



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

10/13/2020 10:50:45 AM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Coal Mine Health And Safety

TITLE-SERIES: 36-19

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

RULE NAME: Rule Governing Written Reports of Accidents

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

ADDRESS: 106 Dee Drive

Charleston, WV 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:

Rule governing written reports of accidents.

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. 19 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 RULE
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 19
~~RULES AND REGULATIONS GOVERNING~~
WRITTEN REPORTS OF ACCIDENTS

§36-19-1. General.

- 1.1. Scope. -- ~~Rules and regulations~~ governing written reports of accidents.
- 1.2. Authority. -- W.Va. Code ~~§22-6-4~~ §§22A-6-4 and 22A-6-5.
- 1.3. Filing Date. -- ~~April 22, 1996~~ _____.
- 1.4. Effective Date. -- ~~June 1, 1996~~ _____.

§36-19-2. Effect of Regulations.

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 W. Va. Code ~~§22A-1A~~ §22A-1-1 et seq. relative to enforcement are applicable to the enforcement of ~~these rules and regulations~~ this rule.

§36-19-3. Definitions.

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

3.2. Accident -- The term "accident" means:

- 3.2.1. ~~(1)~~ A death of an individual at a mine;
- 3.2.2. ~~(2)~~ An injury to an individual at a mine which has a reasonable potential to cause death;
- 3.2.3. ~~(3)~~ An entrapment of an individual for more than thirty (30) minutes;
- 3.2.4. ~~(4)~~ An unplanned inundation of a mine by a liquid or gas;
- 3.2.5. ~~(5)~~ An unplanned ignition or explosion of gas or dust;
- 3.2.6. ~~(6)~~ An unplanned ignition or explosion of a blasting agent or an explosive;
- 3.2.7. ~~(7)~~ An unplanned fire in or about a mine not extinguished within five (5) minutes of ignition;
- 3.2.8. ~~(8)~~ An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
- 3.2.9. ~~(9)~~ A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining

activity for more than one (1) hour;

3.2.10. ~~(10)~~ An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile, or culm bank;

3.2.11. ~~(11)~~ Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty (30) minutes;

3.2.12. ~~(12)~~ An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs;

3.3. Serious Personal Injury -- An event at a mine which causes bodily injury to an individual which requires such individual to be admitted to a medical facility overnight for reasons other than strains, sprains or observation as determined by a physician.

3.4. Occupational Injury -- The term "occupational injury" means any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to perform all duties on any day after an injury, temporary assignment to other duties, or transfer to another job.

§36-19-4. Notification of Accidents and Occupational Injuries.

4.1. If an accident as defined in Section 3.2 of this Series or a serious personal injury as defined in Section 3.3. of this Series occurs, an operator shall immediately contact the district inspector or the regional inspector at large from the regional Office of Miners' Health, Safety and Training for the area where the mine is located.

4.2. Whenever loss of life or personal injury which is determined by the attending physician to have a reasonable potential to cause death shall occur by reason of any accident or occupational injury in or about any coal mine, it shall be the duty of the operator, agent, superintendent or mine foreman to within twenty-four (24) hours report the same in writing to the ~~director~~ Director of the Office of Miners' Health, Safety and Training.

4.3. Whenever any accident or occupational injury occurs in or about any coal mine to any employee or person connected with the mining operation; which does not result in death or injury with a reasonable potential to cause death, the operator, agent, mine superintendent or mine foreman shall, within ten (10) working days, report the same in writing to the ~~director~~ Director of the Office of Miners' Health, Safety and Training and, upon request, to the miner representative within twenty-four (24) hours of submittal, giving full details thereof on forms provided by the ~~department~~ Office of Miners' Health, Safety and Training. If the operator is not made immediately aware of the injury, the written accident/injury report shall be submitted within ten (10) working days of the date the operator was notified.

§36-19-5. Difference Between Medical Treatment and First Aid.

5.1. Medical treatment includes, but is not limited to, the suturing of any wound, treatment of fractures, application of a cast or other professional means of immobilizing an injured part of the body, treatment of infection arising out of an injury, treatment of bruise by the drainage of blood, surgical removal of dead or damaged skin (debridement), amputation or permanent loss of use of any part of the body, treatment of ~~the~~ second (2nd) and third (3rd) degree burns. Procedures which are diagnostic in nature are not considered

by themselves to constitute medical treatments. Visits to a physician, physical examinations, X-ray examinations, and hospitalization for observations, where ~~not~~ no evidence of injury is found and no medical treatment given, do not in themselves constitute medical treatment. Procedures which are preventative in nature also are not considered by themselves to constitute medical treatment. Tetanus and flu shots are considered preventative in nature.

5.2. First aid includes any one-time treatment, and follow-up visit for the purpose of observation, of minor injuries such as cuts, scratches, first (1st) degree burns and splinters. Ointments, salves, antiseptics, and dressings to minor injuries are considered to be first aid.

5.3. The guidelines contained in ~~thirty (30) CFR 50.20-3~~ 30 CFR §50.20-3 and any subsequent amendments to such regulation shall be used by the Office of Miners' Health, Safety and Training to differentiate between medical treatment and first aid for specific types of injuries.

§36-19-6. Investigation of Accidents.

6.1. After notification of an accident by an operator, the ~~MHS&T~~ Office of Miners' Health, Safety and Training inspector at large will promptly decide whether to conduct an accident investigation and will promptly inform the operator of his/her decision. If ~~MHS&T~~ the Office of Miners' Health, Safety and Training decides to investigate an accident, it will initiate the investigation within twenty-four (24) hours of notification. The investigating inspector shall make a report to the ~~director~~ Director of the Office of Miners' Health, Safety and Training, setting forth the results of such examination, including the condition of the mine and the cause or causes of such accident, if known. All such reports shall be made available to interested parties upon written request.

6.2. The mine inspector may investigate an occupational injury as defined in Section 3.4 of this Series. However, the operator shall investigate each occupational injury that requires hospitalization within ten (10) days of occurrence.

§36-19-7. Preservation of Evidence Following Accident.

7.1. Unless granted permission by the Office of Miners' Health, Safety and Training, no operator may alter an accident site or an accident related area until completion of all investigations pertaining to the accident except to the extent necessary to rescue or recover an individual, prevent or eliminate an imminent danger, or prevent destruction of mining equipment.