



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

10/24/2019 2:36:04 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Coal Mine Health And Safety TITLE-SERIES: 36-57
RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: RULES GOVERNING PROXIMITY DETECTION
SYSTEMS AND HAULAGE SAFETY
GENERALLY

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: 12/09/2019 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Mallory Yates Hicks
ADDRESS: 106 Dee Drive
Charleston, West Virginia 25311
EMAIL: mallory.k.yates@wv.gov

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 protection of miners from injuries sustained when becoming contacted by or caught between or by mobile equipment and other equipment or structures mobile or stationary in underground sections of coal mines operating in West Virginia.

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 57 of Title 36 of the Code of State Rules to more accurately identify the scope of the rule, cross-reference the correct authorizing portions of the West Virginia Code, 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. The proposal also removes provisions related to phased implementation of the rules requirements. The proposal also deletes the definition of rebuilt from the Series as unnecessary and superfluous because the term is not used in the proposed version of the Series.

Additionally, the proposal moves the requirements related pre-operational equipment checks from W. Va. Code § 36-18-5 to W. Va. Code R. § 36-57-7. This change is not intended to modify substantive requirements of the pre-operational equipment check; but instead, is intended to facilitate public awareness of and access to the provisions 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 57 of Title 36 of the Code of State Rules to reflect proper citations to the West Virginia Code 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 adds requirements for pre-operational check which were removed, without material change, from W. Va. Code R. § 36-18-5 to aid public awareness and access to these requirements. 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 57 of Title 36 of the Code of State Rules to reflect proper citations to the West Virginia Code 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 adds requirements for pre-operational check which were removed, without material change, from W. Va. Code R. § 36-18-5 to aid public awareness and access to these requirements. This change is not anticipated to have a fiscal 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 EXEMPT RULES
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 57
RULES GOVERNING PROXIMITY DETECTION SYSTEMS AND HAULAGE SAFETY
GENERALLY

§36-57-1. General.

1.1. Scope. -- These rules pertain to the implementation of provisions designed to protect miners from injuries sustained when becoming contacted by or caught between or by mobile equipment and other equipment or structures mobile or stationary in underground sections of coal mines operating in West Virginia.

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

1.3. Filing Date. -- ~~June 12, 2017.~~

1.4. Effective Date. -- ~~June 12, 2017.~~

§36-57-2. Definitions.

2.1. Proximity detection system. -- A system that would be capable of detection, providing a warning, and safely shutting down equipment.

~~2.2. Rebuilt. -- Continuous mining equipment or other mobile face equipment that has been removed from production and the mine to be repaired or refurbished.~~

2.3. Director. -- Director shall mean the ~~director~~ Director of the Office of Miner's Health, Safety, and Training or the ~~director's~~ Director's authorized representative.

§36-57-3. Proximity Detection System Requirements.

3.1. A proximity detection system must be capable of providing an automatic audible or visual warning and stops the equipment at intervals established for the mine that prevent contact with persons;

3.2. A proximity detection system must prevent movement of the equipment if the system is not functioning properly; provided, however, movement is permitted for purposes of relocating the equipment from an unsafe location during malfunction for repair or emergencies;

3.3. A proximity detection system must be installed to prevent interference with or from other electrical systems; and

3.4. A proximity detection system must be installed and maintained by a person trained in the installation and maintenance of the system.

§36-57-4. Proximity Detection Systems ~~Implementation Schedule Required.~~

~~4.1. A proximity detection system shall be installed and maintained on all new place change continuous miners purchased and taken underground by January 1, 2015.~~

~~— 4.2. A proximity detection system shall be installed and maintained on all rebuilt place change continuous miners taken underground by July 1, 2015.~~

~~— 4.3. All existing place change continuous miners in operation shall be refitted with a proximity detection system by March 16, 2018, the timeframe set forth in the federal rule relating to proximity detection systems (CFR 75.1732A).~~

4.1. All place change continuous miners on the working section shall have a proximity detection system installed and maintained.

§36-57-5. Care, Maintenance, and Performance Minimum for Proximity Detection Systems.

5.1. At the beginning of each shift or prior to any initial operation, all proximity detection systems and units worn by individuals shall be tested to ensure working order. A record of malfunctions and corrections shall be included in a book designated by the ~~director~~ Director.

5.2. Maintenance of all proximity detection systems and units worn by individuals shall be maintained in accordance with safe operating procedures.

5.3. The ~~director~~ Director shall impose all applicable penalties pursuant to West Virginia Code §22A-1-21 on any person that, without the authorization of the operator or the ~~director~~ Director or the ~~director's~~ Director's authorized representative, knowingly tampers or attempts to tamper with a proximity detection system or related equipment, approved by the ~~director~~ Director.

§36-57-6. Requirements for Section Haulage Equipment.

6.1. ~~By September 1, 2017, scoops~~ Scoops, diesel powered equipment, and other battery powered section haulage equipment operating in-by the section loading point not provided with compatible proximity detection systems shall at a minimum:

~~6.1.a.~~ 6.1.1. Employ cameras; or

~~6.1.b.~~ 6.1.2. Be equipped with other alternatives as recommended by the West Virginia Board of Coal Mine Health and Safety and approved by the ~~director~~ Director that provide warnings to equipment operator and or persons who are traveling in the area.

~~§36-57-7. Establishing a One Hundred Twenty (120) Day Time Frame for Delivery of Information to Those Working in Active Underground Coal Mines.~~

~~— 7.1. The director, in conjunction with the mining community, shall within one hundred twenty (120) days of the passage of this rule visit each mine and provide information on the availability, installation procedures, and safety advantages of using cameras or proximity devices on underground haulage equipment.~~

~~— 7.2. In carrying out this function, the director shall consult with the West Virginia Board of Miner Training, Education & Certification, the West Virginia Mine Safety Technology Task Force and the mining community including technology equipment manufacturers.~~

~~— 7.3. The director and the Board of Coal Mine Health and Safety shall also conduct voluntary, open-industry regional workshops within six (6) months on all aspects of haulage safety including the acquisition and use of cameras and proximity devices and its application to underground mining equipment along with its demonstrated safety advantages and limitations and the use of strobe lights, extension rods (pogo sticks) or cones, underground.~~

~~§36-57-8~~ **§36-57-7. Pre-Operation Equipment Checks** ~~Expanded.~~

7.1. Each working shift prior to its operation, all self-propelled section equipment to be operated during that shift shall be examined by the equipment operator for safety defects and/or unsafe conditions.

7.2. Pre-Operational equipment examination required under subsection 7.1. of this Series shall include the following items at a minimum. In addition, a list of the following items shall be maintained on such equipment:

7.2.1. Stop/Start Control;

7.2.2. Panic Bar;

7.2.3. Tram Controls;

7.2.4. Steering;

7.2.5. Service Brakes;

7.2.6. Automatic Emergency Brakes;

7.2.7. Lights;

7.2.8. Warning Device;

7.2.9. Canopies, where required;

7.2.10. ATRS System and Boom Controls on Roof Bolting Machines;

7.2.11. Proximity detection systems or cameras, if applicable.

~~8.1. In addition to the provisions under §36-18 7.3.~~ Additionally, all equipment operators shall:

~~8.1.a. 7.3.1.~~ Ensure adequate visibility and that there are no extraneous objects on top the equipment that serves to inhibit or restrict operator visibility. It shall be the responsibility of the equipment operator to remove such items from the equipment; and

~~8.1.b. 7.3.2.~~ Inspect audible warning devices and cameras, if applicable.

7.4. Upon completion of the required examination under subsection 7.1. of this Series, if the equipment is determined to be unsafe, the individual making the examination shall report such unsafe equipment to his/her foreman. Any unsafe equipment shall be taken out of service and tagged until such unsafe condition is corrected. Before the unit of equipment can be placed back into service, the operator of such unit shall make a pre-operational examination.

~~§36-57-9~~ **§36-57-8. Equipment Operators to Check Haulage Routes.**

~~9-1. 8.1.~~ In addition to the provisions under West Virginia Code of State Rules §36-30-1 *et seq.*, before operating a piece of section haulage equipment on a working section underground for the first time during a shift, the equipment operator shall physically walk the path of travel to observe for hazards or non-routine work being performed in the path of travel or any individual that may be in path of travel.

~~§36-57-10~~ §36-57-9. Equipment Operators to Sound Warning Devices.

~~10-1. 9.1.~~ All equipment operators of underground section haulage equipment shall sound the audible alarm on the equipment at the start-up and when approaching and moving through any brattice material or check curtains to warn any miner in the vicinity.

~~§36-57-11~~ §36-57-10. Reflective or Highly Visible Materials Requirements.

~~11-1. By October 1, 2014, mine~~ 10.1. Mine operators shall provide all miners with at least 100 square inches of reflective or highly visible material to be worn at all times while underground in a coal mine in this state. The reflective or highly visible material shall be readily visible and on the outer garments so as to be seen from all directions.

~~§36-57-12~~ §36-57-11. Designated Work Site Program.

~~12-1. 11.1.~~ Approved strobe lights, extension rods (pogo sticks) or cones shall be used in all working sections of an underground mine where maintenance, repair or rehabilitation work is being performed and where there is an unusually high risk of collision or contact by any other equipment that may be traveling in the affected area. Approved strobe lights, extension rods (pogo sticks) or cones shall be installed so as to provide warning and caution others approaching of the work area. If an approved strobe light is not utilized, a minimum of four (4) extension rods (pogo sticks) or four (4) cones or other devices approved by the ~~director~~ Director must be used in each travel way of the affected area.

~~§36-57-13. The Director Shall Expedite Extended Mining Plans.~~

~~— 13.1. The Director of the Office of Miners' Health, Safety and Training shall immediately, upon passage of this rule, communicate the need of expediting approval of extended cut mining plans in order to reduce occurrences of underground haulage safety concerns to the Mine Safety and Health Administration and the U.S. Department of Labor. The director~~ Director ~~shall immediately seek intra-agency coordination of extended cut plans, where appropriate, to minimize occurrences of all section equipment from being relocated or place-changed underground, thus minimizing unnecessary and repetitive movement.~~

~~— 13.2. The director~~ Director ~~shall also undertake an analysis to determine whether all dust control measures can be met and roof stability maintained at all prospective extended cut mining operations. The director~~ Director ~~shall cause to be surveyed and analyzed a variety of underground coal mines across the state and report back to the Board of Coal Mine Health and Safety in a timely manner.~~

~~§36-57-14. Industry Wide Regulatory Notice.~~

~~— 14.1. The mine operator shall conduct a briefing of the rules with all personnel at the mine within fifteen (15) days upon receipt of the rules from the director~~ Director.