

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

Oct 10 3 45 PM '99

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Development Office TITLE NUMBER: 145

CITE AUTHORITY W. Va. Code § 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: Community Development Assessment and

Real Property Valuation Procedures for Office of Coalfield

Community Development

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Robert A. Reintsema, Commissioner  
Bureau of Commerce

\$7.40

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period: Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 10/18/99

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Development Office, 1900 Kanawha  
Boulevard, East, Building 6, Room 504, Charleston, WV 25305,  
Attention: Thomas E. Holder, (304) 558-4010

LEGISLATIVE RULE TITLE: Community development assessment and real property  
valuation procedures for the Office of Coalfield Community Development

1. Authorizing statute(s) citation W. Va. Code § 5B-2A-12
  
2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
August 13, 1999
  
- b. What other notice, including advertising, did you give of the hearing?  
Copies of the proposed legislative rule were distributed to the  
offices of Senators Jackson and Tomlin, and to the West Virginia  
Division of Environmental Protection.
  
- c. Date of Public Hearing(s) or Public Comment Period ended:  
Public comment period ended September 13, 1999
  
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
  
Attached X No comments received \_\_\_\_\_  
See attached Exhibit A.

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

October 18, 1999

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Thomas E. Holder, Manager, Strategic Planning, West Virginia

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Development Office, 1900 Kanawha Boulevard, East, Building 6,

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Suite 553, Charleston, WV 25305, telephone: (304) 558-4010,

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facsimile: (304) 558-3248, e-mail address: tholder@wvdo.org

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- g. **IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same as above.

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not required.

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b. Date of hearing or comment period:

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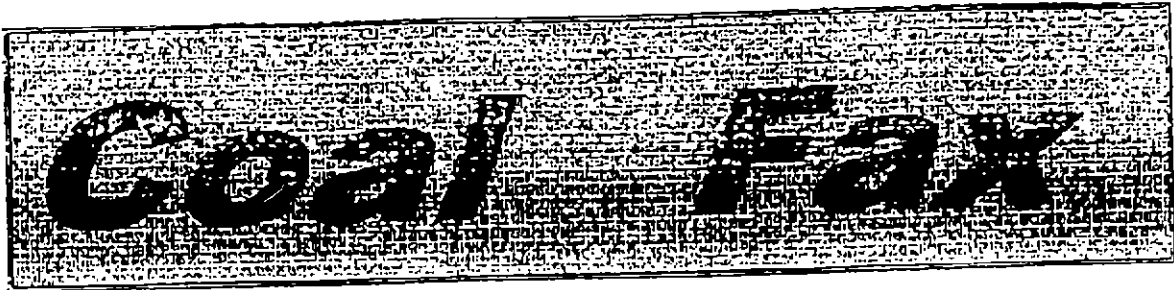
c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

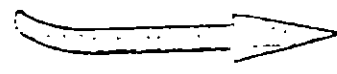
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*A Telefax Message*

FOR: John Swiber

FROM: Chris Hamilton

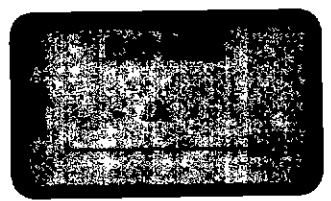
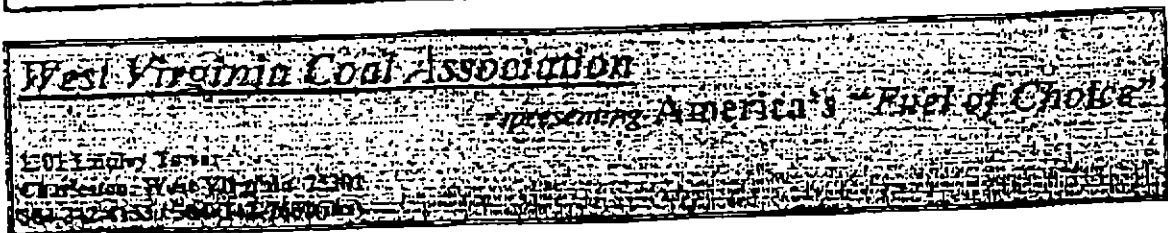


DATE: \_\_\_\_\_

PAGES: 4, including this cover sheet

**NOTES:**

3750  
525



**Comments of the West Virginia Coal Association and the West Virginia Mining And Reclamation Association to the Proposed Rules Addressing the West Virginia Office of Coalfield Community Development – September 13, 1999**

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Attachment to Item 2- Explanation of cost estimates:

*"Assumes 56 mines in 16 counties in FY2000 or roughly 3 mines per county"*

Permitting activities for surface mines in West Virginia have slowed considerably due to federal litigation and a generally depressed coal market. Such a large estimate of surface mines may be too high. In order to prevent a shortfall of revenue for the Office, a new estimate using current mine activity should be conducted.

§ 145-8-2. Definitions. Paragraph 2.8 refers to Section 3(u), Article 3, Chapter 22 of the WV Code which would include all surface disturbance including roads, maintenance areas, plants and loadouts, etc., for all mining, surface and underground. This is in conflict with § 145-8-3. 3.1.a. and 3.2. which exclude, "the surface operations and surface impacts incident to an underground coal mine".

§ 145-8-3. 2. refers to "operators", but should say "permittees". This language appears in a number of places in this document and I would suggest the change be made throughout.

§ 145-8-4.1 states a requirement to file a community impact statement within 60 days after filing for the mining permit. This community impact/development statements are not supposed to be tied to the mining permit, but it's likely that the parallel track of these actions will influence the issuance of the mining permit. Also, in paragraph 4.2, does the law state that we will back up for all previously issued permits? This may take more than 90 days to comply with for the first "go around".

Paragraph 4.3b:

*"The expected duration of the surface mining operations in each area of the community"*

Mining duration estimates will have to be tied to projected coal production estimates. Operators generally regard this information as sensitive/confidential company economic data.

Surface mining duration may be very difficult for an operator to predict, given current coal market conditions and legal considerations. Any failure by the operator to accurately predict surface mining duration may subject the operator to potential legal action should mining become more feasible than originally forecast

Paragraph 4.3.c is unclear. It suggests that the company make known property requirements for virtually any reason, regardless of timing. But, considering that the impact statement is filed after the application for a mining permit, we have already established property control; i.e., we don't need any more property(?) In light of all this, we would probably be inclined to adopt a very hard line not to purchase adjacent property.

Paragraph 4.3.d... substitute "permittee" for "operator".

Paragraph 4.3.e... What is this supposed to accomplish? First, we may not know the intent of the land owner. Also, what about wildly speculative representations for land development? Does this become part of the official record that we have to address somehow?

Paragraph 4.3.f in part states, "and all land which may be affected by the anticipated surface mining operations". This language is simply too broad.

Paragraph 4.3.i. asks too much detail which we may not be able to accurately provide concerning demographics of the labor impact, as well as sources of supplies and services. While broad estimates can be attempted, affiliation with existing labor and material and supply agreements could significantly influence these estimates, and are not entirely within our ability to predict. Any requested information in this paragraph should be qualified as "projections or estimates".

Paragraph 4.3.j is a little unclear concerning distance limitations to this process, as well as adequately defining infrastructure.

Paragraph 4.3.k is loaded with liability issues which are potentially beyond our control. Language such as "otherwise adversely affected", estimated "traffic interference" and "safety problems" is purely subjective and open to interpretation. Also, what is the physical limit to this exercise? Do we bear responsibility beyond our F.O.B. sales point?

Paragraph 4.3.l should state "prepared from USGS topographic maps or maps as accurate". We use aerial mapping in many cases which better and more economically serves our needs (which are equally as accurate as USGS). Also, we currently provide detailed property control within 100 feet of our permit areas. To extend this area of detail to 1000 feet is a tenfold increase! The cost associated with this would be significant.

Paragraph 4.4 should substitute "permittee" for "operator". (Also, this distribution listing is guilty of a little "overkill"?)

Paragraph 4.5 references a "significant revision" under section 13, article 3, chapter 22 of the code. Actually, this is defined in 38CSR2 § 38-2-3. Permit Application Requirements and Contents 3.28.b.1.

Paragraph 4.6... How can a company be fined on a permit which has not been issued? If the community impact statement is filed after the issuance of the Article 3 permit, OK, but not before.

§ 145-8-5... Some careful thought and consideration must be afforded to defining in detail what a Community Development Statement is? (It should not be defined as we go.)

A lot of this process including advertisements and hearings is repetitive and potentially a problem as it could occur in parallel with the Article 3 activity. As already stated, this will not have a positive effect on the timeliness of the Article 3 issuance.

Nowhere in these rules is there any stated limitation as to how long the complete process will take. Our concern is that "unofficially" any contentious permitting action will be delayed until the Community Development Statement is completed (if ever). This may not be the letter and intent of the law, but based on the experience with DEP lately, it could well be the practice. Viewed in this light, this portion of the law could become a routine source of conflict among the various participants.

§ 145-8-6 Land Acquisitions. Nothing too onerous, but as previously stated, we are already required to have property (surface/mineral) control of the proposed area of disturbance prior to submittal of the CIS.

TITLE 145  
LEGISLATIVE RULE  
WEST VIRGINIA DEVELOPMENT OFFICE


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

SUMMARY OF AGENCY APPROVED 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 a legislative rule 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 rule will create a system to collect and process community impact statements required to be filed for future surface-mining operations. This proposed rule shall also establish the process through which the Office will develop community development statements for affected coalfield areas. Finally, this proposed rule 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

TITLE 145


LEGISLATIVE RULE  
WEST VIRGINIA DEVELOPMENT OFFICE

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

**STATEMENT OF CIRCUMSTANCES REQUIRING AGENCY APPROVED  
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 a rule for legislative approval to establish, implement and enforce the provisions of Article 2A.

WEST VIRGINIA DEVELOPMENT OFFICE

  
\_\_\_\_\_  
John R. Snider  
Executive Director

Appendix B

FISCAL NOTE FOR AGENCY APPROVED RULES

Rule Title: Community Development Assessment and Real Property Valuation Procedures for the 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 (FY2001)	NEXT (FY2002)	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$	\$	\$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. Source of funds will be a portion of annual revenue raised by the blasting fee to be imposed by DEP on explosive materials. Funds for program implementation will not be available until after the blasting fee goes into effect – probably July 1, 2000 (FY2001). WVDO plans to have the administrative staff on board and program planning completed by that time.

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.

Program costs will evolve from a blasting fee to be imposed on explosive materials by DEP. Program benefits are not quantifiable at this time, although the planning process should help reduce unemployment insurance and welfare outlays and stabilize state tax revenues in surface mining impacted counties.

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

The program should have no direct fiscal cost to local government. It is estimated the program will cost the coal industry between \$750,000 and \$800,000. Benefits again are not quantifiable at this time, although the planning process should increase employment, business investment and local tax revenues in surface mine impacted counties. Economic diversification should benefit the unemployed, underemployed and welfare dependent in these counties, which historically have had high levels of poverty.

C. Economic Impact on Citizens/Public at Large.

The program should increase economic opportunities and improve living conditions generally for citizens in impacted counties.

Date: 10/18/99

Signature of Agency Head or Authorized Representative

John R. Sieder

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

OFFICE OF THE ATTORNEY GENERAL  
CLERK OF COURTS  
JUL 20 3 45 PM '99  
OFFICE OF THE ATTORNEY GENERAL  
CLERK OF COURTS

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

**§ 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, 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. -- \_\_\_\_\_.

1.4 Effective Date. -- \_\_\_\_\_.

**§ 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.

2.4 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.

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

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

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

2.8 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.

2.9 Permit -- shall mean a permit to conduct surface mining operations.

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

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

2.10.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, 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 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. The 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, 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 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 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, 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 maps shall have a preferred scale of 500 feet to one inch and shall be submitted on print paper 30 inches by 42 inches 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 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 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 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.

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 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 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 W. Va. Code § 59-3-2, 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 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 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 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 180 days from the date of the notice, and that persons and entities in the affected communities shall 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 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, or 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 The final community development statement or modification to an existing community development statement shall be completed within 180 days following the public meeting required under section 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 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.

5.9 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 5.10 of this rule.

5.10 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 shall 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 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 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 cause the value of the property prior to any diminution to be established by a qualified and disinterested appraiser and shall certify this value to the potential property seller and the operator.

6.5 Either party shall 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 Within 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 the 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.

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

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

**AMENDMENTS TO THE PROPOSED LEGISLATIVE RULE AS  
FILED WITH THE WEST VIRGINIA SECRETARY OF STATE FOR  
PUBLIC COMMENT**

Senate Bill No. 681 created the West Virginia Office of Coalfield Community Development (the "Office") pursuant to W. Va. Code § 5B-2A-1 et seq. Under W. Va. Code § 5B-2A-12, the Office is required to promulgate a legislative rule to establish, implement and enforce the provisions of this legislation.

The proposed legislative rule for the Office was filed with the West Virginia Secretary of State on August 13, 1999. The notice for this proposed rule specified a thirty-day public comment period which expired on September 13, 1999. Rita A. Pauley, staff counsel to the Senate Judiciary Committee, made technical comments on the proposed legislative rule. The only response made within the public comment period was a joint comment by the West Virginia Coal Association and the West Virginia Mining and Reclamation Association, a copy of which is attached as Exhibit A to the questionnaire filed with the Legislative Rule Making Review Committee for these agency approved rules. In response to these comments, some amendments were made by the Office to the proposed legislative rule that are described below.

**Amendments Responding to Technical Comments Made By  
Counsel to Senate Judiciary Committee**

1. Definitions for the frequently used terms of “community development statement” and “community impact statement” were added as sections 2.3 and 2.4 to the rule.

2. The style of citations to various state and federal statutes and regulations was revised in sections 2.5, 2.6, 2.7, 3.1, 4.5, 4.6 and 5.3.a of the rule.

3. Textual definitions were added to replace cross-references to other code sections in sections 2.8, 2.9 and 2.10 of the rule.

4. A textual change granting the Office discretion to request additional information was added to the end of sections 4.3.a and 4.3.i of the rule.

5. Minor grammatical changes were made in sections 1.1, 3.3, 5.3.b, 6.2 and 6.4 of the rule as requested by staff counsel to the Senate Judiciary Committee.

6. The ability of the chief of the Office to extend the deadline for filing drafts of the final community development statement or a modification to an existing community development statement was clarified to apply to those instances in which good cause is shown under sections 5.4.e and 5.7 of the rule.

**Amendments Responding to Comments Made by  
West Virginia Coal Association and  
West Virginia Mining and Reclamation Association**

1. The final clause in section 4.3.c of the rule was removed as being duplicative of information requested in sections 4.3.c, d and e of the rule.

2. The final clause in section 4.3.f of the rule requesting the post-mining land use and approximate post-mining contour for all land which may be affected by the anticipated surface mining operations was removed because land outside of the permit boundary will not be disturbed by surface mining operations.

3. Section 4.3.i of the proposed rule had requested information on the estimated number of direct mining jobs drawn from the county in which the proposed mining operation was to be located and each immediately surrounding county, the number of indirect support jobs created, and the sources of supplies, equipment and services anticipated to be obtained from third-party contractors. The request for this information was removed as being too speculative and burdensome on operators subject to this rule.

4. Minor language was added to section 4.3.j of the rule to clarify that the information sought pertains to the nearest utility infrastructure of various types and not to all existing utilities in the area.

5. Section 4.3.k was modified to remove references to information which could be prejudicial to the operators from whom such data was requested.

6. A minor modification was made in section 4.3.l of the rule to make the maps requested by the Office from an operator more consistent with the maps requested by the West Virginia Division of Environmental Protection in the permit application process.

7. The Coal Association observed that no final date existed by which the Office shall have completed a final community development statement or final modification to an existing community development statement. Section 5.7 was added

to the rule which made the deadline for the completion of these documents to be the later of 180 days following the public meeting on such draft document or one hundred eighty 180 days after the issuance of a permit for the surface mining operations.

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