



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

10/11/2019 4:26:21 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Coal Mine Health And Safety TITLE-SERIES: 36-13

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

RULE NAME: RULES AND REGULATIONS GOVERNING THE  
AUTHORITY, ACCOUNTABILITY, AND  
RESPONSIBILITY OF UNDERGROUND MINE  
FOREMAN; RESPONSIBILITY OF OPERATOR  
IN RELATION TO MINE FOREMAN; AND  
REGULATORY REVIEW PROCEDURES

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: No

(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 the authority, accountability, and responsibility of underground mine foremen; responsibility of operator in relation to mine foremen; and regulatory review procedures.

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 13 of Title 36 of the Code of State Rules to cross-reference the correct authorizing portions of the West Virginia Code, to reflect the appropriate designations for certain State agencies such as the Office of Miners Health, Safety, to correct typographical errors, 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.

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 13 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.

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 13 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.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	0	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 13  
RULES AND REGULATIONS GOVERNING THE AUTHORITY, ACCOUNTABILITY,  
AND RESPONSIBILITY OF UNDERGROUND MINE FOREMAN; RESPONSIBILITY  
OF OPERATOR IN RELATION TO MINE FOREMAN;  
AND REGULATORY REVIEW PROCEDURES

**§36-13-1. General.**

1.1. Scope. -- Rules and regulations governing the authority, accountability, and responsibility of underground mine foremen; responsibility of operator in relation to mine foremen; and regulatory review procedures.

1.2. Authority. -- W. Va. Code ~~'22-6-4~~ §22A-6-4.

1.3. Filing Date. -- ~~February 10, 1984~~.

1.4. Effective Date. -- ~~April 6, 1984~~.

**§36-13-2. 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 1A, Chapter 22A of the Code~~ W. Va. Code §22A-1-1 et seq., relative to enforcement are applicable to the enforcement of ~~these rules and regulations~~ this Series.

**§36-13-3. Definitions.**

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

**§36-13-4. Authority, Accountability, and Responsibility of Underground Mine Foremen; Responsibility of Operator in Relation to Mine Foremen; and Regulatory Review Procedures.**

4.1. The mine foreman shall notify, in writing, the operator or superintendent of the mine, and the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, of his inability to comply with any of the requirements of this law, and it shall then become the duty of such operator or superintendent promptly to attend to the matter complained of by the mine foreman so as to enable him to comply with the provisions hereof. Every operator of a mine shall furnish all supplies necessary for the mine foremen to comply with the requirements of this law after being requested to do so in writing by the mine foreman.

4.2. In the performance of the statutory duties delegated to mine foremen, or certified persons acting as such, they shall have no superior officers, and all employees working inside of such mine or mines shall be subordinate to them in their particular work.

4.3 Mine foremen and assistant mine foremen are statutory officers and in the performance of ~~there~~ their statutory duties are representatives of the State. No one shall obstruct the mine foremen or assistant mine foremen in the fulfillment of any of the duties assigned to him by Chapter 22A of the West Virginia Code.

~~4.3-~~ 4.4 The Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall provide each operator and the mine foreman at each mine site with a copy of newly promulgated regulations and changes to regulations, as soon as practicable but no later than fourteen (14) days after the date on which the regulations become effective. The Director shall also provide each operator and the mine foreman at each mine site with a copy of all relevant State court decisions, and interpretations of regulations by the Director, as soon as practicable but no later than thirty (30) days after the date such material is issued. The Director will identify those persons with whom the material is to be reviewed at the mine site.