

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #4 ■

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Development Office TITLE NUMBER: 145

CITE AUTHORITY: 5B-2A-12

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Community Development Assessment and Real Property
Valuation Procedures for Office of Coalfield Community
Development

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

FILED

TITLE 145
LEGISLATIVE RULE
WEST VIRGINIA DEVELOPMENT
OFFICE

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 8
COMMUNITY DEVELOPMENT
ASSESSMENT AND
REAL PROPERTY VALUATION
PROCEDURES
FOR OFFICE OF COALFIELD
COMMUNITY DEVELOPMENT

2.4. "Community Impact Statement" -- shall mean the written statement containing all of the information required by section 4 of this rule that is filed by the operator with the office.

~~2.6.~~ 2.5. Division "Department" -- shall mean the West Virginia Division Department of Environmental Protection established in W. Va. Code §22-1-1 et seq.

2.6. "Development Authority" -- means the appropriate state, local, county or regional development or redevelopment authority.

~~2.5.~~ 2.7. "Development Office" -- shall mean the West Virginia Development Office established in W. Va. Code §5B-2-1 et seq.

2.8. "Infrastructure Component Standards" -- means those standards developed by a development authority which are to be applied to the infrastructure needs as determined by the development authority and as included in a master land use plan to ensure proper implementation of the plan. The standards will be specific to each plan.

~~2.7.~~ 2.9. "Office" -- shall mean the Office of Coalfield Community Development established in W. Va. Code § 5B-2A-1 et seq.

~~2.8.~~ 2.10. "Operator" -- shall mean any individual, partnership, firm, society, association, trust, corporation or other business entity which applies for, which is granted or which obtains a permit to engage in surface mining and reclamation operations.

2.11. "Master Land Use Plan" -- means a plan which addresses current and prospective uses for land which in whole or in part is or has been covered by a surface mining permit; contains all the information required by section 6 of this rule; and contains information sufficient to meet all the requirements of W. Va. Code §22-3-13(c).

~~2.9.~~ 2.12. "Permit" -- shall mean a permit to conduct surface mining operations issued pursuant to W. Va. Code §22-3-8.

§145-8-1. General.

1.1. Scope. -- This rule establishes the procedure for the creation of community impact statements by operators, the process for the development of coalfield community development statements which include asset development goals and infrastructure needs, the criteria for the development of a master plan by local, county regional development or redevelopment authorities, and the procedure for establishing the value of property to assist property owners who desire to voluntarily sell their property to an operator.

1.2. Authority. -- W. Va. Code §5B-2A-12.

1.3. Filing Date. -- ~~April 5, 2000~~

1.4 Effective Date. -- ~~June 19, 2000~~

§ 145-8-2. Definitions.

As used in this rule, unless used in a context that clearly requires a different meaning, the term:

2.1. "Chief" -- shall mean the chief of the office.

2.2. "Code" -- shall mean the code of the State of West Virginia of 1931, as amended.

2.3. "Community Development Statement" -- shall mean the written statement containing all information required by section 5 of this rule that is prepared by the office.

2.13. "Plan" -- means a master land use plan as defined in subsection 2.11 of this rule.

2.14. "Reclamation Plan" -- means the reclamation plan established in W. Va. Code §22-3-10.

~~2.10.~~ 2.15. "Surface Mining Operations" -- shall mean activities conducted on the surface of lands for the removal of coal where such activities disturb the natural land surface. Surface mining operations do not include any of the following:

~~2.10.a.~~ 2.15.a. Coal extraction authorized pursuant to a government-financed reclamation contract;

~~2.10.b.~~ 2.15.b. Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

~~2.10.e.~~ 2.15.c. The reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

§145-8-3. Exempted Operations.

3.1. The provisions of this rule shall apply to all surface mining operations, except:

3.1.a. Surface operations and surface impacts incident to an underground coal mine; and

3.1.b. Surface mining operations of operators that: (1) establish that their probable total annual coal production from all locations during any consecutive twelve-month period, either during the term of the permit or during the first five years after issuance of the permit, whichever period is shorter, will not exceed 300,000 tons, as determined pursuant to rules promulgated by the ~~division~~ department, and (2) otherwise meet all criteria for the small operator assistance program authorized under the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq., as amended.

3.2. The provisions of this rule ~~shall do not~~ apply to: (1) underground coal mining operators or (2) the extraction of minerals by underground mining methods or the surface impacts thereof.

3.3. Any operator claiming an exemption from the requirements of this rule ~~shall~~ must file a statement with the office setting forth the name and address of the operator, the amount and location of the land to be mined or used in the surface mining operations, the expected duration of the surface mining operations, and the basis for the exemption claimed. The statement ~~shall~~ must be executed by an acknowledged signature of an officer, member, partner or other duly authorized agent of the operator.

§145-8-4. Community Impact Statement.

4.1. An operator ~~shall~~ must develop and file a community impact statement, as described in ~~section~~ subsection 4.3 of this rule, with the office no more than 60 days after filing an application for a permit with the ~~division~~ department.

4.2. A community impact statement shall also be filed by the operator within 90 days after the issuance of all permits granted after June 11, 1999, and within 90 days after the first renewal date of all permits issued prior to June 11, 1999.

4.3. A community impact statement, where practicable, ~~shall~~ must be written in a clear and concise manner understandable to all citizens. The community impact statement ~~shall~~ must include the following:

4.3.a. The amount and location of land to be mined or used in the actual surface mining operations, the permit numbers for all mining, surface, national pollutant discharge elimination system or other permits relating to such surface mining operations, the latitude and longitude coordinates of the approximate center of the proposed area to be permitted, and the magisterial districts and other related information requested by the office.

4.3.b. The expected duration of the surface mining operations in each area of the

community.

4.3.c. The extent of anticipated mining-related property acquisitions by the operator and any other property owners, including the names and addresses of the owners of all surface, mineral and other interests in property to be acquired related to the surface mining operations for which the permit application was filed, to the extent that such property acquisitions are known or capable of being known.

4.3.d. The names and addresses of the owners of all surface, mineral and other interests in property to be mined pursuant to the permit and located within 1,000 feet of the permitted area or areas for surface mining operations.

4.3.e. The intentions of property owners, other than the operator, relative to the surface, mineral and other property intended to be acquired for the anticipated surface mining operations, to the extent that such intentions are known or capable of being known.

4.3.f. A statement of the postmining land use and approximate postmining contour for all land within the permit boundary.

4.3.g. The intended blasting plan for the surface mining operations anticipated under the permit and the expected time and duration that the anticipated blasting ~~shall~~will affect each community.

4.3.h. Information concerning the extent and nature of valley fills anticipated to be located within the surface mining operations and the watersheds to be affected by these valley fills.

4.3.i. Economic information about the anticipated surface mining operations, including, without limitation, the estimated number of jobs created, the estimated proportion of mine employees who will be residents of West Virginia, the estimated annual mine payroll, the estimated annual coal production, the anticipated mine life, and such other economic information as may be requested by the office.

4.3.j. The location of and distance from the mine site to the nearest existing gas, electric, water, sewer and other utilities, the location of and distance from the mine site to the closest paved public roadway, and the gas, electric, water, sewer and other utility infrastructure anticipated to be extended to the mine site.

4.3.k. The identification of public bridges, parks and recreation areas, roads, schools, utility lines, water supplies or other public facilities that may be acquired, relocated or removed by the anticipated surface mining operations. The operator ~~shall~~must identify the public roads over which coal mined from the proposed surface mining operation ~~shall~~will be transported after leaving the permitted area, the estimated number of truckloads of coal or refuse materials to be transported daily on these roads, the estimated truck schedule of this transportation activity, and any rerouting of traffic anticipated to be caused by this transportation activity.

4.3.l. Maps of the area within 1,000 feet from the permit or proposed permit area prepared from United States Geological Survey topographic maps, or maps determined to be as accurate by the office, on 7.5 minute quadrangle depicting permit boundaries, property boundaries, property ownership interests, structures, roads, and other information required to be filed with the community impact statement. ~~Such~~The maps ~~shall~~must have a preferred scale of 500 feet to one inch and ~~shall~~are required to be submitted on print paper 30 inches by 42 inches or less. If supplementary maps or plans are attached, match lines ~~shall~~must be used.

4.4. Simultaneously with its filing in the office, the operator shall also provide copies of the community impact statement to the ~~division's~~department's office ~~division~~division of mining and reclamation and office of explosives and blasting, the county commissions, the office of the clerk of the county commissions, the regional planning and development councils, the county economic development authorities, and public libraries in those areas to be affected by the surface mining operations.

4.5. Where the operator makes any significant revision to the permit application under 38 CSR § 2-3.28, which ~~revision~~ substantially affects any of the information provided in the community impact statement previously filed with the office, the operator ~~shall~~ must revise those portions of the community impact statement affected and shall submit these revisions to the office and each of the entities identified in ~~section~~ subsection 4.4 of this rule within 60 days after filing the request for significant revision with the ~~division~~ department.

4.6. The failure to file a community impact statement with the office ~~shall be~~ is a violation under W. Va. Code § 22-3-17.

§145-8-5. Coalfield Community Development Statement.

5.1. The office shall coordinate the development of a coalfield community development statement when an operator applies for any permit with the ~~division~~ department.

5.1.a. When multiple permit applications are applied for by one or more operators in any single county or contiguous area of an adjacent county, the office may develop a coalfield community development statement for the entire county or counties affected by the proposed surface mining operations.

5.1.b. The office ~~shall~~ will divide the coalfield community development statement into smaller areas in the event that economic or geographic factors make a countywide statement impracticable.

5.2. Within 30 days after the community impact statement ~~from the operator applying for the permit~~ is filed with the office, the office shall must distribute notice by certified mail that it is developing a coalfield community development statement to the following:

5.2.a. Owners of surface, mineral and other interests in the property intended to be mined by the operator applying for the permit, ~~by certified mail~~; and

5.2.b. State and local government agencies such as county commissions, city or town governments in affected communities, regional planning and development councils, and county economic development authorities having jurisdiction over the affected communities, ~~all by certified mail~~.

5.3. Within 30 days after the community impact statement ~~from the operator applying for the permit~~ is filed with the office, the operator shall must notify individuals and business owners and operators in affected communities that the office is developing a coalfield community development statement.

5.3.a. ~~This~~ The notification from the operator shall must be by a class I legal advertisement as provided in W. Va. Code §59-3-2, which ~~shall~~ and contain a map identifying the location of the proposed surface mining operations.

5.3.b. After ~~this~~ the notification has been published, the operator shall must file the publication certification for the class I legal advertisement with the office.

5.4. A notice provided by the office and the operator to affected persons and entities about the coalfield community development statement shall must contain the following information:

5.4.a. The name of the permit applicant and the location of the intended surface mining operations;

5.4.b. The locations in the affected communities where the community impact statement has been filed by the operator for inspection;

5.4.c. The expected duration of the surface mining operations in each area of the community;

5.4.d. The notice shall must inform its recipients that the office is preparing an initial community development statement or modifying an existing community development statement,

and invite persons and entities in areas affected by the anticipated surface mining operations to submit written comments and other documentation to the chief within 30 days after the date of the notice about how their communities are anticipated to be affected by the planned surface mining operations and the intended ~~post-mining~~ postmining land use; and

5.4.e. The notice ~~shall~~ must inform its recipients that a draft community development statement or modification to an existing community development statement will be made available for public inspection in the office and in those locations in the affected communities where the community impact statements for the planned surface mining operations were filed within 180 days from the date of the notice, and that persons and entities in the affected communities ~~shall~~ will have 30 days after the date of the issuance of the draft community development statement, or modification thereof, to submit written comments and other documentation to the chief about this draft document. The deadline for filing the draft community development statement or modification to an existing community development statement may be extended by the chief for good cause shown.

5.5. After the close of the public comment period on the draft community development statement or modification to an existing community development statement, the chief ~~shall~~ will schedule a public meeting in the county seat of the area anticipated to be affected by the planned surface mining operations to receive public comment ~~upon~~ on the draft community development statement, or modification, ~~thereof,~~ thereof, ~~being developed by the office.~~

5.6. The office ~~shall~~ will determine what information, findings and recommendations ~~shall~~ will be contained in the coalfield community development statement, or modification thereof, which shall include, but not be limited to, the following:

5.6.a. An evaluation of the future of the affected communities once mining operations are completed.

5.6.b. The identification of community assets that may be developed by the affected community, county or region to foster its viability when surface mining operations are completed which may include the following:

5.6.b.1. Water and wastewater services;

5.6.b.2. Developable land for housing, commercial development or other community purposes;

5.6.b.3. Recreation facilities and opportunities; and

5.6.b.4. Education facilities and opportunities.

5.6.c. In determining the nature and extent of the needed community assets, the office ~~shall~~ must consider at ~~least~~ a minimum, the following:

5.6.c.1. An evaluation of the future of the community once surface mining operations are completed as required to be determined in the coalfield community development statement;

5.6.c.2. The prospects for the long-term viability of any asset developed under ~~this section~~ subdivision 5.6.c.;

5.6.c.3. The desirability of foregoing some or all of the asset development required by ~~this section~~ subdivision 5.6.c. in lieu of the requirements of ~~section~~ subdivision 5.6.e. of this rule;

5.6.c.4. The determinations made during the development of the coalfield community development statement of the impacts of the mining operations on the community; and

5.6.c.5. The extent to which the community, local, state or federal government may participate in the development of assets the community needs to assure its viability.

5.6.d. As part of the coalfield community development statement, the office ~~shall~~must determine the land and infrastructure needs in the county or counties in which the surface mining operations are being conducted, or any adjacent county.

5.6.e. In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office ~~shall~~must consider at least a minimum, the following:

5.6.e.1. The availability of developable land in the general area;

5.6.e.2. The needs of the general area for developable land;

5.6.e.3. The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service and other utilities;

5.6.e.4. The amount of land to be mined and the amount of valley to be filled by the surface mining operation;

5.6.e.5. The amount, nature and cost to develop and maintain the community assets identified in ~~section~~ subdivision 5.6.b. of this rule; and

5.6.e.6. The availability of federal, state and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

5.6.f. In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office ~~shall~~will give significant weight to developable land on or near existing or planned multi-lane highways.

5.7. The final community development statement or modification to an existing community development statement ~~shall~~must be completed within 180 days following the public meeting required under ~~section~~ subsection 5.5. of this rule or within 180 days following the issuance

of a permit for the surface mining operations, whichever occurs later. The deadline for the completion of the final community development statement or modification to an existing community development statement may be extended by the chief for good cause shown.

5.8. When the office receives community impact statements that affect communities that are included within existing community development statements, the office ~~shall~~must determine whether the surface mining activities anticipated by the additional community impact statements require the amendment or modification of the community development statement previously prepared by the office. In the event that the office determines no modification or amendment to the existing community development statement is required, the office and operator ~~shall~~will issue a notice pursuant to ~~sections~~ subsections 5.2. and 5.3. containing the information required by ~~sections~~ subsection 5.3.a—e and disclose the intention of the office not to further amend or modify the existing community impact statement. When the office concludes that the anticipated surface mining operations require an amendment to or modification of an existing community development statement, then the office and operator ~~shall~~must use the notice and public comment provisions contained in ~~sections~~ subsections 5.4.a—e and 5.5. of this rule.

5.9. Based upon the information developed by the office under ~~sections~~ subsections 5.5. and 5.6. of this rule, the office ~~shall~~will prepare an action report, as part of the coalfield community development statement, which shall make recommendations for achieving economic development initiatives, including identifying sources of potential funding. The office ~~shall~~will maintain the action report available for public review, as updated pursuant to ~~section~~ subsection 5.10. of this rule.

5.10. The office ~~shall~~must prepare an annual status update of this action report which ~~shall~~will describe accomplishments and prospects for continued economic development.

§145-8-6. Master Land Use Plans

6.1. A master land use plan may be prepared by a development authority. If requested by a development authority, the office may assist in the preparation of a master land use plan.

6.2. A development authority must determine land and infrastructure needs within its jurisdiction as necessary in conjunction with its preparation of a master land use plan.

6.2.a. In making a determination of the land and infrastructure needs in its jurisdiction, the development authority will evaluate at least the considerations set forth in subsection 5.6.e. of this rule. A development authority may satisfy this requirement by incorporating all or part of the determination of land and infrastructure needs of an area reflected in a community development statement prepared in accordance with section 5 of this rule.

6.3 For any infrastructure needs identified by the development authority, consistent with the current and prospective uses described in the master land use plan, infrastructure component standards will also be developed.

6.3.a. The infrastructure component standards developed by a development authority must be approved by the appropriate county commission or commissions before such standards can be included in a master land use plan.

6.3.b. The approval of infrastructure component standards by the county commission or commissions may only be rendered after notice to the public and a 30-day comment period.

6.4. Once a master land use plan has been prepared, the office must review the plan. This review shall include an evaluation of the plan's impact on the development of economic and community assets and conformance with this rule.

6.5. A master land use plan shall be sufficiently complete to indicate its relationship to definite objectives of the development authority as to appropriate land uses and shall include at a minimum, the following:

6.5.a. The boundary of the area encompassed by the plan with a map showing the existing uses and conditions of the real property and any infrastructure components therein;

6.5.b. A land use plan showing the proposed uses of the area;

6.5.c. A statement of the proposed changes, if any, in zoning ordinances or maps, street and highway layouts, building codes and ordinances;

6.5.d. A site plan of the area;

6.5.e. A statement as to the kinds and number of additional public facilities or utilities which will be required to support the new land uses in the area after development;

6.5.f. A statement of the land and infrastructure needs as determined pursuant to subsection 6.2. of this rule including a statement of infrastructure component standards; and

6.5.g. Any community impact statements and/or community development statements which may have been prepared and which effect any property within the boundaries of the master land use plan.

6.6. An operator may include, in a surface mining permit application, a master land use plan which addresses postmining land uses in the reclamation plan developed pursuant to W. Va. Code §22-3-10. An operator may seek to amend a reclamation plan approved but not implemented or a reclamation plan pending approval by including a master land use plan.

6.6.a. Any modifications in the postmining land use during mining must be made in accordance with 38 CSR §§ 2-7.3.a. and 3.28.

6.7. All master land use plans must be approved by the department as part of the operator's reclamation plan before the master land use plan may be implemented.

§145-8-6 7. Land Acquisitions.

~~6.1.~~ 7.1. After a community impact statement is filed by an operator as provided in section 3 of these rules, the office ~~shall~~must give notice to the property owner at the address identified by the community impact statement that the owner's property has been identified for purchase by the operator and the name and address of the proposed purchaser, but the office ~~shall~~will not provide ~~no~~ other assistance unless requested by the potential property seller.

~~6.2.~~ 7.2. The office ~~shall~~will assist property owners so notified and other property owners who desire to sell their property voluntarily to an operator which has applied for a permit or any person, firm or corporation directly or indirectly affiliated with such operator, provided that all of the following conditions are met:

~~6.2.a.~~ 7.2.a. The operator or any person, firm or corporation directly or indirectly affiliated with the operator makes an offer, in writing, to purchase the property stating all the terms and conditions of the proposed purchase;

~~6.2.b.~~ 7.2.b. The property to be purchased is located within 1,000 feet of property which actually is or will be mined by the operator;

~~6.2.c.~~ 7.2.c. The structures are actually being used for commercial purposes or are occupied residences situate on the property to be purchased; and

~~6.2.d.~~ 7.2.d. The potential seller or group of sellers requesting assistance from the office own all of the property proposed to be purchased, and no undivided interests in the property exist that are opposed to the valuation procedure.

~~6.3.~~ 7.3. If requested by a potential seller qualifying under section subsection 6.2 7.2. of this rule, the office ~~shall~~will ~~only~~ provide assistance only if it determines that the value of the property is diminished by the proposed surface mining operations and that the offer made by the operator is less than the value the property would have had prior to any diminution of value.

~~6.4.~~ 7.4. If the office determines that the value of the property is diminished and that the offer made by the operator or its affiliate is less than the value the property would have had prior to any diminution of value, ~~then~~ the office ~~shall~~will ~~cause~~ establish the value of the property prior to any diminution. The value will ~~to be~~ established by a qualified and disinterested appraiser. The office will and shall certify ~~this~~the value to the potential property seller and the operator.

~~6.5.~~ 7.5. ~~Either party shall~~The parties have 30 days after their receipt of the certification of value by the office to request a reconsideration of this valuation based upon written documentation submitted to the office within such 30-day period.

~~6.6.~~ 7.6. Within 30 days after its receipt of a request for reconsideration, the office ~~shall~~will review all documentation provided, and if the office determines that good cause has been shown for an adjustment to the previously certified value of the property, then the office ~~shall~~will provide the parties with certification of the adjusted value which ~~shall~~will be a final determination and not subject to further challenge by the parties.