



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Coal Mine Health And Safety TITLE-SERIES: 36-17

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: RULES AND REGULATIONS GOVERNING UNUSED AND ABANDONED PARTS OF MINE

CITE STATUTORY AUTHORITY: W. Va. Code §22A-6-4

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/25/2019 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Mallory Yates Hicks

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Charleston, West Virginia 25311

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The Series governs unused and abandoned parts of mine.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Pursuant to the regulatory review and reform initiatives established in West Virginia Code § 29A-3-20 (2016) and Executive Order No. 3-18, the proposed legislative-exempt rules modify and update Series 15 of Title 36 of the Code of State Rules to cross-reference the correct authorizing portions of the West Virginia Code, to correct typographical errors, to reflect the appropriate designations for certain State agencies such as the Office of Miners Health, Safety, to utilize the current citation formats, and to renumber provisions according to the outline required under W. Va. Code R. §153-1-5.22. & §153-1-6.

The proposal also removes out-of-date requirements for the design, installation, sampling, monitoring, construction, repair, and recording of seals for unused or abandoned mines and replaces the entire subsection by incorporating the federal regulations under 30 C.F.R. §§ 75.300 through 75.389 governing each subject matter.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed legislative-exempt rule is not anticipated to impact the revenues of State Government. The proposal simply updates Series 17 of Title 36 of the Code of State Rules to reflect proper citations to the West Virginia Code, the proper names of certain State agencies, and the current citation and numbering formats pursuant to the regulatory review and reform initiatives established in West Virginia Code § 29A-3-20 (2016) and Executive Order No. 3-18. The proposal also replaces out of date provisions related to the design, installation, sampling, monitoring, construction, repair, and recording of seals for unused or abandoned mines with the current federal standards governing each subject matter. But this change is not anticipated to have an impact of State revenues.

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The proposed legislative-exempt rule is not anticipated to economically impact the State or its residents. The proposal simply updates Series 17 of Title 36 of the Code of State Rules to reflect proper citations to the West Virginia Code, the proper names of certain State agencies, and the current citation and numbering formats pursuant to the regulatory review and reform initiatives established in West Virginia Code § 29A-3-20 (2016) and Executive Order No. 3-18. The proposal also replaces out of date provisions related to the design, installation, sampling, monitoring, construction, repair, and recording of seals for unused or abandoned mines with the current federal standards governing each subject matter. But this change is not anticipated to have an substantive impact on the State or its residents.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs and Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The proposed legislative-exempt rule is not anticipated to have a fiscal impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Wesley H White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 36
LEGISLATIVE RULE
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 17
RULES AND REGULATIONS GOVERNING UNUSED AND
ABANDONED PARTS OF MINE

§36-17-1. General.

- 1.1. Scope. -- Rules and regulations governing unused and abandoned parts of mine.
- 1.2. Authority. -- W. Va. Code ~~§§22-6-4~~ §§22A-6-4 and 22A-2-5.
- 1.3. Filing Date. -- ~~October 2, 2007.~~
- 1.4. Effective Date. -- ~~November 1, 2007.~~

§36-17-2. Effect of Regulations.

2.1. ~~These rules and regulations~~ This Series shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of ~~Article one A, Chapter twenty-two A, of the Code W. Va. Code §22A-1-1 et seq.,~~ relative to enforcement are applicable to the enforcement of ~~these rules and regulation~~ this Series.

§36-17-3. Definitions.

All terms used in ~~these rules and regulations~~ this Series, not defined herein, shall have the meanings set forth in ~~Section one, Article one A, Chapter twenty-two A of the Code W. Va. Code §22A-1-2.~~

§36-17-4. Unused And Abandoned Parts Of Mine.

~~4.1.~~

4.1. In any mine, all workings which are abandoned after the first day of July, one thousand nine hundred seventy-one, shall be sealed or ventilated.

4.1.1. If the workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the ~~director~~ Director of the Office of Miners' Health, Safety and Training and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be considered to be abandoned until such panel is abandoned.

~~(b)~~ 4.1.2. Air that has passed through an abandoned area or area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any working mine, unless permission is granted by the ~~director~~ Director with unanimous agreement of the technical and mine safety review committee. Air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. Air which has been used to ventilate an area from which the pillars have been removed shall not be used to ventilate any working place in a mine, except that the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before

sealed areas, temporary or permanent, are reopened, the ~~director~~ Director shall be notified.

(e) 4.1.3. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent are reopened, the ~~Director of the Department of Energy~~ Director shall be notified.

~~4.2.~~

(a) 4.2. A professional engineer registered with the Board of Registration for Professional Engineers pursuant to ~~Article Thirteen, Chapter Thirty of the West Virginia Code W. Va. Code § 30-13-1 et seq.,~~ shall certify the design of all new seals as meeting the ~~criteria of the final~~ requirements of ~~30CFR75:335~~ 30 C.F.R. § 75.335 (2015). Seal installation, seal sampling and monitoring, seal construction and repair, and seal records shall comply with the requirements of 30 C.F.R. §§ 75.300 through 75.389.

~~— (1) For each basic seal design, the following criteria shall be considered: minimum requirements for the seal location, including strength, configuration and preparation; quality and strength requirements for each material involved in constructing the seal; details on the size and configuration of the seal and its structural elements; and quality control measures and minimum testing requirements to ensure that the seal meets the design requirements.~~

~~— (b) Every seal design shall have the Professional Engineer's certificate and signature, in addition to his or her seal in the following form "I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations".~~

~~— (c) Certifications required in this section along with design documents, construction or as-built reports and/or drawings shall be kept at the mine by the operator for the life of such mine or life of the seal shall be available for review by state inspection personnel as well as representatives of the miners.~~

~~— (d) Each phase of new seal construction shall be observed and inspected by a mine foreman fire boss to assure that such phase has been constructed pursuant to the approved design, but in no event shall a mine foreman fire boss observe/inspect the seal construction less than once every two hours. Results of such inspections and observations shall be recorded in a book kept on the surface for that purpose.~~

~~— (e) The operation shall, prior to construction of the final seal in a set notify the director, who shall cause an inspection to be made of the seals before the area is finally sealed. —~~

~~4.3.~~

~~— (a) Protocols for the inspection of the physical condition of seals and the atmospheric measurement (sampling) developed pursuant to the final requirements of 30CFR75:335.~~

~~— (b) In all mines containing workings using seals constructed in accordance with the provisions of 30CFR75.335(a)(2) as published prior to May 22, 2007, which are constructed of cementaceous foam blocks the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals, constructing new seals, or other means.~~

~~— (c) 4.3.2. When seal enhancement is necessary according to 4.3(b) above of these rules such seals must have the capability to withstand a minimum of 50psi overpressure.~~

~~————(d) 4.3.3. If the director determines that any seal(s) described in subsection (b) is incapable of being remediated in a safe and effective manner, the director shall order that the mine foreman fire boss, shall at least every twenty-four hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. In addition the operator shall maintain areas behind these seals inert pursuant to the final requirements of 30CFR75.335(b)(3) (b)(7).~~