



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Miners Health Safety And Training TITLE-SERIES: 56-08

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes

RULE NAME: 56-08 Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §§22A-1-6 and 22A-1-36(a)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code 22A-1-36(a).

The Office of Miners Health, Safety and Training (OMHST) in consultation with the Board of Coal Mine Health and Safety (Coal Board) have agreed that the language found in 36 CSR § 31-3.1, which pertains to a coal mines comprehensive mine safety program, fits better within 56 CSR § 8 (Office of Miners Health, Safety and Training Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia) than as a stand alone section in 36 CSR § 31-3.1. Thus, OMHST and the Coal Board desire to move 36 CSR § 31-3.1 to 56 CSR § 8 and renumber it as a new section (56 CSR § 8-8.5) therein. Once this Rule is promulgated, the Coal Board will repeal 36 CSR § 31.

36 CSR § 31 has been in effect since 1984, and it gives the Director the authority to require a mine operator who has experienced a substantial number of injuries due to materials handling to identify a procedure to reduce such injuries and add that procedure to the mines comprehensive mine safety program. That section will now become 56 CSR § 8-8.5.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

7/14/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

8/13/2020

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Posted on Agency's website.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The Office of Miners Health, Safety and Training (OMHST) in consultation with the Board of Coal Mine Health and Safety (Coal Board) have agreed that the language found in 36 CSR § 31-3.1, which pertains to a coal mines comprehensive mine safety program, fits better within 56 CSR § 8 (Office of Miners Health, Safety and Training Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia) than as a stand alone section in 36 CSR § 31-3.1. Thus, OMHST and the Coal Board desire to move 36 CSR § 31-3.1 to 56 CSR § 8 and renumber it as a new section (56 CSR § 8-8.5) therein. Once this Rule is promulgated, the Coal Board will repeal 36 CSR § 31.

36 CSR § 31 has been in effect since 1984, and it gives the Director the authority to require a mine operator who has experienced a substantial number of injuries due to materials handling to identify a procedure to reduce such injuries and add that procedure to the mines comprehensive mine safety program. That section will now become 56 CSR § 8-8.5.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Office of Miners Health, Safety and Training (OMHST) in consultation with the Board of Coal Mine Health and Safety (Coal Board) have agreed that the language found in 36 CSR § 31-3.1, which pertains to a coal mines comprehensive mine safety program, fits better within 56 CSR § 8 (Office of Miners Health, Safety and Training Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia) than as a stand alone section in 36 CSR § 31-3.1. Thus, OMHST and the Coal Board desire to move 36 CSR § 31-3.1 to 56 CSR § 8 and renumber it as a new section (56 CSR § 8-8.5) therein. Once this Rule is promulgated, the Coal Board will repeal 36 CSR § 31.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

No economic impact on revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

No economic impact on special revenue accounts.

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

No economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 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

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

N/A

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 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 8
RULE GOVERNING THE SUBMISSION AND APPROVAL
OF A COMPREHENSIVE MINE SAFETY PROGRAM FOR COAL MINING
OPERATIONS IN THE STATE OF WEST VIRGINIA

§56-8-1. General.

1.1. Scope. -- Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia.

1.2. Authority. -- W. Va. Code §§22A-1-6 and 22A-1-36(a) ~~and (c)~~.

1.3. Filing Date. -- ~~March 29, 2019~~ _____.

1.4. Effective Date. -- ~~May 1, 2019~~ _____.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon 5 years from its effective date.

§56-8-2. Preamble - Comprehensive Safety Program for Coal Mining Operations in the State of West Virginia.

2.1. Purpose. -- The primary goal of W. Va. Code §22A-1-36 is to protect the health and safety of this state's coal miners by increasing safety awareness and by providing a safe work place through the development and implementation of comprehensive safety programs for each coal mine in the state. The purpose of this rule is to implement the mandate of W. Va. Code §22A-1-36 by requiring each coal operator and each independent contractor to develop a comprehensive safety program for each active mine and by detailing the requirements for such programs. In implementing such mandate, it is recognized that different types of safety programs may be developed for each mine, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, and the physical features of the particular mine.

§56-8-3. Definitions.

3.1. Unless the context in which a word or phrase appears clearly requires a different meaning, all terms used in this rule that are not defined herein, shall have the meanings set forth in W. Va. Code §22A-1-2.

3.1.1. Active Mining Operation. -- The term "active mining operation" shall mean, when used herein, any active surface mining operation or active underground mining operation.

3.1.1.a. The term "active underground mining operation" shall mean an underground coal mine which is ventilated, and in which miners are employed.

3.1.1.b. The term "active surface mining operation" shall mean a surface coal mine where miners are employed.

3.1.2. Annual Review. -- The term "annual review" shall mean those annual reviews required by section 8.4. of this rule.

3.1.3. Comprehensive Mine Safety Program. -- The term "comprehensive mine safety program," "comprehensive safety program," or "program" shall mean the particular safety program at each mine as required in W. Va. Code §22A-1-36, which is developed and submitted by the coal operator or independent contractor, approved by the director, and includes such level of the safety program components set forth in Section 7.2. of this rule as the director deems appropriate. Such program shall include and address the extraction, production, processing and preparation activities conducted by the mine operator or independent contractors.

3.1.4. Code. -- The term "code" shall mean the West Virginia Code of 1931, as amended.

3.1.5. Director. -- The term "director" shall mean the director of the office of miners' health, safety and training.

3.1.6. Independent Contractor. -- The term "independent contractor" shall mean any firm, corporation, partnership, or individual that contracts to engage in the extraction, production, processing or preparation activities associated with a coal mine.

3.1.7. Mine. -- The term "mine," when used herein, shall mean any surface coal mine or underground coal mine as defined herein.

3.1.8. Operator. -- The term "operator" means any firm, corporation, partnership, or individual operating any coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

3.1.9. Surface Coal Mine. -- The term "surface coal mine" shall mean a surface area of land, and all structures, facilities, machinery, tools, equipment, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, which are used in, or to be used in, or resulting from the work of extracting coal from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities. It is identified by one federal identification number.

3.1.10. Underground Coal Mine. -- The term "underground coal mine" shall mean a mine as defined in W. Va. Code §22A-1-2(a)(6).

§56-8-4. Responsibility for Comprehensive Mine Safety Program.

4.1. The design, development, submission, implementation, evaluation and modification of the comprehensive mine safety program shall be the responsibility of the operator or independent contractor of each mine.

§56-8-5. Submission of Initial Comprehensive Mine Safety Program.

5.1. All operators and independent contractors of new mines shall submit a comprehensive mine safety program, and shall have such program approved by the director prior to commencement of work or operations by miners at the mine site.

5.2. After the effective date of this rule, all mines, which are temporarily inactive but which have an

approved comprehensive safety program, shall resume operations under the comprehensive safety program for that mine in effect at the time such mine was temporarily closed. If the operator or independent contractor elects to retain the existing comprehensive safety program, the operator or independent contractor shall notify the director prior to the resumption of work by miners at the mine. If the operator or independent contractor elects to modify the existing comprehensive safety program, the operator or independent contractor shall submit such modifications to the director within ninety (90) calendar days after resuming active mining operations.

§56-8-6. Mine Evaluation for Development of the Initial Comprehensive Mine Safety Program; Submittals to Director.

6.1. In developing the initial comprehensive safety program, the operator or independent contractor shall analyze the various program components, contained in Section 7 of this rule, in conjunction with the evaluation criteria provided in this rule, and shall take into consideration the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, or any other aspect of the particular mine deemed relevant by the operator or independent contractors. Based upon this analysis and evaluation of the type of safety program needed at a particular mine, the operator or independent contractor shall proceed to develop a comprehensive mine safety program composed of the appropriate components contained in Section 7 of this rule and a plan and appropriate procedures for implementing each of the components of the program.

6.2. Each operator or independent contractor shall submit to the director for approval a comprehensive mine safety program in accordance with this rule. In addition each operator or independent contractor shall submit the following:

6.2.1. A statement that the analysis and evaluation required by Section 6.1 of this rule has been completed;

6.2.2. A statement indicating which process the operator or independent contractor has selected, consistent with Section 11.1. of this rule, to ensure that all employees at the mine are aware of all components of the comprehensive mine safety program prior to commencement of work at the mine;

6.2.3. A list of safety instructors and their certifications, and/or qualifications, who will have primary responsibility for planning and conducting safety training at the mine;

6.2.4. The name of the person or persons representing the operator or independent contractor, including his/her title or position and mailing address or telephone number, who can be notified by the director for all matters concerning the operator or independent contractor's comprehensive mine safety program.

6.3. Within ninety (90) calendar days after submission of the initial comprehensive safety program, the director shall either approve the program as submitted or shall reject and return the program to the operator or independent contractor for modification and resubmission, stating in detail the reasons for such rejection. If the program is rejected, the director shall give the operator or independent contractor a reasonable length of time to modify and resubmit such program.

§56-8-7. Primary Safety Program Components.

7.1. Depending upon the safety program needs of a particular mine or independent contractor, the comprehensive mine safety program may include any or all of the components contained in Section 7.2. of

this rule. Comprehensive mine safety programs submitted by independent contractors shall address only the specific type of work to be performed by the contractor.

7.2. A comprehensive mine safety program may include:

7.2.1. The operator or independent contractor's safety policy for each mine;

7.2.2. The operator or independent contractor's policies regarding personal safety protection of each worker (hard hats, shoes, etc.);

7.2.3. Safety training programs and objectives, including any or all of the following:

7.2.3.a. Classroom training;

7.2.3.b. Workplace training;

7.2.3.c. Safety meetings; and

7.2.3.d. Informal training.

7.2.4. The operator or independent contractor's practices and procedures for promoting:

7.2.4.a. Safe working practices for personnel;

7.2.4.b. Safe working conditions in the mine environment; and

7.2.4.c. Safe working practices for machinery, equipment, and systems.

7.2.5. The operator or independent contractor's emergency provisions and procedures at the mine.

7.2.6. The operator or independent contractor's procedures for accident investigation and reporting, which may include:

7.2.6.a. Investigation;

7.2.6.b. Filing;

7.2.6.c. Analysis; and

7.2.6.d. Follow-up.

7.2.7. The operator or independent contractor's practices and procedures for comprehensive mine safety program promotion and enforcement; and

7.2.8. Such other components deemed necessary by the operator or independent contractor to effectuate the goals of W. Va. Code §22A-1-36.

§ 56-8-8. Modifications.

8.1. The operator or independent contractor may submit at any time proposed modifications or

revisions to the comprehensive mine safety program, along with the reasons thereof, to the director.

8.2. Within ninety (90) days after receipt by the director of any proposed revisions or modifications to the program, the director shall either approve the revisions or reject the revisions, stating in detail the reasons for such rejection. If within ninety (90) days of receipt of such revisions by the director no action has been taken, the proposed revisions shall be taken as approved.

8.3. When revisions to a program are submitted to the director, the operator or independent contractor may request and the director may issue temporary approval of such revisions pending the director's final review and approval.

8.4. The director may require modifications to a comprehensive mine safety program at any time following the investigation of a fatal accident or serious injury, as defined by Title 36, Series 19, Section 3.2(2), if such modifications are warranted by the findings of the investigation. A comprehensive mine safety program may be subject to annual review by the director after a fatality or serious accident involving bodily harm has occurred, or, if the operator has shown a pattern of mine safety violations as defined by W. Va. Code §22A-1-15(c)(2), such a finding shall also warrant annual review by the director.

8.5. Whenever the Director determines that a mine has experienced a substantial number of injuries due to materials handling, he/she shall require the mine operator to include a component in the mine's comprehensive safety program which identifies procedures for reducing such injuries.

§ 56-8-9. Annual Review of the Comprehensive Mine Safety Program After Fatal or Serious Accident or a Pattern of Violation.

9.1. Each operator or independent contractor subject to an annual review under section 8.4. of this rule shall conduct an annual review of the comprehensive mine safety program in effect at each mine. The purpose of the review shall be to determine the effectiveness of the comprehensive mine safety program by evaluating the components of the program to determine whether modifications to the existing program are necessary and desirable.

9.1.1. Each operator or independent contractor shall submit to the director within thirty (30) days after the anniversary date of the program a report which shall contain the findings of the annual review, a statement indicating whether, as a result of such review, modifications to the existing program are necessary, and if applicable, proposed modifications to the existing program. When modifications to the existing program are submitted, the operator or independent contractor may request, and the director may issue, temporary approval of requested modifications pending the director's final review and approval.

9.1.2. The director will review the annual report submitted by the operator or independent contractor and will either approve the report, or reject the report, stating in detail the reasons for rejection. The reasons for rejection may include proposed changes to the program deemed necessary by the director and not included by the operator or independent contractor.

9.1.3. If rejected, the director shall give the operator or independent contractor a reasonable period of time to modify and resubmit such report and proposed modifications. If within thirty (30) calendar days subsequent to receipt of the report or proposed modifications by the director, no action has been taken by the director, the proposed report and modifications shall be considered approved.

9.1.4. The anniversary date of the program shall be one (1) year from the date the annual review was required.

9.2. The annual evaluation conducted pursuant to subsection 8.4. of this rule shall include a review of the following items relating to a particular mine:

- 9.2.1. Accident rate;
- 9.2.2. Accident distributions;
- 9.2.3. A review of violations issued by the office of miners' health, safety and training;
- 9.2.4. Fatal accidents and serious injuries as defined by Title 36, Series 19, Section 3.2(2); and
- 9.2.5. Accident investigations conducted during the previous one-year period.

9.3. At the discretion of the mine operator or independent contractor, other sources of information may be used to ascertain performance of the safety program in the annual evaluation. They may include, but are not limited to:

- 9.3.1. Mine conditions or changes in mine conditions;
- 9.3.2. Mining methods or equipment or changes in mining methods or equipment at the mine;
- 9.3.3. Number of working sections at a mine or changes in the number of working sections at the mine;
- 9.3.4. Personnel or management, or changes in personnel or management;
- 9.3.5. Instructors responsible for safety training or changes in instructors responsible for safety training; and
- 9.3.6. Findings from safety observations conducted by responsible mine officials.

§56-8-10. Review Procedure.

10.1. If a comprehensive mine safety program or modifications thereto are rejected by the director pursuant to Sections 6.3, 8.2., or 9.1. of this rule, the operator or independent contractor shall be entitled to a hearing before the director to contest such rejection.

10.2. The operator or independent contractor may petition the director to be removed from annual review. In that petition, the operator or independent contractor shall set forth reasons as to why it should no longer be subject to annual review. If the director rejects that petition, the operator or independent contractor shall be entitled to a hearing before the director to contest such rejection.

10.3. The operator or independent contractor shall notify the director within fifteen (15) days of the receipt of such rejection that he/she is requesting a hearing and shall state specifically his/her reasons thereto. A hearing shall be scheduled within ten (10) days of the receipt of the request for hearing and shall be held within twenty (20) days of such request.

10.4. Any operator or independent contractor adversely affected by a decision rendered by the director pursuant to subsection 9.2. of this rule may appeal such decision in accordance with W. Va. Code §29A-5-4.

§56-8-11. Right of Mine Employees to Review and Comment on the Comprehensive Mine Safety Program; Posting Requirements.

11.1. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director regarding the review of the comprehensive mine safety program and any modifications or revisions to the program and the initial report. The operator or independent contractor shall satisfy this requirement by selecting one of the two methods set out in 11.1.1. or 11.1.2. below.

11.1.1. The operator or independent contractor may establish a safety committee at the mine. This committee shall consist of at least three (3) non-supervisory employees. Where feasible, the committee should have representation on each working shift. The requirements for such committee may be satisfied with an existing committee for the mine. It shall be the responsibility of the operator or independent contractor to provide this committee with the opportunity to review the initial comprehensive safety program and any modifications or revisions thereto, and the annual report, and to provide written comments and suggestions to the director with copies to the operator or independent contractor. Such opportunity to review shall be satisfied by compliance with section 11.4. of this rule. It shall be the responsibility of the committee to ensure that all employees of the mine have the opportunity to review and comment on the proposed comprehensive safety program, any proposed modifications or revisions thereto.

11.1.2. The operator or independent contractor may hold a meeting for all employees of the mine at which meeting the operator or independent contractor shall provide an in-depth review of each of the components of the comprehensive safety program for the mine. The purpose of such meeting is to provide each employee of the mine the opportunity to review and comment on the proposed comprehensive safety program and any modifications or revisions thereto, and the annual report. Such meeting shall be held prior to the submittal of the initial program and the submittal of any modifications or revisions to such program, and the submittal of the annual report. The operator or independent contractor shall notify the director and post notice on the mine bulletin board of the time and place of the meeting at least ten (10) calendar days prior to the meeting. The director or his/her authorized representative has the right to attend such meeting.

11.2. If the operator or independent contractor selects a safety committee (11.1.1.) to satisfy the requirements of section 11.1., he/she shall provide a minimum of eight (8) hours annual instruction for each member of the safety committee at each mine, which instruction shall include materials and training relevant to the review and evaluation of the components of the comprehensive safety program. This instruction may be satisfied through other instruction and training programs the operator or independent contractor is required to provide, as approved by the director.

11.3. Notwithstanding which option the operator or independent contractor elects to satisfy the requirements of this section, each employee of the mine has the right to review the proposed comprehensive mine safety program and any modifications or revisions thereto, and the annual report, and to provide comments to the director.

11.4. A copy of the proposed modifications or revisions of the existing comprehensive mine safety program and the annual report shall be posted on the mine bulletin board, as provided in W. Va. Code §22A-1A-16(a), for at least fifteen (15) days prior to the date of submittal to the director.

11.5. A copy of the current approved comprehensive mine safety program shall be made available to any employee of the mine upon request and shall also be posted on the mine bulletin board as provided in W. Va. Code §22A-1A-16(a).

§56-8-12. Miscellaneous.

12.1. The director may develop forms and guidelines to facilitate development, review, and approval of the comprehensive safety program submitted by each operator or independent contractor; provided, however, that such forms and guidelines cannot modify or expand the requirements of this rule.