

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED

AUG 13 10 31 AM '99

OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Development Office TITLE NUMBER: 145

RULE TYPE: Legislative; CITE AUTHORITY 5B-2A-12

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 8

TITLE OF RULE BEING PROPOSED: Rules for West Virginia Office of Coalfield
Community Development

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 13 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Development Office

State Capitol Complex

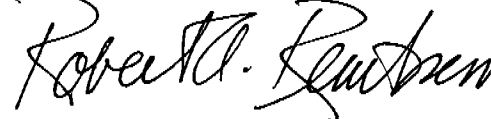
1900 Kanawha Boulevard, East

Building 6, Room 504

Charleston, West Virginia 25305

Attention: Tom Holder

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Robert A. Reintsema, Commissioner
Bureau of Commerce

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 145

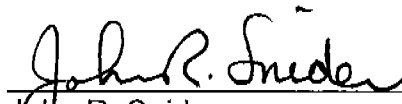
**LEGISLATIVE RULES
WEST VIRGINIA DEVELOPMENT OFFICE**

**SERIES 8
PROPOSED RULES FOR OFFICE OF COALFIELD COMMUNITY DEVELOPMENT**

**CIRCUMSTANCES REQUIRING PROPOSED
LEGISLATIVE RULE**

Senate Bill No. 681 became effective June 11, 1999, creating the West Virginia Office of Coalfield Community Development pursuant to Chapter 5B, Article 2A of the West Virginia Code. West Virginia Code § 5B-2A-12 requires the Office of Coalfield Community Development to propose rules for legislative approval to establish, implement and enforce the provisions of Article 2A.

WEST VIRGINIA DEVELOPMENT OFFICE



John R. Snider
Executive Director

**TITLE 145
LEGISLATIVE RULES
WEST VIRGINIA DEVELOPMENT OFFICE**


**SERIES 8
PROPOSED RULES FOR OFFICE OF COALFIELD COMMUNITY DEVELOPMENT**

SUMMARY OF PROPOSED LEGISLATIVE RULE

During the 1999 legislative session, Senate Bill No. 681 created the West Virginia Office of Coalfield Community Development (the "Office") under Chapter 5B, Article 2A of the West Virginia Code. West Virginia Code § 5B-2A-12 requires that legislative rules be promulgated by the Office to establish, implement and enforce the provisions of Article 2A.

The Office was created to help address the long-term economic needs of communities and citizens in West Virginia impacted by surface mining activities. The Office's proposed legislative rules will create a system to collect and process community impact statements required to be filed for future surface-mining operations. These proposed rules shall also establish the process through which the Office will develop community development statements for affected coalfield areas. Finally, these proposed rules shall establish a formal procedure to assist property owners in the determination of the fair market value of property sought to be acquired in connection with such mining operations.

WEST VIRGINIA DEVELOPMENT OFFICE



John R. Snider
Executive Director

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for West Virginia Office of Coalfield Community Development

Type of Rule: X Legislative Interpretive Procedural

Agency West Virginia Development Office

Address State Capitol Complex

1900 Kanawha Boulevard, East

Building 6, Room 553 Charleston, WV 25305-0311

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THIRDAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$750,680	\$773,200	\$796,400
PERSONAL SERVICES			167,400	172,400	177,600
CURRENT EXPENSE			566,080	583,100	600,600
REPAIRS & ALTERATIONS			-	-	-
EQUIPMENT			17,200	17,700	18,200
OTHER					

2. Explanation of above estimates:

See attached budget sheet. Contractual costs consistent with informal cost estimates provided by reputable contractor.

3. Objectives of these rules:

To implement the provisions of 1999 Senate Bill 681 (Chapter 5B, Article 2A, West Virginia Code) regarding establishment of an Office of Coalfield Community Development within the West Virginia Development Office.

Rule Title: Rules for West Virginia Office of Coalfield Community Development

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. Economic Impact on State Government.

Will help stabilize employment and state tax revenues in surface mining impacted counties.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Will stimulate growth in local property taxes, diversify local economies, and assist property owners impacted by surface mining.

C. Economic Impact on Citizens/Public at Large.

Will increase economic opportunities and improve living conditions for citizens in impacted counties.

Date: 8-12-99

Signature of Agency Head or Authorized Representative

John B. Sude

Attachment to Item 2 - Explanation of cost estimates

assume 56 mines in 16 counties in FY2000 or roughly 3 mines per county

Budget

Director	1	\$ 60,000
Professional	1	\$ 42,000
Secretarial	1	\$ 22,000
Fringe Benefits (35%)		\$ 43,400
Travel		\$ 15,000
Office Space		\$ 14,280
Furniture/Equipment		\$ 17,200
Office/Printing/Blinding		\$ 5,000
Telephone		\$ 3,000
Equipment Contracts/ Maintenance		\$ 4,000
Contractual		\$ 524,800
Total		\$ 750,680

office space/furniture/equipment

staff	office space				furniture/equipment			total
	size	sq ft	\$/sq ft	cost	furniture	computers/printers/phones	filing cabinets	
director	15x15	225	14	\$ 3,150	\$ 2,000			\$ 7,650
professional	15x15	225	14	\$ 3,150	\$ 2,000	2,500		\$ 7,650
secretary/reception area	15x15	225	14	\$ 3,150	\$ 2,000	2,500		\$ 7,650
conference room	15x15	225	14	\$ 3,150	\$ 2,000	500		\$ 5,650
file/storage room	10x12	120	14	\$ 1,680			1,200	\$ 2,880
totals		1020		\$ 14,280	\$ 8,000	\$ 8,000	\$ 1,200	\$ 31,480

contractual costs

impact statement review (56 statements x 16 hrs per statement x \$25 per hour)	\$ 22,400
community development statement preparation (16 impacted counties x \$30,000 per statement)	\$ 480,000
appraisal assistance (56 impact statements x 1 appraisal per statement x \$400 per appraisal)	\$ 22,400
total	\$ 524,800

TITLE 145
LEGISLATIVE RULES
WEST VIRGINIA DEVELOPMENT OFFICE

OFFICE OF LEGISLATIVE SERVICES
103 13 13 31 11 99

SERIES 8
RULES FOR OFFICE OF COALFIELD COMMUNITY DEVELOPMENT

§ 145-8-1. General.

1.1 Scope. -- This Legislative rule establishes the procedure for the creation of community impact statement by operators, the process for the development of coalfield community development statements which include asset development goals and infrastructure needs, 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. -- August , 1999.

1.4 Effective Date. -- _____, 1999.

§ 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 of Coalfield Community Development.

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

2.3 Development Office -- shall mean the West Virginia Development Office established in Article 2, Chapter 5B of the code.

2.4 Division -- shall mean the West Virginia Division of Environmental Protection established in Article 1, Chapter 22 of the code.

2.5 Office -- shall mean the Office of Coalfield Community Development established in Article 2A, Chapter 5B of the code.

2.6 Operator -- shall have the same meaning as the definition of that term in Section 3(o), Article 3, Chapter 22 of the code.

2.7 Permit -- shall have the same meaning as the definition of that term in Section 3(p), Article 3, Chapter 22 of the code.

2.8 Surface Mining Operations -- shall have the same meaning as the definition of that term in Section 3(u), Article 3, Chapter 22 of the code.

§ 145-8-3. Exempted Operations.

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

3.1.a. The 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, and (2) otherwise meet all criteria for the small operator assistance program authorized under the federal Surface Mining Control and Reclamation Act of 1977, as amended, and the federal regulations promulgated thereunder, as amended.

3.2 The provisions of this rule shall 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 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, which statement shall 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 develop and file a community impact statement, as described in section 4.3 of this rule, with the office no more than 60 days after filing an application for a permit with the division.

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 be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:

4.3.a The amount and location of land to be mined or used in the actual surface mining operations, and 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 appropriate geographic areas in which the proposed permitted area is located;

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; which information shall include the identification of owner occupied dwellings and businesses proposed to be purchased as a part of the mining operations, and the number of residents and employees affected by such proposed purchases;

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 one thousand feet (1,000') 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 and all land which may be affected by the anticipated surface mining operations;

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 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 number of direct mining jobs created, the

estimated proportion of mine employees who will be drawn from the county in which the proposed surface mine operation is located and from each immediately surrounding county, the estimated annual mine payroll, the number of indirect support jobs created, the estimated annual coal production, the anticipated mine life, the sources of supplies, equipment and services anticipated to be received from third party contractors and such other economic information as may be deemed appropriate in connection with these surface mining operations.

4.3.j The location of and distance from the mine site to 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 infrastructure anticipated to be extended to the mine site.

4.3k The identification of public bridges, parks and recreation areas, roads, schools, utility lines, water supplies or other public facilities that may be acquired, damaged, relocated or otherwise adversely affected by the anticipated surface mining operations and proposed mitigation activities related to these facilities. The operator shall identify the public roads over which coal mined from the proposed surface mining operation shall be transported after leaving the permitted area, the estimated number of truckloads of coal or refuse materials to be transported daily on these roads, any related traffic interference or safety problems and proposed mitigation activities related to these roads.

4.3.l Maps of the area within one thousand feet (1,000') from the areas for which a permit is being sought prepared from United States Geological Survey topographic maps 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 maps shall have a preferred scale of five hundred feet (500') to one inch, and shall be submitted on print paper thirty inches (30") by forty-two inches (42") or less. If supplementary maps or plans are attached, match lines shall 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 office 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 section 13, article 3, chapter 22 of the code, which revision substantially affects any of the information provided in the community impact statement previously filed with the office, the operator shall 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 4.4 of this rule within 60 days after filing the request for significant revision with the division.

4.6 The failure to file a community impact statement with the office shall be a violation under section 17, article 3, chapter 22 of the code.

§ 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.

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 affected by the proposed surface mining operations.

5.1.b The office shall 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 thirty (30) days after the community impact statement from the operator applying for the permit is filed with the office, the office shall distribute notice 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 thirty (30) days after the community impact statement from the operator applying for the permit is filed with the office, the operator shall notify individuals and business owners and operators in affected communities that the office is developing a coalfield community development statement.

5.3.a This notification from the operator shall be by a class I legal advertisement as provided in article 3, chapter 59 of the code, which shall contain a map identifying the location of the proposed surface mining operations.

5.3.b After this notification has been published, the operator shall file the publication certification for such 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 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 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 thirty (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 land use; and

5.4.e The notice shall 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 one hundred eighty (180) days from the date of the notice, and that persons and entities in the affected communities shall have thirty (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 one hundred eighty day period may be extended by the chief in those instances where additional time is necessary to properly complete the draft community development statement.

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 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 the draft community development statement, of modification thereof, being developed by the office.

5.6 The office shall determine what information, findings and recommendations shall 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 consider at least 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 5.6.c;

5.6.c.3 The desirability of foregoing some or all of the asset development required by this section 5.6.c in lieu of the requirements of section 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 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 consider at least 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 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 give significant weight to developable land on or near existing or planned multi-lane highways.

5.7 When the office receives community impact statements that affect communities that are included within existing community development statements, the office shall 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 issue a notice pursuant to sections 5.2 and 5.3 containing the information required by sections 5.3.a - c 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 use the notice and public comment provisions contained in sections 5.4.a - e and 5.5 of this rule.

5.8 Based upon the information developed by the office under sections 5.5 and 5.6 of this rule, the office shall 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 maintain the action report available for public review, as updated pursuant to section 5.9 of this rule.

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

§ 145-8-6. Land Acquisitions.

6.1 After a community impact statement is filed by an operator as provided in section 3 of these rules, the office shall 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 provide no other assistance unless requested by the potential property seller.

6.2 The office has a valuation procedure to 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 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 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 The structures are actually being used for commercial purposes or are occupied residences situate on the property to be purchased; and

6.2.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 If requested by a potential seller qualifying under section 6.2 of this rule, the office shall only provide assistance if it determines that the value of such 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 If the office determines that the value of such 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 cause the value of such property prior to any diminution to be established by a qualified and disinterested appraiser, and shall certify such value to the potential property seller and the operator.

6.5 Either party shall have thirty (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 Within thirty (30) days after its receipt of a request for reconsideration, the office shall review all documentation provided, and if the office determines that good

cause has been shown for an adjustment to the previously certified value of such property, then the office shall provide the parties with certification of the adjusted value which shall be a final determination and not subject to further challenge by the parties.

85828