

*Title 36
Procedural rules*

~~WEST VIRGINIA ADMINISTRATIVE REGULATION~~

BOARD OF COAL MINE HEALTH AND SAFETY

~~TITLE 36~~ SERIES 37

~~TITLE~~ *e* Rulemaking Procedures for the Board of Coal Mine Health and Safety

86.37.1 General

1.1 Scope - This administrative rule establishes procedures to be followed by the Board of Coal Mine Health and Safety in carrying out its rulemaking responsibilities by West Virginia Code 22-6-4 and 22-6-4a.

1.2 Authority - ^{W. Va.} ~~West Virginia Code~~ 22-6-4.

1.3 Filing Date - January 21, 1987

1.4 Effective Date - February 21, 1987

36.37.2 Definitions

2.1 All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in Chapter 22A, Article 1, Section 1 of the West Virginia Code.

36.37.3 General Rulemaking Procedures

3.1 Priorities.

(a) The Board shall consider issues in the following order of priority:

- (1) Causes of fatal injuries (occurring after the effective date of this regulation)
- (2) Major causes of nonfatal injuries (occurring since the calendar year immediately prior to the effective date of this regulation)
- (3) General health and safety issues

(b) Notwithstanding any code provision to the contrary, the Board may consider issues from more than one of the above categories at the same time.

3.2 Use of Committees

(a) Committees may be established upon approval of two-thirds (2/3) of the quorum present. Committees shall be established solely to develop issues and advise the full Board on matters before the Board. All Committees shall be comprised of one operator representative and one miners representative, who shall be appointed by the Chairman, by the two public members at their option, and by the Chairman at his option.

36.37.4 Procedures for promulgating regulations in response to fatalities

4.1 The Commissioner of the Department of Energy shall provide the Board with all available reports regarding each coal mine fatality within sixty (60) days of the accident.

4.2 The Administrator shall submit a report to the Board which analyzes each coal mine fatality within ninety (90) days of the accident. The report shall summarize the relevant facts concerning the accident, including:

- (a) Cause of accident
- (b) Contributing factors to the accident
- (c) Notices of violation issued
- (d) Recommendations made by the investigating team
- (e) Followup to the recommendations, if any
- (f) Existing laws, regulations, and policies relevant to the cause of the accident

4.3 Within 120 days of the review of the available reports, the Board shall take the following actions on each fatality reviewed:

- (a) The Board shall direct the Administrator to prepare findings of fact and conclusions of law.
- (b) The Board shall formally vote on whether to approve the findings of fact and conclusions of law.
- (c) The Chairman shall call for a formal vote on whether the promulgation of rules and regulations by the Board could assist in preventing the recurrence of the specific type of fatality. A majority of the quorum present must vote against having additional regulations in order for this motion to fail.
- (d) If the Board determines that no rules or regulations would assist in preventing the specific type of fatality in question, the Board must publish, within a reasonable time, its findings and conclusions, as provided for in Section 4.3(b), and the reasons for its determination that no additional regulations are needed. These

findings and conclusions shall be maintained at the Department of Energy office in Charleston, and be made available to interested persons for inspection or copies.

- (e) If the Board determines that the promulgation of rules and regulations would assist in preventing the specific type of fatality, it shall take the following actions:
- (1) The Board shall direct the Administrator to prepare proposed regulations consistent with the findings of fact and conclusions of law approved by the Board.
 - (2) The Board shall formally vote on whether to promulgate the proposed regulations. The Board may make such proposed regulations available for comment by interested persons in accordance with Code 22-6-4, provided such action can be completed and final action taken on the regulation within the 120 day period.
 - (3) If the Board decides to promulgate the regulation as is or with modifications, provided such modifications are supported by factual findings developed by the Board, the regulation shall be filed in the Secretary of State's office, and a notice of final rulemaking and a copy of the final regulation shall be sent to all affected operators and other interested persons.
 - (4) If the Board determines that no regulation can be developed to be consistent with the findings and conclusions, it shall direct the Administrator to prepare amended findings and conclusions stating the reason for such determination. Upon approval, the Board shall, within a reasonable time, publish these findings and conclusions and shall maintain them at the Department of Energy office in Charleston to be available to interested persons for inspection or copies.

36.37.5 Procedures for promulgating regulations in response to major causes of injuries

5.1 As soon as practicable after the first day of January of each year, the Administrator shall submit a report to the Board on each major cause of injury. The report shall summarize the relevant facts concerning each major cause of injury, including:

- a. Circumstances surrounding the injuries, including: cause of injuries; activity of victim at time of injury; object, substance, or machine involved in injuries; nature of injury; and location in mine where injury occurred.
- b. Existing laws, regulations, and policies relevant to the cause of the accident.

5.2 Between the first day of January and the first day of July of each year, the Board shall review in detail the major causes of coal mining injuries during the previous calendar year, taking into account both frequency and severity of injury.

5.3 Prior to the first day of July of each year, the Board shall take the following action on each major cause of injury reviewed:

- (a) The Board shall direct the Administrator to prepare findings of fact and conclusions of law.
- (b) The Board shall formally vote on whether to approve the findings of fact and conclusions of law.
- (c) The Chairman shall call for a formal vote on whether the promulgation of rules and regulations by the Board could assist in preventing the recurrence of the specific type of injury. A majority of the quorum present must vote against having additional regulations in order for this motion to fail.
- (d) If the Board determines that no rules or regulations would assist in preventing the recurrence of the specific type of injury in question, the Board must publish, within a reasonable time, its findings and conclusions as provided for in Section 5.3(b), and the reasons for its determination that no additional regulations are needed. These findings and conclusions shall be maintained at the Department of Energy office in Charleston, and be made available to interested persons for inspection or copies.
- (e) If the Board determines that the promulgation of rules and regulations would assist in preventing the recurrence of specific types of injuries, it shall take the following actions:
 - (1) The Board shall direct the Administrator to prepare proposed regulations consistent with and based upon the findings of fact and conclusions of law developed pursuant to Section 5.3(b).
 - (2) The Board shall formally vote on whether to promulgate the proposed regulations. The Board may make such proposed regulations available for comment by interested persons in accordance with the provisions of Code 22-6-4, provided that such action can be completed and final action taken on the regulation by July 1.
 - (3) If the Board decides to promulgate the regulation as is or with modifications, provided that such modifications are supported by factual findings developed by the Board, the regulation shall be filed in the Secretary of State's office, and a notice of final rulemaking and a copy of the final regulation be sent to all affected operators and other interested persons.

- (4) If the Board determines that no regulation can be developed to be consistent with the findings and conclusions, it shall direct the Administrator to prepare amended findings and conclusions stating the reasons for such determination. Upon approval, the Board shall, within a reasonable time, publish these findings and conclusions and shall maintain them at the Department of Energy office in Charleston to be available to interested persons for inspection or copies.

36.37.6 Procedures for promulgating regulations in response to suggestions by Board members or Administrator

6.1 Any Board member or the Administrator may suggest subjects for the Board to investigate. Suggestions shall be submitted to the Administrator, and may be submitted either at a Board meeting or at any other time. Whenever possible, suggestions shall be submitted in writing on a form provided by the Administrator, and shall include a brief statement of the problem to be addressed.

6.2 The Administrator shall submit a report to the Board at the next regular scheduled Board meeting of all suggestions which have been submitted during and after the last Board meeting. The Administrator shall maintain a list of all suggestions submitted, and each suggestion shall be considered by the Board in the order it was submitted, unless a majority of the Board determines that a particular suggestion should receive priority attention.

6.3 The Administrator shall prepare a report which outlines the issues to be addressed under each suggestion, and shall submit the report to the Board during the meeting at which the suggestion will be taken up for consideration. The Administrator's report shall include the following:

- (a) Definition of the problem.
- (b) Technical evidence available -- general information, including any injuries or fatalities, which is available or which needs to be developed.
- (c) Staff time required -- general estimate of the amount of time the Administrator will require to prepare technical evidence for Board review.
- (d) Legal authority -- determination of whether consideration of and action on this issue is within the Board's statutory authority.
- (e) Description of findings of fact and conclusions of law -- identification of the findings and conclusions which the Board must make if it decides to propose regulations.
- (f) Existing laws, regulations, and policies relevant to the suggestion.

6.4 Upon receipt of the Administrator's report, the Board shall review the issues raised in the report, and take one of the following actions:

- (a) Accept the report, and proceed with Step 6.5
- (b) Direct the Administrator to undertake further research necessary for Board consideration of this issue, and direct the Administrator to prepare a revised report which identifies the issues discussed, materials reviewed, results of any additional research, and preliminary findings and conclusions.

6.5 Following such time that adequate or sufficient information has been generated through compliance with 6.3 (a - f), the Board shall take up the Administrator's report or revised report for consideration. The Board shall take the following action within a reasonable time:

- (a) The Board shall formally vote on whether to approve the preliminary findings of fact and conclusions of law.
- (b) The Chairman shall call for a formal vote on the need for additional regulations or existing regulations to be amended or revised based on the suggestion submitted and the problem(s) to be addressed.
- (c) If the Board determines that no regulations are needed, it must publish, within a reasonable time, its reasons, in the form of findings of fact and conclusions of law, for such determination. These findings and conclusions shall be maintained at the Department of Energy office in Charleston, and be made available to interested persons for inspection or copies.
- (d) If the Board determines that regulations are needed, it shall direct the Administrator to prepare proposed regulations for review and approval by the Board, and upon approval shall make them available for public comment in accordance with the provisions of Code 22-6-4.

6.6 For all proposed regulations, the Board shall take the following actions:

(a) A notice of proposed rulemaking and a copy of the proposed regulation shall be delivered to each affected mine operator and other interested persons. The notice of proposed rulemaking shall contain a summary explaining the preliminary findings of fact and conclusions of law, and the effect of the proposed regulation.

(b) A minimum of 30 days from the date the notice and proposed regulations are mailed out shall be provided for persons to submit written comments. All written comments postmarked on or before the last day of the comment period shall be accepted for Board consideration.

(c) If a public hearing is requested by any interested person during the comment period, the Board shall immediately after the close of the comment period publish a notice specifying the regulation to which objections have been raised and setting the date for the public hearing.

(d) Hold a public hearing on the proposed regulation if so requested, or if previously agreed by the Board members.

(e) Review all comments received, and direct the Administrator to prepare final findings of fact and conclusions of law. The Board's response to all comments received shall be made a matter of record.

(f) Vote on final findings of fact and conclusions of law within 60 days after the public hearing, and make such findings and conclusions available at the Department of Energy office in Charleston to interested persons for inspection or copies.

(g) Vote on whether to promulgate the regulation as is or with modifications, or remove from further consideration.

(h) If the Board decides to promulgate the regulation as is, or with minor changes, the regulation shall be filed in the Secretary of State's office, and a notice of final rulemaking and a copy of the final regulations shall be sent to all affected operators and other interested persons.

(i) If the Board determines that major changes to the proposed regulations are needed, it shall resubmit the proposed regulations as amended for public comment in accordance with the provisions of this section and Code 22-6-4.

(j) If the Board decides to remove the proposed regulation from further consideration, a notice shall be sent to all persons who received the proposed regulation, advising them of this action and why it was taken.

36.37.7 Agenda for Board meetings

7.1 Prior to adjournment of each meeting, the Board will set the agenda for the next regular scheduled meeting.

7.2 The agenda for each regular scheduled meeting will be structured in the following sequence:

- (a) Approval of minutes
- (b) Administrator's report on new suggestions submitted
- (c) Review of fatal accidents
- (d) Review of non-fatal accidents (when scheduled)
- (e) Suggestions from the list of suggestions maintained by the Administrator, taken in order of priority, unless a majority of the Board agrees to move a suggestion up on the list.
- (f) Other business

7.3 The order in which items on the agenda are considered shall not be changed except by approval of a majority of the Board.