



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: 36-24

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

RULE NAME: Rules and Regulations Governing the Record
Keeping of all Certified Persons Employed in all
Mines Throughout the State of West Virginia

CITE STATUTORY AUTHORITY: W. Va. Code §§22A-6-4 and 22A-6-5

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/16/2020 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Mallory Yates Hicks

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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:

This rule governs the record keeping of all certified persons employed in all mines throughout the State of 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 W. Va. Code § 29A-3-20 (2016) and Executive Order No. 3-18, this proposed legislative-exempt rule modifies and updates 36 C.S.R. 24 to cross-reference the correct authorizing portions of the West Virginia Code and corrects typographical errors including errors in paragraph numbering.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This proposed legislative-exempt rule is not anticipated to impact the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This proposed legislative-exempt rule is not anticipated to impact special revenue accounts.

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

This proposed legislative-exempt rule is not anticipated to impact 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.

36CSR24

TITLE 36
LEGISLATIVE EXEMPT RULE
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 24
RULES AND REGULATIONS GOVERNING THE RECORD KEEPING
OF ALL CERTIFIED PERSONS EMPLOYED IN ALL MINES
THROUGHOUT THE STATE OF WEST VIRGINIA

§36-24-1. General.

1.1. Scope. -- Rules and Regulations Governing the Record Keeping of All Certified Persons Employed in All Mines Throughout the State of West Virginia.

1.2. Authority. -- W. Va. Code ~~§22A-6-4~~ §§22A-6-4 and 22A-6-5.

1.3. Filing Date. -- ~~April 22, 1983~~ _____.

1.4. Effective Date. -- ~~June 5, 1983~~ _____.

1.5. Findings and Conclusions:

1.5.1. ~~(a)~~ Findings of Facts.

1.5.1.a. ~~(1)~~ Certification of miners employed in coal mines in West Virginia is required by Chapter 22A of the West Virginia Code to insure that only competent qualified persons are employed to act as underground or surface miners or in specific miner occupations.

1.5.1.b. ~~(2)~~ Since 1980 there ~~There~~ have been ~~at least ten~~ several civil and criminal prosecutions of persons in the coal industry purporting to be certified by the ~~5~~state as miners or for particular miner occupations who either possess bogus certificates or do not possess certificates for these occupations.

1.5.1.c. ~~(3)~~ Persons acting as miners or in particular miner occupations who are not properly certified as required by law create a safety hazard in the mines because such persons have not demonstrated their competency or qualifications under ~~5~~state law for these occupations.

1.5.1.d. ~~(4)~~ In order for the ~~Department of Energy~~ Office of Miners' Health, Safety and Training to know at any given time the certifications of persons working in the mines, a current listing is needed at each mine location of persons employed at that location and their certifications, if any.

1.5.1.e. ~~(5)~~ Such records can be made most readily and efficiently available through the employers of persons holding ~~5~~state certifications, since the employers have access to and knowledge of those persons who work for them.

1.5.2. ~~(b)~~ Conclusions of Law.

1.5.2.a. ~~(1)~~ Therefore, the Board of Coal Mine Health and Safety promulgates the following regulation to require all employers of persons certified pursuant to Chapter 22A and currently employed in West Virginia mines to set up and maintain records on these persons and their certifications.

1.5.2.b. ~~(2)~~ The regulation is consistent with the requirements of ~~Code 22A-1A-21~~ W. Va. Code §22A-1-23 that operators of coal mines shall maintain such records, make such reports and provide such information as the Director may reasonably require from time to time to enable him/her to ~~perform~~ perform his/her functions under law.

1.5.2.c. ~~(3)~~ The regulation will not reduce the level of safety or protection afforded miners below the level of safety or protection afforded by Chapter 22A.

1.5.2.d. ~~(4)~~ The regulation is necessary and proper to effectuate the purpose of Chapter 22A and to prevent the circumvention and evasion thereof.

§36-24-2. Effect Of Regulations.

2.1. These rules and regulations shall have 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.

§36-24-3. Definitions.

3.1. ~~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.~~ 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. ~~(a)~~ Code: The term "Code" when following a reference to a specific section, article, or chapter, shall mean the West Virginia Code of 1931, as amended.

3.1.2. ~~(b)~~ Miner's certification: The term "Miner's certification" shall mean any, and all types of certifications mandated and required for any occupation at the present time, or which may ~~become~~ mandated in the future, by the West Virginia ~~Department of Energy~~ Office of Miners' Health, Safety and Training.

3.1.3. ~~(c)~~ Parties Responsible for Record Keeping: The term "Parties responsible for record keeping" shall mean all coal mine operators in the mining industry, construction companies, shaft operators, manufacturing companies, private consultants, ~~and, or~~ and/or any other company, persons, or firms associated with the mining industry, who have in their employ persons who are certified in accordance with Chapter 22A of the Code.

§36-24-4. System For Record Keeping.

4.1. Six (6) months after the effective date of these rules and regulations, parties responsible for record keeping, except as otherwise provided in Section 4.2, shall maintain a file on the state certifications of all current employees on their payroll. The file shall contain the name, the last four digits of the social security number, current certification and certification number for each individual employee possessing a state certification.

4.2. New mines opened after the effective date of this regulation and temporarily inactive mines, shall maintain such records within six (6) months of the date on which such mines are activated and/or reactivated.

§36-24-5. Availability Of Records.

5.1. Unless otherwise approved by the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, all records required in Section 4.1 of these rules and regulations shall be made available to the Director of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training, or his/her authorized representative, and to designated auditors of the ~~Department of Energy~~ Office of Miners' Health, Safety and Training for compliance audit purposes, within five (5) days after a request is made for the need of such records.

§36-24-6. Individual Responsibility.

6.1. After the effective date of these rules and regulations, any person employed by parties responsible for record keeping shall, upon request, provide to the parties responsible for record keeping; all necessary information pertaining to state certifications and all types of certifications that they hold.

6.2. All persons possessing miner certifications and employed by parties responsible for record keeping shall provide in writing to the parties responsible for record keeping any change in the information required in ~~section 4~~ Section 4.1 of these rules and regulations, including additional miner certifications, within four (4) days subsequent to such change.