



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: 36-22

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

RULE NAME: Rule Governing the Prohibition of Acts
Endangering Security of Mine; Search for
Intoxicants, Matches, Etc.

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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Charleston, WV 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:

This rule governs the prohibition of acts endangering security of mine and search for intoxicants, matches, etc.

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. 22 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 economically 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.

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

SERIES 22
~~RULES AND REGULATIONS GOVERNING THE~~
~~NO ACT PERMITTED PROHIBITION OF ACTS ENDANGERING SECURITY~~
OF MINE; SEARCH FOR INTOXICANTS, MATCHES, ETC.

§36-22-1. General.

1.1. Scope. -- ~~Rules and regulations governing no act permitted endangering security of mine; and~~ search for intoxicants, matches, etc.

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

1.3. Filing Date. -- ~~December 1, 1983~~ _____.

1.4. Effective Date. -- ~~January 15, 1984~~ _____.

§36-22-2. Effect and Purpose of ~~Regulations~~ Rule.

2.1. ~~These rules and regulations~~ This rule 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-2-1 et seq. relative to enforcement are applicable to the enforcement of ~~these rules and regulations~~ this rule.

2.2. The purpose of this section is to prevent persons from acting in such a manner as to endanger persons working in or at a mine and to establish guidelines to prevent hazardous articles and intoxicants from being carried into and utilized by persons working in or at a mine.

§36-22-3. Definitions.

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

§36-22-4. No Act Permitted Endangering Security of Mine; Search for Intoxicants, Matches, Etc.

4.1. No miner, workman or other person shall knowingly damage any shaft, lamp, instrument, or machinery. No person shall alter or obstruct any air course or ventilating devices unless instructed by a certified person, or enter any part of a mine against caution, or disobey any order of any mine foreman or assistant mine foreman given in carrying out any of the provisions of this section.

4.2. Open lights, smoking, and smokers' articles, including matches, are prohibited in all mines. No person shall at any time enter mines with or carry therein any matches, pipes, cigars, cigarettes, or any device for making lights or fire not authorized or approved. The operator shall at frequent intervals; search or cause to be searched; any person, including his/her clothing and material belongings, entering or about to enter the mine, or inside the mine, to prevent such person from taking or carrying therein any of the above-mentioned articles or intoxicants.

~~4.3.~~ Any search of a person for purposes of enforcement of this ~~paragraph, Section~~ may be required of persons entering a mine or work area of a mine. If any person refuses to submit to a search, that person shall not be permitted to enter the mine or work area of a mine until such time as a personal search is conducted. Searches of persons may be conducted in a mine or work area of a mine. If any person refuses to submit to a search, that person shall be required to leave such mine or work area of a mine until such time as a personal search is conducted.

~~4.4.~~ ~~4.3:~~ No person shall at any time carry into any mine or work area of any mine any intoxicant or enter any mine or work area of any mine while under the influence of intoxicants. For the purpose of enforcement of this ~~paragraph, Section~~ the word "intoxicant" shall mean alcoholic liquor as defined in ~~West Virginia Code Chapter 60, Article 1, Section 5~~ W. Va. Code 60-1-5, or a controlled substance as defined in ~~West Virginia Code Chapter 60A, Article 1, Section 101 (d)~~ W. Va. Code 60A-1-101(e) not specifically prescribed by a physician who is fully aware of and has taken into account the job duties the person is expected to perform.

~~4.5.~~ ~~4.4:~~ For purposes of enforcement of Section ~~4.3~~ 4.4, of ~~these regulations~~ this rule, an operator shall refuse entry into a mine or remove from the mine any person whom the operator has a reasonable cause to believe is under the influence of intoxicants. The operator shall immediately notify a miner's representative employed on such shift that such action has been taken. The names and telephone numbers of the miner's representatives shall be provided to the mine operator and posted on the mine bulletin board. Reasonable cause shall be determined by the existence of one or more of the following conditions:

4.5.1. ~~(1)~~ Odor of alcohol or other intoxicant about the individual or on his/her breath;

4.5.2. ~~(2)~~ Abnormally slurred speech, stammering, stumbling, weaving, or other loss of motor coordination;

4.5.3. ~~(3)~~ Unexplained animated signs of intoxication or influence of drugs on the individual;

4.5.4. ~~(4)~~ Other discernable signs of intoxication or influence of drugs on the individual.

4.6. ~~4.5:~~ Any miner who has been denied entry or removed from the mine pursuant to Section ~~4.4~~ 4.5, of ~~these regulations~~ this rule shall be afforded the opportunity to receive a timely and appropriate medical examination to be provided by the operator. The operator shall afford the miner the opportunity for transportation to the medical facility where the examination will be performed. Such medical examination may include administration by a physician of tests prescribed and approved by the Department of Health of the State of West Virginia for the determination of a base of a controlled substance or alcohol pursuant to Chapter 17C, Article 5 of West Virginia Code. ~~If the results of any such tests demonstrates a blood alcohol level of one tenth (.10) of one percent (1%) or more by volume, or the presence of controlled substances to a degree which renders such person incapable of performing safely, such tests shall be determinative that a person is "under the influence" for purposes of this section.~~ For determining whether an individual is under the influence, the provisions of 56 CSR 19 apply.

4.7. The designated miner's representative shall be provided the opportunity to participate with the operator or his/her authorized representative during the administration of the appropriate medical examination; however, the medical examination shall not be delayed by the absence of the miner representative. The representative shall be compensated by the operator until such time that the representative leaves the mine site.

~~Each operator shall provide to the Director of the Department of Energy by June 1st of each year, on a~~

~~form provided by the Director, a list of any such tests required during the previous twelve (12) months and the results of such tests. The information shall be used by the Department to evaluate the effectiveness of the regulation, and shall in no way identify the name of the employee required to take the test or the mine where that person is employed.~~