



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: 36-11
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: RULES AND REGULATIONS GOVERNING WHEN UNDERGROUND MINE FOREMAN-FIRE BOSS REQUIRED; ASSISTANTS; CERTIFICATION; THE REOPENING OF ABANDONED MINES AND THE DEENERGIZATION OF SELF-PROPELLED ELECTRIC COAL FEEDERS; PERFORMANCE REQUIREMENTS
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 circumstances requiring an underground mine foreman-fire boss and assistants as well as certification for such positions. The Series further governs the reopening of an abandoned mine and the deenergization of self-propelled electric coal feeders.

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 11 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 and Federal 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 corrects several typographical errors in the Series.

Additionally, the Board of Coal Mine Health and Safety is considering moving W. Va. Code R. §36-11-6, which relates to the requirements for deenergization of self-propelled electric coal feeders to a more appropriate location within Title 36 of the Code of State Rules. The proposal is not intended to change the substantive contents of W. Va. Code §36-11-6; but instead, is intended to facilitate public awareness of and access to the provisions of this section. The Board of Coal Mine Health and Safety seeks public comment regarding the clearest and most natural location for the substantive contents of this section.

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 11 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 11 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)
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 11
RULES AND REGULATIONS GOVERNING WHEN UNDERGROUND MINE FOREMAN-FIRE BOSS REQUIRED; ASSISTANTS; CERTIFICATION; THE REOPENING OF ABANDONED MINES AND THE DEENERGIZATION OF SELF-PROPELLED ELECTRIC COAL FEEDERS; PERFORMANCE REQUIREMENTS

§36-11-1. General.

1.1. Scope. -- Rules and Regulations Governing When Underground Mine Foreman-Fire Boss Required; Assistants; Certification; The Reopening of Abandoned Mines; and the Deenergization of Self-Propelled Electric Coal Feeders; Performance Requirements.

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

1.3. Filing Date. -- ~~May 4, 2010.~~

1.4. Effective Date. -- ~~May 4, 2010.~~

§36-11-2. Effect of Regulations.

These rules and regulations have the effect of the 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.

§36-11-3. Definitions.

All terms used in these rules and regulations, 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.

§36-11-4. When Underground Mine Foreman-Fire Boss Required; Assistants; Certification.

~~2.1.~~

~~2.1.a.~~ 4.1. In every underground mine where five (5) or more persons are employed in a period of twenty-four (24) hours, the operator shall employ at least one (1) person certified in accordance with the provisions of ~~Article 9, Chapter 22 of the West Virginia Code~~ W. Va. Code § 22A-7-1 et seq., as a mine foreman-fire boss. Each applicant for certification as a mine foreman-fire boss shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least five (5) years' experience in the underground working, ventilation and drainage of a coal mine, which shall include at least eighteen (18) months' experience on or at a working section of a underground mine or be a graduate of the ~~School of Mines~~ Department of Mining Engineering at West Virginia University or of another accredited mining engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had at least two (2) years practical experience in an underground mine, which shall include at least eighteen (18) months' experience on or at a working section of an underground mine; or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical engineering or civil engineering and have at least four (4) years' practical experience in an underground mine, which shall include at least eighteen

(18) months' experience on or at a working section of an underground mine; and (3) have demonstrated his knowledge of dangerous mine gases and their detection, mine safety, first aid, safety appliances, state and federal mining laws and regulations and other subjects by completing such training, educations and examinations as may be required of him under these rules and regulations.

~~2.1.b.~~ 4.2. In mines in which the operations are so extensive that the duties devolving upon the mine foreman-fire boss cannot be discharged by one man, one or more assistant mine foremen-fire bosses may be designated. Such persons shall act under the instruction of the mine foreman-fire boss, who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of ~~Article 9, Chapter 22 of the West Virginia Code~~ W. Va. Code §22A-7-1 et seq. Each applicant for certification as assistant mine foreman-fire boss shall, at the time he is issued a certificate of competency, ~~posses~~ possesses all the qualifications required of a mine foreman-fire boss: *Provided,* That he shall at the time he is certified be required to have at least three (3) years' experience in the underground working, ventilation and drainage of coal mines, which shall include eighteen (18) months on or at a working section of an underground mine or be a graduate of the ~~School of Mines~~ Department of Mining Engineering at West Virginia University or of another accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had twelve (12) months' practical experience in an underground mine, all of which shall have been on or at a working section or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical or civil engineering and have had at least two (2) years' practical experience in an underground mine, which shall include at least eighteen (18) months' experience on or at a working section of an underground mine.

~~2.1.e.~~ 4.3. Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman-fire boss in any mine in this state until the next regular mine foreman-fire boss' examination held by the department, but not to exceed a maximum of ninety (90) days.

~~2.1.d.~~ 4.4. After the effective date of this section, all duties heretofore performed by persons certified as mine foreman, assistant mine foreman or fire boss shall be performed by persons certified as underground mine foreman-fire boss or an assistant underground mine foreman fire boss. After the effective date of this section, every certificate heretofore issued to an assistant mine foreman or fire boss shall be deemed to be equal value to a certificate issued hereafter to an assistant mine foreman-fire boss, and every certificate heretofore issued to a mine foreman shall be deemed to be equal value to a certificate issued hereafter to a mine foreman-fire boss.

§36-11-5. Reopening Of Abandoned Mines.

5.1. No person, shall reopen for any purpose any old or abandoned mine without first giving the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training ten (10) days written notice. Such notice shall state clearly the name or names of the owner or owners of the mine proposed to be reopened.

5.2. Upon receipt of such notice, the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training shall have his representative present at the time at the mine designated in the notice for such opening, who shall have full authority necessary to protect the health and safety of those persons performing such work.

5.3. No old or abandoned mine shall be reopened for the purpose of producing coal unless a permit approval is obtained from the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training as required by ~~Chapter 22A, Article 2, Section 63 of the West Virginia Code~~ W. Va. Code §22A-2-63.

§36-11-6. Deenergization Of Self-propelled Electric Coal Feeders; Performance Requirements.

6.1. Three (3) months after the effective date of these rules and regulations, deenergization of the tramming motors of self propelled electric coal feeders shall be provided by:

~~6.1.~~ 6.1.1. Mechanical actuation of an existing push button emergency stopswitch;

~~6.2.~~ 6.1.2. Mechanical actuation of an existing lever emergency stopswitch;

~~6.3.~~ 6.1.3. The addition of a separate electro-mechanical switch assembly.

6.2. The existing emergency stopswitch or additional switch assembly shall be actuated by a bar or lever which shall extend a sufficient distance in each direction to permit quick deenergization of the tramming motors of self-propelled electric coal feeders from all locations from which the equipment can be operated.

6.3. Movement of not more than two (2) inches of the actuating bar or lever, resulting from the application of not more than fifteen (15) pounds of force upon contact with any portion of the equipment operator's body at any point along the length of the actuating bar or lever, shall cause deenergization of the tramming motors of the self-propelled electric coal feeders.