**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: Miners Health Safety And Training TITLE-SERIES: 56-03

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

RULE NAME: Rule Governing the Safety of Those Employed in and Around Surface Mines in West Virginia

CITE STATUTORY AUTHORITY: W. Va. Code §§22A-1-38 and 22A-1-42

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 06/07/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Eugene White, Director

ADDRESS: Office of Miners' Health, Safety and Training

7 Players Club Dr., Suite 2, Charleston, WV 25311

EMAIL: eugene.e.white@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 rule updates the electrical safety rules for surface mines by adding additional safety precautions for locking out and tagging electrical circuits, troubleshooting and using insulating gloves.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The Office of Miners Health, Safety and Training, in consultation with the Board of Coal Mine Health and Safety (Board), has updated the electrical safety rules found in 56 CSR §3 pertaining to locking and tagging, troubleshooting, and the use of insulated gloves on surface mines to correspond with the electrical safety rule changes the Board made to 36 CSR §12, which became effective on February 11, 2021. These updates to the electrical safety rules will provide a safer work environment for surface coal miners

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 rule is not anticipated to impact the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

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

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

This proposed legislative rule is not anticipated to economically impact the state or its residents.

D. FISCAL NOTE DETAIL:

| Effect of Proposal | Fiscal Year | | |
|---|---|---|---|
| | 2021 Increase/Decrease (use "-") | 2022 Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost | 0.0 | 0.0 | 0.0 |
| Personal Services | 0.0 | 0.0 | 0.0 |
| Current Expenses | 0.0 | 0.0 | 0.0 |
| Repairs and Alterations | 0.0 | 0.0 | 0.0 |
| Assets | 0.0 | 0.0 | 0.0 |
| Other | 0.0 | 0.0 | 0.0 |
| 2. Estimated Total Revenues | 0.0 | 0.0 | 0.0 |

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**

**Jack M Rife -- 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 3
## RULE GOVERNING THE SAFETY OF THOSE EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA

### §56-3-1. General.

1.1. Scope. -- This rule governs the safety of employees in and around surface mines.

1.2. Authority. -- W. Va. Code §§22A-1-38 and 22A-1-42.

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 ~~May 1, 2024~~ August 1, 2027.

1.6. Applicability. -- This rule shall extend to all surface mining operations. This rule shall not apply to any utility or railroad having facilities in the vicinity of surface mining operations unless such utility or railroad is also the operator of such surface mining operations.

1.7. Other law applicable. -- All provisions of the mining laws of this state, specifically chapter 22A, article 2 of the code, are applicable to surface mining, except to the extent that this rule covers the specific requirement, and except to the extent that the context of a specific provision would render its applicability totally inappropriate to surface mining.

### §56-3-2. Effect of Law and Rule.

2.1. 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 chapter 22A, article 1 of the code relative to enforcement are applicable to the enforcement of this rule.

### §56-3-3. 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.

3.2. Abandoned underground mine workings. -- The term "abandoned underground mine workings" means excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

3.3. Accident. -- The term "accident" means any premature ignition, fire, injury, or death other than natural causes of any person.

3.4. Active underground mine working. -- The term "active underground mine working" means all

places in a mine that are ventilated and inspected regularly.

3.5. Agent. -- The term "agent" means any person charged with the responsibility for the operations of all or a part of a surface mine or the supervision of the miners on a surface mine.

3.6. Approved. -- The term "approved" means in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.

3.7. Armored cable. -- The term "armored cable" means a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

3.8. Assistant mine foreman. -- The term "assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

3.9. Barricaded. -- The term "barricaded" means to obstruct passage of person, vehicles, or flying materials.

3.10. Berm. -- The term "berm" means a pile or mound of material or equivalent capable of restraining a vehicle.

3.11. Blasting agent. -- The term "blasting agent" means any material consisting of a mixture of a fuel and oxidizer which:

3.11.1. is used or intended for use in blasting;

3.11.2. is not classified as an explosive by the department of transportation;

3.11.3. passes all United States DOT tests defining blasting agent, including insensitivity to a No. 8 blasting cap in accordance with 49 CFR 173.114a.

3.12. Blasting area. -- The term "blasting area" means the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury.

3.13. Board of appeals. -- The term "board of appeals" means the board as provided for in W. Va. Code §22A-5-1 *et seq*.

3.14. Board of Coal Mine Health and Safety. -- The term "board of coal mine health and safety" means the board provided for in chapter 22A, article 6 of the code.

3.15. Brake system. -- The term "brake system" means any or all of the following systems:

3.15.1. Service brake system - the primary brake system used for stopping a vehicle.

3.15.2. Emergency stopping system - the system used for stopping a vehicle in the event of any single failure in the service brake system.

3.15.3. Parking system - a system to hold a stopped vehicle in a stationary position.

3.16. Branch circuit. -- The term "branch circuit" means any circuit, alternating current or direct current, connected to and leading from the main power lines.

3.17. Cable. -- The term "cable" means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

3.18. Cast primer or booster. -- The term "cast primer or booster" means a case or pressed block or solid high explosives (i.e., not nitroglycerin sensitized) which is normally used to detonate insensitive or noncapsensistive explosives.

3.19. Certified electrician. -- The term "certified electrician" means any person who is qualified as a mine electrician and who has passed an examination given by OMHST, or has at least three (3) years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a non-coal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by OMHST, or any person who is qualified as a mine electrician in any state that recognizes certified electricians licensed in West Virginia.

3.20. Certified person. -- The term "certified person" when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, means a person who is qualified under the provisions of this law to perform such duty.

3.21. Circuit breaker. -- The term "circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

3.22. Code. -- The term "code" means the West Virginia code, as amended.

3.23. Delta connected. -- The term "delta connected" means a power system in which the windings or transformers or S.C. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

3.24. Detonating cord. -- The term "detonating cord" means a flexible cord containing a center core of high explosives to detonate other explosives with which it comes in contact.

3.25. Detonating cord millisecond delay connectors. -- The term "detonating cord millisecond delay connectors" means non-electric shot interval (millisecond) delay devices for use in delaying blasts which are surface initiated by detonating cord.

3.26. Detonator. -- The term "detonator" means blasting caps, electrical blasting caps, and non-electric delay blasting caps.

3.27. Director. -- The term "director" means the director of the office of miners' health, safety and training provided for in W. Va. Code §22A-1-3.

3.28. Effectively grounded. -- The term "effectively grounded" means grounded through a grounding connection of sufficiently low impendance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

3.29. Electric blasting caps. -- The term "electric blasting caps" means instantaneous electric blasting

caps and all types of delay electric blasting caps.

3.30. Electrical trouble shooting or testing. -- The term "electrical troubleshooting or testing" shall mean the process of locating an electrical problem in the electric circuits on an energized machine. This process can include the following: taking voltage and current measurements, simulating a fault to activate a device, and observing diagnostic indicators/readouts or the operational sequence of relays and contactors.

3.31. ~~3.30.~~ Explosives. -- The term "explosives" means any or all of the following, but is not limited to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps, non-electrical delay blasting caps, cast primer and boosters, detonating cord, and detonating cord delay connections.

3.32. ~~3.31.~~ Flame-resistant cable, portable. -- The term "flame-resistant cable, portable" means a portable flame-resistant cable that has passed the flame test of the Federal Bureau of Mines.

3.33. ~~3.32.~~ Ground or grounding conductor (mining). -- The term "ground or grounding conductor (mining)", also referred to as a safety ground conductor, safety ground, and frame ground, means a metallic conductor used to connect the metal frame, or enclosure or any equipment, device or wiring system with a mine track or other effective grounding medium.

3.34. ~~3.33.~~ Grounded (earthed). -- The term "grounded (earthed)" means that the system, circuit, or apparatus referred to is provided with a ground.

3.35. ~~3.34.~~ High voltage. -- The term "high voltage" means voltages of more than one thousand (1,000) volts.

3.36. Hot stick. -- The term "hot stick" shall mean an approved and insulated pole usually made of fiberglass used when performing work on high-voltage circuits to protect them from electric shock.

3.37. ~~3.35.~~ Imminent danger. -- The term "imminent danger" means the existence of any condition or practice on a surface mine which could be expected to cause death or serious physical harm before such condition or practice can be abated.

3.38. ~~3.36.~~ Inspector. – The term "inspector" means a surface mine inspector employed by OMHST, pursuant to W. Va. Code §22A-1-13.

3.39. ~~3.37.~~ Interested persons. -- The term "interested persons" includes the operator, members of any mine safety committee at the mine affected and other duly authorized representative of the mine workers and OMHST.

3.40. ~~3.38.~~ Lightning arrestor. -- The term "lightning arrestor" means a protective device for limiting surge voltage on equipment by discharging or by passing surge current, it prevents continued flow or follow current to ground and is capable of repeating these functions as specified.

3.41. ~~3.39.~~ Low voltage. -- The term "low voltage" means up to and including six hundred sixty (660) volts.

3.42. ~~3.40.~~ Medium voltage. -- The term "medium voltage" means voltages from six hundred sixty-one (661) to one thousand (1,000) volts.

3.43. ~~3.41.~~ Mine foreman. -- The term "mine foreman" means the certified person whom the operator

or superintendent shall place in charge of the workings of the surface mine and of the persons employed thereon.

3.44. ~~3.42.~~ Mine power center or distribution center. -- The term "mine power center or distribution center" means a combined transformer or distribution unit, complete within a metal enclosure from which one (1) or more low-voltage power circuits are taken.

3.45. ~~3.43.~~ Miner. -- The term "miner" means any individual working on or around a surface mine who is employed by the operator.

3.46. ~~3.44.~~ Neutral (derived). -- The term "neutral (derived)" means a neutral point or connection established by the addition of a "zigzag" or grounding transformer to a normally underground power system.

3.47. ~~3.45.~~ Neutral point. -- The term "neutral point" means the connection point of transformer or generator windings from which the voltage to ground is nominally zero (0), and is the point generally used for system groundings in wye-connected A.C. power system.

3.48. ~~3.46.~~ Non-electric delay blasting caps. -- The term "non-electric delay blasting caps" means a blasting cap with an integral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from a miniaturized detonating cord.

3.49. ~~3.47.~~ Office of miners' health, safety and training. -- The term "office of miners' health, safety and training" means the agency continued under W. Va. Code §22A-1-1.

3.50. ~~3.48.~~ OMHST. -- The term "OMHST" means the office of miners' health, safety and training.

3.51. ~~3.49.~~ Operator. -- The term "operator" means any firm, corporation, partnership or individual operating any surface coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

3.52. ~~3.50.~~ Person. -- The term "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

3.53. ~~3.51.~~ Portable (trailing) cable. -- The term "portable (trailing) cable" means a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.

3.54. ~~3.52.~~ Primer. -- The term "primer" means a cartridge or container of explosives into which a detonator or detonating cord is inserted or attached, and whose purpose is to initiate the main explosive charge.

3.55. ~~3.53.~~ Qualified person. -- The term "qualified person" means a person who has completed an examination and is considered qualified on record by OMHST.

3.56. ~~3.54.~~ Safety fuse. -- The term "safety fuse" means a flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a blasting cap.

3.57. ~~3.55.~~ Superintendent. -- The term "superintendent" means the person who shall have, on behalf of the operator, immediate supervision of one (1) or more mines.

3.58. ~~3.56.~~ Supervisor. -- The term "supervisor" means a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work of employees and who is acting pursuant to such specific designation and instructions.

3.59. ~~3.57.~~ Surface mine. -- The term "surface mine" means all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, shops and trails; and coal prospecting. "Surface mine" for the purpose of this rule shall not mean the surface operations connected with an underground coal mine.

3.60. ~~3.58.~~ Work of preparing the coal. -- The term "work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, loading, and removing of over-burden from the top of the coal for the purpose of extracting coal.

3.61. ~~3.59.~~ Working place. -- The term "working place" means all areas in or about a surface mine where persons are working.

3.62. ~~3.60.~~ Wye-connected. -- The term "wye-connected" means a power system connection in which one (1) end of each phase windings or transformers or A.C. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

3.63. ~~3.61.~~ Zigzag transformer (grounding transformer). -- The term "zigzag transformer (grounding transformer)" means a transformer intended primarily to provide a neutral point for grounding purposes.

**§56-3-4. Applicability and Enforcement of Laws Safeguarding Life and Property; Rules; Authority of OMHST Regarding Safety Laws.**

4.1. All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface mining operations insofar as such laws are applicable thereto. The director of OMHST shall promulgate reasonable rules in accordance with the provisions of chapter 29A of the code to protect the safety of those employed in and around surface mines. The enforcement of all laws and rules relating to the safety of those employed in and around surface mines is hereby vested in OMHST and shall be enforced according to the provisions of chapter 22A of the code.

**§56-3-5. Director of OMHST - Appointment; Term of Office.**

5.1. There shall be a director of OMHST, who shall be appointed by the governor with the advice and consent of the senate and who shall serve subject to the provisions of W. Va. Code §22A-1-3.

**§56-3-6. Director of OMHST - Powers and Duties.**

6.1. The director of OMHST is hereby empowered and it is his/her duty to administer and enforce the provisions of this rule relating to health and safety inspections and enforcement and training in coal mines, underground clay mines, open pit mines, cement manufacturing plants and underground limestone and sandstone mines.

6.2. The director of OMHST has full charge of the agency. The director has the power and duty to:

6.2.1. Supervise and direct the execution and enforcement of the provisions of this rule.

6.2.2. Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out his/her responsibilities and fix their compensation, except as otherwise provided in this rule.

6.2.3. Assign mine inspectors to divisions or districts in accordance with the provisions of W. Va. Code §22A-1-8 as may be necessary to fully and effectively carry out the provisions of this rule, including the training of inspectors for the specialized requirements of surface mining, shaft and slope sinking and surface installations and to supervise and direct the mine inspectors in the performance of their duties.

6.2.4. Suspend, for good cause, any mine inspector without compensation for a period not exceeding thirty (30) days in any calendar year.

6.2.5. Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with this rule.

6.2.6. Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of this rule.

6.2.7. Cause a properly indexed permanent and public record to be kept of all inspections made by the director or by mine inspectors.

6.2.8. Make annually a full and complete written report of the administration of the office to the governor and the legislature of the state for the year ending June 30. The report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of individuals employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the office from all sources identifying each source of the funds, the expenditures of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the office, the number of inspections made by each inspector, the number and type of violations found by each inspector. However, no inspector may be identified by name in this report. Such reports shall be filed with the governor and the legislature on or before December 31 of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

6.2.9. Call or subpoena witnesses for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records or other documents relevant or material to any hearing, investigation or examination of any mine permitted under chapter 22A of the code or this rule. Any witness so called or subpoenaed shall receive $40 per diem and shall receive mileage at the going rate for state employees for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the witness.

6.2.10. Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or the operator's agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his/her representative.

6.2.11. Beginning January 1, 2013, the director shall share information regarding suspension or revocation of a certificate of a certified person, as defined in this rule for violation of the substance abuse provisions of chapter 22A of the code with other states that subject similar persons to disciplinary action for violation of a substance abuse policy.

6.2.12. The director shall propose rules for legislative approval pursuant to W. Va. Code §29A-3-1 et seq., a rule establishing a program for the sharing of information between employers who employ certified persons regarding the discharge of persons in safety sensitive positions as defined in W. Va. Code R. §56-19-3.17 for violation of an employer's substance abuse policy.

6.2.13. Perform all other duties which are expressly imposed upon him/her by the provisions of chapter 22A of the code and this rule.

6.2.14. Impose reasonable fees upon applicants taking tests administered pursuant to the requirements of chapter 22A of the code and this rule.

6.2.15. Impose reasonable fees for the issuance of certifications required under chapter22A of the code and this rule.

6.2.16. Prepare study guides and other forms of publications relating to mine safety and charge a reasonable fee for the sale of the publications.

6.2.17. Make all records of the office open for inspection of interested persons and the public.

6.3. The director of OMHST, or his/her designee, upon receipt of the list of approved innovative mine safety technologies from the Mine Safety Technology Task Force, has thirty days to approve or amend the list as provided in W. Va. Code §11-13BB-4. At the expiration of the time period, the director shall publish the list of approved innovative mine safety technologies as provided in W. Va. Code §11-13BB-4.

**§56-3-7. Director of OMHST; Eligibility.**

7.1. The director shall be appointed by the governor, by and with the advice and consent of the senate, and shall serve at the will and pleasure of the governor.

**§56-3-8. Director of OMHST; Oath and Bond.**

8.1. The director of OMHST shall, before entering upon the discharge of his/her duties, take the oath of office prescribed by section 5, article 4 of the constitution of West Virginia, and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars ($10,000), which security to be approved by the governor, conditioned upon the faithful discharge of his/her duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from office funds.

**§56-3-9. Mine Inspectors May Be Appointed to Fill Vacancy in OMHST; Permanent Tenure Benefits not Affected.**

9.1. Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within OMHST, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position without forfeiting any of the benefits which have accrued to him/her because of his/her permanent tenure as a mine inspector.

**§56-3-10. Eligibility for Appointment as Surface Mine Inspector; Qualifications; Salary and Expenses; Removal.**

10.1. In order to qualify for employment as a surface mine inspector, an eligible applicant shall meet the requirements found in W. Va. Code §22A-1-13, and submit to a written and oral examination given by the board of coal mine health and safety. The examination shall relate to the duties to be performed by a surface mine inspector and may, subject to the approval of the board of coal mine health and safety, be prepared by the director.

10.2. If the board of coal mine health and safety finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed each required examination with a grade of at least seventy-five percent (75%), or an overall combined average score of eighty percent (80%), the board of coal mine health and safety shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director. The director may then appoint one (1) of the candidates from the three (3) having the highest grades.

10.3. All such appointees shall be citizens of West Virginia, in good health, not less than twenty-four (24) years of age, of good character and reputation, and temperate in habits. No person shall be eligible for permanent appointment as a surface mine inspector until having served in a probationary status for a period of one (1) year to the satisfaction of the director.

10.4. Surface mine inspectors serving as such on the effective date of this section (July 1, 1977) may continue to serve for a probationary period not exceeding one (1) year and if eligible as prescribed by this section, may qualify for appointment during such probationary period in accordance with the provisions of this section.

10.5. However, surface mine inspectors employed on the effective date of this section (July 1, 1977) and who have served to the satisfaction of the director for a period of two (2) years or more may continue to serve on a permanent tenure basis. In the performance of duties devolving upon surface mine inspectors, they shall be responsible to the inspector-at-large of OMHST of their respective region.

10.6. Salaries of surface mine inspectors shall be not less than fifty-three thousand nine hundred four dollars ($53,904.00) per year. In the discharge of their official duties in privately owned vehicles, surface mine inspectors shall receive mileage at the rate applicable to state employees. A surface mine inspector, after having received a permanent appointment, may be removed from office only for physical or mental impairment, incompetency, neglect of duty, public intoxication, malfeasance in office, or other similar good cause.

**§56-3-11. Mine Inspectors' Examining Board Abolished and Duties Imposed Upon the Board of Coal Mine Health and Safety.**

11.1. The mine inspectors' examining board is hereby abolished and all duties and responsibilities imposed upon the mine inspectors' examining board are transferred and hereby imposed upon the board of coal mine health and safety.

11.2. The board of coal mine health and safety shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board of coal mine health and safety on the written request of three (3) members or the director of OMHST. Notice of each meeting shall be given in writing to each member by the secretary at least five (5) days in advance of the meeting.

11.3. A quorum of this board is four (4) members which shall include at least two (2) members representing the viewpoint of operators and at least two (2) members representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present, except no vote of this board may be taken unless all six (6) voting members are present.

11.4. In addition to other duties expressly set forth in W. Va. Code §22A-6-1 *et seq.*, the board of coal mine health and safety shall:

11.4.1. Establish, and from time to time revise, forms of application for employment as mine inspectors and forms for written examinations to test the qualification of candidates for the position;

11.4.2. Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearings for removal of inspectors, required to be held under chapter 22A of the code. All of such rules shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

11.4.3. Conduct after public notice of the time and place thereof, examinations of candidates for appointment as mine inspector. By unanimous agreement of all members of the board of coal mine health and safety, one (1) or more members of the board of coal mine health and safety may be designated to give a candidate the written portion of the examination.

11.4.4. Prepare and certify to the director a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidates with the highest grade appearing at the top of the list. After each meeting of the board of coal mine health and safety held to examine such candidates, and at least annually, the board of coal mine health and safety shall prepare and submit to the director a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment, © who have been passed over for appointment for three (3) years, (d) who have become ineligible for appointment since the board of coal mine health and safety originally certified that such person was qualified and eligible for appointment as mine inspector, or (e) who, in the judgment of the board of coal mine health and safety, should be removed from the register for good cause.

11.4.5. Cause the secretary of the board of coal mine health and safety to keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for such period of time as may be established by the board of coal mine health and safety. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board of coal mine health and safety;

11.4.6. Issue a letter or written notice of qualifications to each successful eligible candidate;

11.4.7. Hear and determine proceedings for the removal of mine inspectors in accordance with the provisions of chapter 22A of the code;

11.4.8. Hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of W. Va. Code §22A-1-4: Provided, that an aggrieved inspector, in order to appeal from any order or suspension, shall file such appeal in writing with the board of coal mine health and safety no later than ten (10) days after receipt of notice of suspension. On such appeal the board of coal mine health and safety shall affirm the act of the director unless it be satisfied from a clear preponderance

of the evidence that the director has acted arbitrarily;

11.4.9. Make an annual report to the governor and the director concerning the administration of mine inspection personnel in the state service, making such recommendations as the board of coal mine health and safety considers to be in the public interest.

**§56-3-12. Director and Inspectors Authorized to Enter Mines; Duties of Inspectors to Examine Mines; No Advance Notice; Reports After Fatal Accidents.**

12.1. The director or his/her authorized representative shall have authority to visit, enter, and examine any mine, whether underground or surface and may call for the assistance of any mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director or mine inspector proper facilities for entering such mine and making examination or obtaining information.

12.2. If miners at any mine or one of their authorized representatives have reason to believe that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.

12.3. Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in the respective districts and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each surface mine operation for the purpose of determining whether a danger, described in W. Va. Code §§22A-1-14 and 15 exists in any such mine, or whether any provisions of chapter 22A of the code are being violated or have been violated within the past forty-eight (48) hours in any such mine.

12.4. In addition to the other duties imposed by this rule, it shall be the duty of each inspector to note each violation found and issue an order or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.

12.5. The mine inspector shall visit the scene of each fatal accident occurring in any mine within his/her district and shall make an examination into the particular facts of such accident; make a report to the director, setting forth the results of such examination, including the condition of the mine and the cause or causes of such fatal accident, if known, and all such reports shall be made available to the interested parties, upon written requests.

12.6. At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the director on such inspection.

**§56-3-13. Findings Orders and Notices.**

13.1. Imminent Danger, Withdrawal Order, Notice of Violation and Abatement.

13.1.1. If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or the operator's

agent to cause immediately all persons, except those referred to in subdivisions 13.1.3.a., 13.1.3.b., 13.1.2.c., and 13.1.3.d. of subsection 13.1.3., to be withdrawn from and to be prohibited from entering such area until an authorized representative of the director determines that such imminent danger no longer exists. All employees on the inside and outside of a mine who are idle as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four (4) hours of such shift.

13.1.2. If, upon any inspection of a coal mine, an authorized representative of the director finds that there has been a violation of law, but the violation has not created an imminent danger, he/she shall issue a notice to the operator or the operator's agent, fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director finds that the violation has not been totally abated, and if he/she also finds that the period of time should not be further extended, he/she shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator or the operator's agent to cause immediately all persons, except those referred to in subdivisions 13.1.3.a., 13.1.3.b., 13.1.2.c., and 13.1.3.d. of subsection 13.1.3., to be withdrawn from, and prohibited from entering such area until an authorized representative of the director determines that the violation has been abated.

13.1.3. The following persons shall not be required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

13.1.3.a. Any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the director, to eliminate the condition described in the order;

13.1.3.b. Any public official whose official duties require him/her to enter such area;

13.1.3.c. Any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is accompanied by such person and whose presence in such area is necessary for the investigation of the conditions described in the order; and

13.1.3.d. Any consultant to any of the foregoing.

13.2. Notices and orders issued pursuant to this rule shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health and safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

13.3. Each notice or order issued under this rule shall be given promptly to the operator of the coal mine or the operator's agent by an authorized representative of the director issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative and posted on the bulletin board at the mine.

13.4. A notice or order issued pursuant to this rule may be modified or terminated by an authorized representative of the director.

**§56-3-14. Review of Orders and Notices by the Director.**

14.1. An operator, issued an order pursuant to the provisions of W. Va. Code §22A-1-15, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the director for review of the order within thirty (30) days of receipt thereof or within thirty (30) days of its modification or termination. An operator, issued a notice pursuant to W. Va. Code §22A-1-15(b) or any representative of miners in any mine affected by such notice, may, if he/she believes that the period of time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty (30) days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the director shall cause such investigation to be made as he deemed appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or the time fixed in such notice. The filing of an application for review under this law shall not operate as a stay of any order or notice.

14.2. The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five (5) days prior to the hearing.

14.3. Upon receiving the report of such investigation, the director shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the order, or the modification or termination of such order, or the notice complained of and incorporate the findings therein.

14.4. In view of the urgent need for prompt decision of matters submitted to the director under this rule, all actions which the director takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of issues involved.

14.5. Pending completion of the investigation required by this section, the applicant may file with the director a written request that the director grant temporary relief from any modification or termination of order, or from any order issued under W. Va. Code §22A-1-14, except an order issued under W. Va. Code §22A-1-15, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he/she may prescribe, if:

14.5.1. A hearing has been held in which all parties were given an opportunity to be heard;

14.5.2. The applicant shows that there is substantial likelihood that the findings of the director will be favorable to the applicant; and

14.5.3. Such relief will not adversely affect the health and safety of miners.

14.6. No temporary relief shall be granted in the case of a notice issued under W. Va. Code §22A-1-15.

**§56-3-15. Posting of Notices, Orders, and Decisions; Delivery to Agent of Operator; Names and Addresses to be Filed by Operator.**

15.1. At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine, and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices, orders, and decisions required by the code or this rule to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal.

15.2. A copy of any notice, order, or decision required by this rule to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or the operator's agent.

15.3. The director shall cause a copy of any notice, order, or decision required by this rule to be given to an operator to be mailed immediately to a representative of the miners. Such notice, order, or decision shall be available for public inspection.

15.4. In order to insure prompt compliance with any notice, order, or decision issued under this rule, the authorized representative of the director may deliver such notice, order, or decision to an agent of the operator and such agent shall immediately take appropriate measures to insure compliance with such notice, order, or decision.

15.5. Each operator of a coal mine shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, or decision issued under this rule affecting such mine.

15.6. Where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the director the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a health and safety official under this section shall not be construed as making such official subject to any penalty under this rule.

**§56-3-16. Judicial Review.**

16.1. Venue, Petition for Appeal and Relief.

16.1.1. Any order or decision issued by the director under this rule except an order or decision under W. Va. Code 22A-1-15 shall be subject to judicial review by the circuit court of the county in which the mine affected is located upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this rule and files within thirty (30) days from the date of such order or decision.

16.1.2. The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the director shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.

16.1.3. In the case of a proceeding to review any order or decision issued by the director under this rule, except an order or decision pertaining to an order issued under W. Va. Code §22A-1-15(a) or an order or decision pertaining to a notice issued under W. Va. Code §22A-1-15(b), the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final

determination of the proceeding if:

16.1.3.a. All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

16.1.3.b. The person requesting such relief shows that there is a substantial likelihood that he/she will prevail on the merits of the final determination of the proceeding; and

16.1.3.c. Such relief will not adversely affect the health and safety of miners in the coal mine.

16.1.4. The judgment of the court shall be subject to review only by the supreme court of appeals of West Virginia upon a writ of certiorari filed in such court within sixty (60) days from the entry of the order and decision of the circuit court upon such appeal from the director.

16.1.5. The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.

16.1.6. Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any proceeding instituted under this section.

**§56-3-17. Injunctions.**

17.1. The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located whenever the operator or the operator's agent:

17.1.1. Violates or fails or refuses to comply with any order or decision issued under this rule; or

17.1.2. Interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this rule; or

17.1.3. Refuses to admit such representatives to the mine; or

17.1.4. Refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine; or

17.1.5. Refuses to furnish any information or report requested by the director in furtherance of the provisions of this rule; or

17.1.6. Refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this rule.

17.2. The court shall have jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under subsection 17.1.1. shall continue in effect until the completion or final termination of all proceedings for review of such order under this rule, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it.

17.3. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

**§56-3-18. Penalties.**

18.1. The penalty provisions found in W. Va. Code §22A-1-21 shall apply to this rule.

**§56-3-19. Discrimination.**

19.1. No person shall discharge or in any other way discriminate against, or cause to be discharged or caused to be discriminated against, any miner or any authorized representative of miners by reason of the fact that the person believes or knows that such miner or representative:

19.1.1. Has notified the director, or his/her authorized representative, or an operator, directly or indirectly, of any alleged violation or danger;

19.1.2. Has filed, instituted or caused to be filed or instituted any proceeding under chapter 22A of the code or this rule;

19.1.3. Has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of chapter 22A of the code or this rule.

19.2. No miner or authorized representative of any miner shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or authorized representative of any miner has performed an act under subsection 19.1.1., 19.1.2. or 19.1.3. above.

19.3. Any miner or an authorized representative of any miner who believes that he or she has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty (30) days after such violation occurs, apply to the board of appeals for a review of such alleged discharge, discrimination, or failure to compensate.

19.3.1. A copy of the application shall be sent to the operator who shall be identified as the respondent.

19.3.2. Upon receipt of such application, the board of appeals shall cause such investigation to be made as it deems appropriate.

19.3.3. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such alleged violation.

19.3.4. The parties shall be given written notice of the time, date and place of the hearing at least five (5) days prior to the hearing.

19.3.5. Mailing of the notice of hearing to the charged party at the party's last address of record as reflected in the records of OMHST is deemed adequate notice to the charged party.

19.3.6. Such notice shall be by certified mail, return receipt requested.

19.3.7. Any such hearing shall be of record.

19.3.8. Upon receiving the report of such investigation, the board of appeals shall issue an order as set forth below:

19.3.8.a. If the board of appeals finds that a violation did occur, then it shall issue a decision within forty-five (45) days, incorporating an order therein, requiring the person committing such violation to take affirmative action to abate the violation as the board of appeals deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or authorized representative of any miner to his/her former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order.

19.3.8.b. If the board of appeals finds that there was no violation, then it shall issue an order denying the application. Such order shall incorporate the board of appeal's findings therein.

19.3.9. If the hearing under this section relative to discharge is not completed within forty-five (45) days of the date of discharge due to delay caused by the operator, then the miner shall be automatically reinstated until the final determination.

19.3.10. If the hearing is not completed within forty-five (45) days of the date of discharge due to delay caused by the board pf appeals, then the board of appeals may, at its option, reinstate the miner until the final determination.

19.3.11. If the hearing is not completed within forty-five (45) days of the date of discharge due to delay caused by the miner, then the board of appeals shall not reinstate the miner until the final determination.

19.4. Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the attorney's fees as determined by the board of appeals to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of said proceedings, shall be assessed against the person committing such violation.

**§56-3-20. Record and Reports.**

20.1. In addition to the records that are specifically required by this rule, every operator of a coal mine shall establish and maintain any records, make any reports, and provide any information as the director may reasonably require from time to time to enable him/her to perform his/her functions under this rule. The director is authorized to compile, analyze, and publish, either in summary or detailed form, any reports or information so obtained. Except to the extent otherwise specifically provided by this rule, all records, information, reports, findings, notices, orders or decisions required or issued pursuant to or under this rule may be published from time to time, may be released to any interested person, and shall be made available for public inspection.

**§56-3-21. Mine Foreman Examiner for Mine Foreman and Assistant Mine Foreman - Salary.**

21.1. The director shall appoint a mine foreman examiner to examine and certify mine foreman and assistant mine foreman and mine examiners. Such mine foreman examiners shall be paid a minimum salary of thirty-one thousand thirty-two dollars ($31,032) per year.

21.2. The duties of the mine foreman examiner shall be to:

21.2.1. Prepare and conduct examinations of mine foreman, assistant mine foreman,

21.2.2. Prepare and certify to the director a register of all persons who successfully completed the examination with a passing grade of eighty percent (80%).

21.3. The director shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations, and at least two (2) weeks notice of time and place where the examinations are to be held shall be given.

21.3.1. The examinations shall be given at any location where there are at least five (5) persons to be tested, and adequate facilities to conduct such examination.

21.3.2. The office of the mine foreman examiner shall be located at a place determined by the director. All records of the mine foreman examiner pertaining to the examinations shall be kept at his/her office.

21.4. The mine foreman examiner shall, with the approval of the director, prepare, and from time to time, modify examinations to be administered to applicants for certification as mine foreman.

21.4.1. All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten (10) days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.

21.5. Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under this rule.

21.6. The mine foreman examiner shall certify to the director, on a form furnished by the director, every person whose examination shall disclose his/her fitness for the duties of mine foreman, assistant mine foreman, and as above classified, and the director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.

**§56-3-22. Withdrawal of Certification.**

22.1. Charge of breach of duty -- A mine inspector or the director may charge a mine foreman, assistant mine foreman, or any other certified person with neglect or failure to perform any duty mandated pursuant to this rule. The charge shall state:

22.1.1. The name of the person charged;

22.1.2. The duty or duties this person is alleged to have violated;

22.1.3. The approximate date and place so far as is known of the violation of duty;

22.1.4. The capacity of the person making the charge; and

22.1.5. Shall be verified on the basis of information and belief or personal knowledge.

22.2. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charges filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file on each charge and of all related documents which shall be open to the public.

22.3. Evaluation of charge by board of appeals.

22.3.1. Within twenty (20) days after receipt of the charge the board of appeals shall evaluate the charge and determine whether or not a violation of duty has been stated.

22.3.2. In making such a determination the board of appeals shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge.

22.3.3. Upon request, the director shall investigate the charge and report the results of the investigation to the board of appeals within ten (10) days of the director's receipt of the charge.

22.3.4. If the board of appeals determines that probable cause exists to support the allegation that the person charged has violated a duty, the board by the end of the twenty (20) day period shall set a date for hearing which date shall be within eighty (80) days of the filing of the charge.

22.3.5. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected, and to any interested person of record.

22.3.6. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

22.4. Hearing.

22.4.1. The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence.

22.4.1.a. Any member of the board of appeals shall have the power to administer oaths.

22.4.1.b. The board of appeals may subpoena witnesses and require production of any books, papers, records, or other documents relevant or material to the inquiry.

22.4.2. The board of appeals shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice.

22.4.3. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing.

22.4.4. No continuance shall be granted except for good cause shown.

22.4.5. The board of appeals may accept as evidence a notarized affidavit of drug testing procedures and results from a medical review officer (MRO) in lieu of live testimony by the MRO. If the board of appeals desires testimony in lieu of a notarized affidavit, the MRO may testify under oath telephonically or by an internet based program in lieu of physically attending the hearing.

22.4.6. At the conclusion of the hearing the board of appeals shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings and

conclusions of law.

22.4.6.a. If the board of appeals finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect.

22.4.6.b. No renewal of the certificate shall be granted except as herein provided.

22.5. Failure to cooperate.

22.5.1. Any person charged who shall, without just cause, refuse or fail to appear before the board of appeals or cooperate in the investigation or gathering of evidence shall forfeit his/her certificate or certificates for a period to be determined by the board of appeals, not to exceed five (5) years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foreman, assistant mine foreman, or other certified person.

22.6. Penalties.

22.6.1. The board of appeals may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty (30) days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed in chapter 22A of the code.

22.7. Integrity of penalties imposed.

22.7.1. No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under chapter 22A of the code, during the period of the suspension imposed herein.

22.8. Any party adversely affected by a final order or decision issued by the board of appeals shall be entitled to judicial review thereof pursuant to W. Va. Code §29A-5-4.

**§56-3-23. Certification of Mine Foreman or Assistant Mine Foreman Whose License to Engage in Similar Activities Suspended in Another State.**

23.1. Any person whose license, certificate or similar authority to perform any supervisory duties in another state has been suspended or revoked by that state cannot be certified in West Virginia under any provision of this rule or chapter 22A of the code during the period of such suspension or revocation in the other state.

**§56-3-24. Board of Appeals.**

24.1. There is hereby continued a board of appeals under W. Va. Code §22A-5-1, consisting of three (3) members.

24.1.1. Two (2) members of the board of appeals shall be appointed by the governor, one (1) person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one (1) person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators.

24.1.2. The third (3rd) person, who shall be chairman of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, shall be selected by the two (2) members appointed by the governor.

24.1.3. The term of office of members of the board of appeals shall be five (5) years.

24.2. The function and duties of the board of appeals shall be to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.

24.3. The board of appeals shall have the power to administer oaths and subpoena witnesses and require production of any books, papers, records, or other documents, relevant or material to the appeal inquiry.

24.4. The chairman of the board of appeals shall subpoena any witness requested by a party to a hearing to testify or produce books, records or documents. Any witness responding to a subpoena so issued shall receive a daily witness fee to be paid out of the state treasury upon a requisition of the state auditor equivalent to the rate of pay under the wage agreement currently in effect plus all reasonable expenses for meals, lodging and travel at the rate applicable to state employees. Any full payments as hereinbefore specified shall be in full and exclusive payment for meals, lodging, actual travel and similar expenses and shall be made in lieu of any lost wages occasioned by such appearance in connection with any hearing conducted by the board of appeals.

24.5. Each member of the board of appeals shall be paid the same compensation and expense reimbursement as is paid to members of the legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. No reimbursement for expenses shall be made except upon an itemized account, properly certified by such members of the board of appeals. All reimbursement for expenses shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board of appeals.

24.6. Board members, before performing any duty, shall take and subscribe to the oath required by article 4, section 5 of the constitution of West Virginia.

**§56-3-25. Certification of Surface Mine Foreman.**

25.1. In every surface mine where five (5) or more persons are employed in a period of twenty-four (24) hours, the operator shall employ at least one (1) person certified in accordance with the provisions of W. Va. Code §22A-37-1 as a mine foreman.

25.1.1. Each applicant for certification as a mine foreman shall, at the time the applicant is issued a certificate of competency:

25.1.1.a. Be a resident or employed in a mine in this state;

25.1.1.b. Have had at least three (3) years experience in surface mining:

25.1.1.b.1. Which shall include at least eighteen (18) months experience on or at a working section of a surface mine; or

25.1.1.b.2. Be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school; and

25.1.1.b.3. Have had at least two (2) years practical experience in a surface mine, which shall include at least eighteen (18) months experience on or at a working section of a surface mine; and

25.1.1.b.4. Have demonstrated a knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and other subjects by completing such training, education and examinations as may be required of the applicant under W. Va. Code § 22A-1-37.

25.2. In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one (1) person, one (1) or more assistant mine foreman may be designated.

25.2.1. Such person shall act under the instruction of the mine foreman who shall be responsible for the person's conduct in the discharge of his/her duties.

25.2.2. Each assistant so designated shall be certified under the provisions of W. Va. Code §22A-1-37.

25.2.3. Each applicant for certification as assistant mine foreman shall, at the time the applicant is issued a certificate of competency, possess all of the qualifications required of a mine foreman.

25.2.3.a. The applicant shall, at the time he/she is certified, be required to have at least two (2) years experience in surface mining, which shall include eighteen (18) months on or at a working section of a surface mine;

25.2.3.b. Or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve (12) months practical experience in a surface mine, all of which shall have been on or at a working section.

25.3. The director shall promulgate such rules as may be necessary to carry out the provisions of W. Va. Code §22A-1-37.

25.4. Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman in any mine in this state until the next regular mine foreman examination held by OMHST, but not to exceed a maximum of ninety (90) days.

**§56-3-26. Instruction of Employees and Supervision of Apprentices; Annual Examinations of Persons Using Approved Gas Detectors; Records of Examination; Maintenance of Gas Detectors, Etc.**

26.1. It shall be the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in such mine shall, before beginning work therein, be instructed in the particular danger incident to the person's work in such mine, and be furnished a copy of the mining laws of this state and rules of such mine.

26.2. No person shall be qualified for testing for methane and for oxygen deficiency unless each such person has been trained and demonstrates to the satisfaction of an authorized representative of the director that the person is qualified to test for methane with an approved gas detector. Records of such

examinations shall be kept by the operator and the director.

26.3. Persons whose duties require them to use approved gas detectors, that have been qualified by OMHST to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified mine foreman and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to OMHST.

26.4. Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from the OMHST.

26.5. Each operator shall provide for the proper maintenance of each detector, and before each shift, care shall be taken to insure that such detector is in a permissible condition.

26.6. Gas detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the director.

26.7. Other approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated every thirty (30) calendar days.

26.8. Job assignments to any miner.

26.8.1. When a job assignment is given to any miner that the person has not performed in the recent past, or if any person is inexperienced in the particular job assignment, the person shall be instructed in the hazards incident thereto and the law and rules relevant thereto prior to performing any duties in such job assignment.

26.8.2. When the job assignment includes the operation of equipment, the instruction shall include a supervised dry run.

26.8.3. When the job assignment relates to a plan in effect at the mine, the relevant portions of the plan shall be reviewed.

26.8.4. A record shall be kept of such instruction required under this subsection.

**§56-3-27. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places; Records.**

27.1. Pre-shift examination.

27.1.1. Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions.

27.1.2. Upon completion of the examination, the foreman shall record the results in a book prescribed by the director, at the designated station at the surface mine before persons enter the working area of the mine.

27.1.3. The operator shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the mine and rules applicable thereto.

27.2. On-shift examination.

27.2.1. The mine foreman or assistant mine foreman shall examine all working places in the pit under his/her supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety.

27.2.2. It shall further be the duty of the mine foreman or the assistant mine foreman to carefully examine the haulage roads in the pit area for slips, cracks, overhanging trees and other dangerous conditions during his/her pre-shift and on-shift examinations.

27.3. Dangerous conditions.

27.3.1. Should the mine foreman or his/her assistants find a place to be in a dangerous condition, he/she shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

27.3.2. The mine foreman shall also record any dangerous conditions and practices found during his/her examination in a book provided for that purpose.

27.4. Close deep operations.

27.4.1. When a surface mine operation is known to be close to an active underground mine, the mine foreman or superintendent shall give the official representative of the underground mine at least twelve (12) hours notice in advance of any contemplated blasting that may endanger the safety of persons employed in the underground mine.

27.5. Instructions.

27.5.1. The mine foreman shall see that every person employed to work at such mine shall, before beginning work therein:

27.5.1.a. Be instructed in the particular dangers incident to his/her work in such mine; and

27.5.1.b. Be furnished a copy of the state surface mining rules.

27.6. Records of examinations.

27.6.1. All violations or hazardous conditions and the action taken to correct such violations or conditions including the pre-shift and on-shift examinations shall be recorded with ink or indelible pencil in a book prescribed by the director, kept for such purpose at a place at the surface mine designated by mine management.

27.6.2. All records of daily and weekly reports as prescribed herein, shall be open for inspection by interested persons, and the record book shall be kept for a period of one (1) year.

27.7. It shall be the duty of the mine foreman, assistant mine foreman to examine each mine within three (3) hours prior to the beginning of a shift and before any miner on such shift enters the active workings of the mine.

27.8. The mine foreman shall give prompt attention to the removal of all dangers reported to him/her

by his/her assistants, or any other person working in the mine, and in case it is impracticable to remove the danger at once, the mine foreman shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists.

**§56-3-28. Duty of Mine Foreman to Notify Operator When Unable to Comply with Law; Duty of Operator.**

28.1. The mine foreman shall notify in writing the operator or superintendent of the mine, and the director, of his/her inability to comply with any of the requirements of this law, and it shall then become the duty of such operator or superintendent promptly to attend to the matter complained of by the mine foreman so as to enable him/her to comply with the provisions hereof.

28.2. Every operator of a mine shall furnish all supplies necessary for the mine foreman to comply with the requirements of this law after being requested to do so in writing by the mine foreman.

**§56-3-29. Death Or Resignation Of Mine Foreman; Successor.**

29.1. In case of death or resignation of mine foreman, the superintendent or manager shall appoint a certified person to act as mine foreman.

**§56-3-30. Excavating.**

30.1. Loose material removal. -- Loose hazardous material shall be stripped for a safe distance (minimum of fifteen (15) feet), except where vegetation is required to support the slope from the top of pit or highwalls, and the loose unconsolidated material shall be sloped to the angle of repose, or barriers, baffle boards, screen, or other approved devices that afford equivalent protection.

30.2. Benches. -- When a bench is required to insure safe operations, the width and height of the bench shall be governed by the type of equipment to be used and the operations to be performed, type of material and height of wall.

30.3. Highwall and spoil bank work areas.

30.3.1. The highwall shall be sloped or benched when required by OMHST to prevent or minimize the danger of slide.

30.3.1.a. All overhanging ledges and loose material shall be scaled from the highwall.

30.3.1.b. When scaling of highwalls is necessary to correct conditions, a safe means shall be provided to perform such work.

30.3.2. When the highwall is cracked and shows evidence of movement, or of weakening, the area shall be made safe or abandoned and dangered off.

30.3.3. Trees endangering workers along highwalls shall be removed. Such work shall be completed during daylight hours.

30.3.4. Spoil banks shall be placed an adequate distance from the pit to prevent any material from rolling back and endangering the workers.

30.3.4.a. Spoils shall be kept free of bodies of water which would be hazardous in active work

areas.

30.3.4.b. Spoil material shall be sloped to the angle of repose or other measures taken to prevent the material from slothing, sliding, or rolling into the pit.

30.3.5. Persons, other than those designated to correct unsafe conditions, shall not work near or under dangerous highwalls or banks.

30.3.6. During bench loading, adequate precautions shall be taken to prevent equipment from going over a highwall.

30.4. Examinations.

30.4.1. Should a slide occur, a certified foreman or assistant shall examine the area of the slope for danger of additional slides.

30.4.2. No person shall work in the area until the examination is complete and the area declared safe.

30.5. Repairs in excavation areas.

30.5.1. Special safety precautions shall be taken when persons are required to perform repair work between immobilized equipment and within twenty (20) feet of the highwall or spoil bank where such equipment may hinder escape from falls or slides.

30.5.2. A competent person shall be designated to observe the highwall or spoil bank.

30.5.3. If equipment is mobile and repair work is necessary on such equipment, such equipment will be moved to a location outby the highwall or spoil bank.

30.6. Tree removal. -- When workers are in the area, suitable warning shall be given before equipment shoves over or uproots trees, and workers shall be removed from the immediate vicinity.

30.7. Night work. -- When surface mining is performed at night, the pit in the vicinity of the work shall be adequately illuminated.

30.8. Ground Control Plan. -- The MSHA-approved surface ground control plan shall serve as the state-approved plan, and the operator, upon approval by MSHA, shall provide a copy of the MSHA-approved surface ground control plan to the director.

**§56-3-31. Drilling.**

31.1. Inspection. -- Where required by the director, all drilling equipment shall be provided with restraining devices installed properly to prohibit the free fall of drill steels which may break or become dethreaded at the point of the adaptor.

31.2. Horizontal drill.

31.2.1. When horizontal drills are used, the operator shall not leave the controls while the drill stems are in operation.

31.2.2. All persons shall be required to keep in the clear of auger and drill stems while in motion. No person shall be permitted to pass under or step over a moving drill stem or auger.

31.2.3. Prior to horizontal holes being drilled in overburden, a careful inspection of the highwall face shall be made. All loose hazardous material shall be removed before other work is performed.

31.3. Vertical drilling.

31.3.1. When vertical drilling operations are being performed, the drill machine shall be continuously attended.

31.3.2. When churn drills or vertical rotary drills are used, the drill machine operator shall not work under suspended tools.

31.3.3. When collaring holes, inspecting, or during any operation where tools are removed from the hole, the tools shall be lowered to the ground or platform.

31.4. General precautions (drilling).

31.4.1. When drilling operations are being performed in the area of abandoned mines, special precautions shall be taken to protect against methane.

31.4.2. In the event of a power failure, drill machine controls shall be placed in the neutral position.

31.4.3. No person shall be permitted around auger and drill stems that are in motion.

31.4.4. Starter hole drill steels shall be utilized when collaring holes with a hand-held drill.

31.4.5. No person shall be permitted on the drill mast while the drill bit or carriage is in motion.

31.4.6. Tools and/or other material shall not be left on the drill mast.

31.5. Drilling position.

31.5.1. Drill machine operators shall not drill from positions that hinder their access to controls levers, or from insecure footing, or staging, or from atop equipment not designated for this purpose.

31.5.2. Workers shall not hand grasp the drill steel while collaring holes or place their hand on the chuck or centralizer while drilling.

31.5.3. Workers operating or working near jackhammers or jackleg drills shall position themselves so they will not be struck or lose their balance if the drill steel breaks.

31.6. Movement of drills.

31.6.1. Vertical drill holes and blast crevices that remain open after blasting and constitute a hazard shall be protected to prevent persons from falling into them.

31.6.2. While moving a drill machine from one area to another, drill steel tools and other equipment shall be secured and the mast placed in a safe position.

31.6.3. The location of the drill machine helper shall be known to the drill machine operator at all times while such drill is being moved.

31.6.4. Hand-held air drills shall be turned off and all air bled from air hoses before such drill is moved from one working area to another and at the end of each shift.

31.6.5. The department of environmental protection, office of blasting shall be responsible for the examinations and certification of persons engaging in or directly responsible for blasting or use of explosives in surface mining operations.

**§56-3-32. Explosives and Blasting.**

32.1. Transportation vehicles. -- Motor vehicles used to haul explosives shall comply with the following provisions:

32.1.1. Portable fire extinguisher. -- Only fire extinguishers approved by the Underwriters Laboratories, carrying appropriate labels as to type and purpose, shall be used. A portable fire extinguisher shall be a multi-purpose dry chemical type, containing:

32.1.1.a. A nominal weight of five (5) pounds of dry powder and enough expellant to apply the powder; or

32.1.1.b. A foam-producing type containing at least two and one-half (2-1/2) gallons of foam-producing liquid and enough expellant to supply foam.

32.1.2. All electric wiring shall be adequately protected and securely fastened. Damaged insulated wiring shall be repaired or replaced immediately.

32.1.3. Chassis, engine, pan and bottom of vehicle body shall be reasonably clean and free of oil and grease.

32.1.4. Fuel tanks and lines shall have no leaks.

32.1.5. Safety devices including but not limited to lights, horn, brakes, windshield wipers, and steering apparatus shall be functioning properly.

32.1.6. When explosives are not transported in their original closed containers, or in special closed cases constructed of nonconductive material, the vehicle cargo space shall be lined with wood or approved nonsparking material.

32.1.7. The vehicle shall be plainly marked to indicate the nature of the cargo.

32.1.8. The vehicle shall be equipped with suitable side and tailgates. The explosives shall not be piled higher than the side or end.

32.2. Transportation of explosives - precautions.

32.2.1. Explosives and/or detonators shall not be transported in the same vehicle unless separated by a substantially fastened four-inch (4") hardwood partition or equivalent approved material.

32.2.2. Explosives and/or detonators shall be transported promptly without undue delays.

32.2.3. Only those persons necessary shall be permitted to ride on or in vehicles containing explosives and/or detonators.

32.2.4. When vehicles containing explosives or detonators are parked on a grade, the parking brakes shall be set and the vehicle blocked securely against rolling.

32.2.5. Vehicles containing explosives and/or detonators shall not be taken to a repair garage or shop.

32.3. General requirements - explosives.

32.3.1. After the effective date of the certified blasters rules, all handling and transporting of explosives shall be under the direct supervision of a certified blaster.

32.3.2. Previously frozen explosives of nitroglycerin base shall not be used.

32.3.3. Open fires and flames are prohibited within fifty (50) feet of the area where explosives are being stored, handled or used. Any person who violates this subdivision shall be subject to the maximum assessment of two hundred fifty dollars ($250).

32.3.4. Explosives, blasting caps and electric blasting caps shall not be carried in pockets of clothing or left lying around unguarded.

32.3.5. The use of explosives and all handling incident thereto, will be discontinued during the approach of and during thunderstorms and/or electrical storms.

32.3.6. All runways, chutes and conveyors used for unloading of explosives shall have no exposed sparking metal parts.

32.3.7. Explosives and detonators shall be kept a safe distance from the highwall and spoil bank.

32.3.8. Driving vehicles or dragging boxes over firing lines, detonator wires, explosives, blasting agents, and detonators is prohibited. The backing of drills over loaded holes is prohibited.

32.3.9. Deteriorated or damaged explosives and detonators shall be destroyed by an authorized representative of the manufacturing company.

32.3.10. Explosives and/or detonators shall not be transported in a bucket or a dragline or like equipment.

32.4. Shooting preparation.

32.4.1. Primers shall not be made up until ready to be inserted in the hole.

32.4.2. Two (2) way radio equipment shall be turned off prior to the handling and use of electric detonators for proposed shot. This rule does not apply to radios operating beyond the distances shown on Table 56-3 found at the end of this rule.

32.4.3. Adequate warning signs shall be located on all travel roads, distance of not less than one hundred (100) feet from the minimum transmitting distance.

32.4.4. No equipment except the drill and explosive truck, other than necessary equipment for road repairs to remove the drill or explosive truck, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded.

32.4.5. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; except

32.4.5.a. Where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes;

32.4.5.b. If current is detected, such power cables be moved to a safe distance or the power cables shall be de-energized.

32.4.6. Holes shall not be drilled if there is danger of intersecting a loaded or a misfired hole.

32.4.7. Only wooden or other approved nonsparking implements shall be used to punch holes in an explosive cartridge.

32.4.8. Tamping poles shall be blunt and squared at the end and made of wood or other, nonsparking, approved material.

32.4.9. Tamping shall not be performed directly on a capped primer.

32.4.10. When a surface mine has cut into a known active underground mine, the surface mine inspector of the district and an official representative of the deep mine shall be notified before any blasting is performed. The surface mine inspector, deep mine representative and surface mine representative shall determine and agree during what hours blasting shall be performed.

32.4.11. Misfires shall be handled only by or under the direction of a designated blaster or certified foreman.

32.4.12. Blasting caps shall be crimped to fuses only with implements designed for that specific purpose.

32.4.13. In no case shall any forty (40)-second-per-foot safety fuse less than thirty-six (36) inches long or any thirty (30)-second-per-foot fuse less than forty-eight (48) inches long be used.

32.4.14. Nothing except a safety fuse is to be inserted in the open end of a blasting cap.

32.4.15. No detonators, detonating cord, igniter cord, safety fuse, or any explosives shall be used if they have been water soaked.

32.4.16. Electric blasting caps shall be fired with an approved blasting device.

32.4.17. Explosives shall be kept separated at least fifteen (15) feet from detonators until loading is started, unless an approved container is utilized.

32.4.18. Ample warning shall be given by an approved audible warning device before blasts are fired. All persons shall be removed from the blasting area.

32.4.19. Detonating caps taken into a pit prior to being used shall be kept in a wooden box or other approved suitable container.

32.4.20. At least a five (5)-foot air gap shall be provided between the blasting circuit and the power circuit when the hole or series of holes are being connected.

32.5. Shooting cables.

32.5.1. Shooting cables shall be well insulated and as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire.

32.5.2. Shooting cables shall be kept away from power wires and all other sources of electric current.

32.5.3. When shooting highwall and overburden, the shooting cable shall be at least five hundred (500) feet in length when new and never less than four hundred fifty (450) feet.

32.5.4. The shooting cable for use in popping coal shall be of sufficient length to assure the safe location of persons participating in the blasting, and in no event less than one hundred (100) feet in length.

32.5.5. The shooting cable shall be kept shunted until connected to the approved blasting device.

32.5.6. Except when being tested with a blasting galvanometer, or other approved device, electric detonators shall be kept shunted until they are connected to the blasting line or wired into a blasting round.

32.5.7. A wired round shall be kept shunted until connected to the shooting cable.

32.6. Blasting.

32.6.1. Any area in which loaded holes are prepared to be fired shall be guarded by a barricade and danger signs, or by a person physically present to prevent unauthorized entry.

32.6.2. The blaster shall make sure that all persons are in a safe place before firing a shot.

32.6.3. The blaster performing the blasting shall be the person who makes the detonating cord connections or connects the leg wires of the detonating caps to the shot cable.

32.6.4. All holes or series of holes containing detonators shall be fired immediately upon completion of loading. However, after connecting the loaded holes, if for any reason the holes cannot be fired immediately, all work shall cease within a radius of three hundred (300) feet of the blasting area and work shall not commence again until the holes have been fired.

32.6.5. The firing of holes shall be conducted during daylight hours.

32.6.6. After a blast the blaster shall examine the area and pronounce it safe before others enter.

32.7. Post firing.

32.7.1. Shooting cables shall be disconnected immediately from the blasting unit after each blast and shunted.

32.7.2. No person shall return to the area where blasting has been performed until the dust has settled and the area cleared of smoke.

32.8. Misfires.

32.8.1. When electric blasting caps have been used, neither the blaster nor any other person is permitted to return to misfired holes for at least fifteen (15) minutes. Misfires shall be handled only by a designated blaster in the presence of the mine/pit foreman.

32.8.2. When a shot has misfired, extra precaution shall be taken in the handling of the misfires.

32.8.3. The blaster shall wait at least thirty (30) minutes before returning to a misfired shot, when using blasting caps and fuse.

32.8.4. After shooting a misfired shot, the blasting cable shall be disconnected from the source of power and the battery end short circuited before electric connections are examined.

32.8.5. If explosives or blasting agents are suspected of burning in a hole, all persons in the blasting area shall move to a safe location and no person shall return to the hole for at least one (1) hour.

32.9. Storage of explosives.

32.9.1. After loading boreholes all unused explosives shall be returned to the proper explosive storage magazine.

32.9.2. Separate surface magazines shall be provided for storage of explosives, detonators, and blasting heater elements.

32.9.2.a. Surface magazines shall:

32.9.2.a.1. Be constructed of incombustible material exposed inside the magazine;

32.9.2.a.2. Be provided with doors constructed of at least one-fourth (1/4) inch steel plate lined with a two (2) inch thickness of wood, or the equivalent;

32.9.2.a.3. Be provided with adequate and effectively screened ventilation openings near the floor and ceiling;

32.9.2.a.4. Be kept locked securely when unattended; and

32.9.2.a.5. Be posted with suitable danger signs so located that a bullet passing through the face of the sign will not strike the magazine.

32.9.2.b. The location of the magazine shall not be less than two hundred (200) feet from any active work area, occupied buildings, or public roads unless barricaded.

32.9.2.c. If magazines are illuminated electrically the lamps shall be of vapor-proof type,

properly installed and wired.

32.9.2.d. Smoking, open flames, open lights or spark-producing devices shall be prohibited in or within fifty (50) feet of a detonator or explosive magazine or facility.

32.9.3. Explosives magazines shall be located at least one hundred (100) feet away from power lines and fuel storage areas.

32.9.4. Cases or boxes containing explosives shall not be stored on their ends or sides in magazines nor stacked more than six (6) feet high.

32.9.5. An area of twenty-five (25) feet around magazines shall be kept clear of dry leaves, grass, undergrowth, trash and debris.

32.9.6. Detonator and explosives storage magazines shall be separated by at least twenty-five (25) feet.

32.9.7. Ground rods shall be properly installed and secured on explosive storage magazines so as to provide sufficient electrical ground.

32.9.8. Semitrailer van(s) used for highway or on-site transportation of blasting agents are satisfactory for storing these materials, provided they are located according to the American Table of Distance with respect to inhabited buildings, passenger railroads and public highways. Trailers will be provided with substantial means for locking, and the trailer doors shall be kept locked except during time of placement and removal of blasting agents.

**§56-3-33. Underground Workings.**

33.1. The operator shall refrain from surface mining within five hundred (500) feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided,

33.1.1. That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if:

33.1.1.a. The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director, and

33.1.1.b. Such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, That any breakthrough which does occur shall be sealed.

33.2. The official representative of any known underground mine shall be notified immediately when a surface mine operation may in any way interfere with the safe operation of the active underground mine.

33.3. Special precautions shall be taken to protect the employees where excavating is being performed in the vicinity of a known abandoned underground mine which may contain a dangerous accumulation of water and/or gas.

33.4. All cut-through into underground mine workings shall be closed immediately.

**§56-3-34. Haulage.**

34.1. Roads - traffic directions and warning signs.

34.1.1. Traffic directions which differ from standard highway practice shall be posted on signs along the haulage roads at strategic points in letters at least three (3) inches high.

34.1.2. Well marked signs conspicuously placed, shall be properly located to alert drivers to existing danger areas. Such as the approach to a dangerous curve or extreme grade.

34.1.3. Traffic rules, signals, and warning signs shall be standardized at each mine.

34.1.4. Where side or overhead clearances on haulage roads or loading or dumping locations are hazardous to mine workers, such areas shall be conspicuously marked and warning devices shall be installed when necessary to insure the safety of the workers.

34.1.5. Flashers, flares, or other means of signaling shall be used to warn approaching drivers of a hazard created by an obstruction in the roadway.

34.1.6. Regulatory signs shall be used to indicate required method of traffic movement, (Example: "Stop", "Yield", "One Way".)

34.1.7. Posted warning signs shall be used where necessary to indicate potential hazardous conditions. (Example: "Hill", "Curve", "Truck Crossing".)

34.1.8. Object marking shall be used to mark physical obstruction in or near the haulage way that presents possible hazards. (Example: Reflectors and high visibility paint.)

34.1.9. All signs and markings shall be displayed and utilized so as to be effective as possible.

34.1.10. Where side or overhead clearance on any haulage road or at any loading or dumping location at a surface mine is hazardous to any person, such hazard shall be corrected immediately, and all necessary precautions taken while such hazard is being corrected.

34.2. Haulage roads - construction and maintenance.

34.2.1. Haulage roads shall be located an adequate distance from highwalls and spoil banks to minimize the danger of falling material onto personnel and equipment.

34.2.2. When dust created by haulage is thrown into suspension in such quantities that may obscure the vision of the operators of vehicles, adequate means shall be taken to allay such dust.

34.2.3. Only authorized persons shall be permitted on haulage roads and at loading or dumping locations.

34.2.4. Berms or guards shall be provided where required on the outer bank of elevating roadways.

34.2.5. The width and grade to be utilized in haulage road construction shall be determined for each

specific situation based upon terrain configuration, vehicle characteristics, and driver visibility for safe haulage.

34.2.6. Haulage roads shall be constructed of sufficient width to permit the driver to maneuver the vehicle to avoid striking unexpected obstacles on the roadway where reclamation rules permit.

34.2.7. Provisions shall be made to adequately drain and remove excessive water from the haulage roads.

34.2.8. Haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to insure safe operation.

34.2.9. All roads leading to and from work sites on which persons are expected to travel to and from work or to haul coal or supplies, shall be of sufficient width and be maintained in good condition.

34.2.10. Haulage operations shall be stopped when the haulage surface has deteriorated to the extent that it presents a danger to the safety of the haulage operation.

34.2.11. All haulage vehicles placed into service after the effective date of this rule shall be equipped with an approved supplementary emergency braking system.

34.2.12. All power lines constructed over haulage roads after the effective date of this section shall be maintained a minimum of twelve (12) feet above all equipment used on haulage roads including dump trucks in a raised position.

34.3. Haulage equipment - construction and maintenance.

34.3.1. Haulage trucks shall not be operated with dirty windshields, cracked, dirty, or broken rear view mirrors.

34.3.2. Supplies, materials, and tools other than small hand tools shall not be transported with persons in vehicles unless such vehicles are specifically designed to make such transportation safe.

34.3.3. All new haulage vehicles placed into service shall be equipped with an emergency steering and braking system.

34.3.4. Where required by the director, trucks used for haulage of coal, workers or supplies shall be equipped with two (2) way communication instruments.

34.3.5. Where required by the director or the director's authorized representative, runaway roads or "J" roads shall be provided on all haulage roads on which coal is first hauled from such surface mine after the effective date of this section.

34.4. Haulage equipment - operation.

34.4.1. Haulage truck operators shall make sure their truck path is unobstructed, especially when starting or moving the trucks forward or backward.

34.4.2. Radio or visual contact shall be made with an operator of a haulage truck to insure that it is safe to approach the truck.

34.4.3. Vehicles shall follow at a safe distance: passing shall be limited to areas of adequate clearance and visibility.

34.4.4. Workers shall not work or pass under the buckets or booms of equipment.

34.4.5. Drivers shall drive their trucks according to the condition of the road and the weather. At no time shall truck speeds exceed the safe predetermined speed limit that has been established on that haul road.

34.4.6. Haulage trucks traveling in the same direction, shall not pass any vehicle until signals have been exchanged between both drivers and the vehicle to be passed pulls to the right side of the road.

34.4.7. Haulage trucks shall maintain a safe distance behind the truck they are following. Other vehicles shall maintain a minimum of one (1) car length for each ten (10) m.p.h. of travel behind the vehicle they are following.

34.4.8. When approaching a state or county road, drivers shall maintain their trucks under control to stop, yield right of way, or obey the signals of a flagman.

34.4.9. When the body of a haulage unit is being raised, no person will be permitted in close proximity where they may be endangered.

34.4.10. Materials or equipment required in the cab of haulage equipment shall be adequately secured.

34.5. Parked vehicles.

34.5.1. Lights, flares, or other approved warning devices shall be adequately located when parked equipment creates a hazard to vehicular traffic.

34.5.2. Mobile equipment shall not be left unattended unless the brakes are set. When mobile equipment is parked on a grade, the wheels shall be turned into a bank or berm, or shall be blocked.

34.6. Employee parking and mantrips.

34.6.1. On all active surface mines, a designated area shall be provided for parking of employee's vehicles.

34.6.2. No vehicle or other conveyance used to transport persons to and from work areas at surface mines shall be overcrowded and all persons shall ride in a safe position.

34.6.3. All mantrips shall have ten (10) unit first aid kits, and audible warning devices.

**§56-3-35. Auger Mining.**

35.1. Proximity to underground workings.

35.1.1. Auger mining should not be done in proximity to active underground workings unless the work is coordinated with the underground plan or workings.

35.1.2. Auger holes should not be drilled so as to:

35.1.2.a. Disrupt the ventilation systems of active underground mines;

35.1.2.b. Create inundation hazards to active underground mines; and

35.1.2.c. Cause damage to the roof and ribs of active and underground roadways.

35.1.3. Auger holes should not intersect underground mine workings known to contain or suspected to contain dangerous quantities of impounded water, except to de-water such areas under controlled conditions and then only after all necessary precautions have been taken to safeguard life and property.

35.2. Safeguards - auger areas generally.

35.2.1. Adequate approved means shall be provided to prevent unauthorized persons from entering areas where coal has been removed.

35.2.2. Warning signs shall be posted conspicuously at the entrances to abandoned auger operations.

35.2.3. Completed auger holes shall be blocked with highwall spoil to a minimum height of one (1) foot above the coal bed and to within one thousand (1,000) feet of the active holes.

35.2.4. Adequate precaution shall be taken when any auger hole or holes are not blocked with highwall spoil to insure unauthorized entry.

35.2.5. All haulroads entering auger pits shall be barricaded to insure against unauthorized vehicles when auger holes are left unguarded.

35.3. Protection of workers.

35.3.1. No person or persons shall enter an auger hole until a qualified employee has determined by recognized means of detection whether the air within the hole is of good quality and does not contain methane or is deficient in oxygen.

35.3.2. The examiner shall wear a lifeline that extends to the hands of a person on the surface.

35.3.3. Persons entering an auger hole should examine and test its walls for danger from falling materials. Any hazardous conditions found should be corrected before any other work is done or the hole vacated and suitable danger boards placed across its entrance.

35.3.4. Augers which are provided with walkways or platforms, where practicable shall be equipped with safe handrails.

35.4. Auger operations.

35.4.1. Haulage trucks awaiting loading shall park a safe distance from the highwall and spoil bank.

35.4.2. No person or persons other than the auger crew shall be allowed on or around the auger when in operation unless in line of duty.

35.4.3. Only the truck being loaded and one (1) other truck shall be in the auger pit.

35.4.4. Open lights and smoking materials are prohibited in auger holes.

35.4.5. "No Smoking" signs shall be posted in close proximity where auger holes are being drilled.

35.4.6. When auger holes first penetrate abandoned or mined out underground workings, and as frequently thereafter as these workings are penetrated a qualified employee should determine, by recognized means of detection, whether or not methane or oxygen deficient air is present or is being emitted in dangerous quantities.

35.4.7. The operator shall not leave the controls while the auger is being operated.

35.4.8. No person or persons shall be allowed to be on the top of the cab of the carriage engine for any reason while it is moving, or when the auger train is in motion.

35.4.9. Partitions of coal between auger holes shall be adequate enough to support highwall when augering operations are being performed.

35.4.10. Partitions of coal between auger holes shall not be recovered by other methods of mining without the approval of the director.

35.4.11. Adequate illumination shall be provided for work areas after dark.

35.4.12. Persons shall keep clear of the auger train while it is in motion and shall not pass under or over an auger train, except where suitable crossing facilities are provided.

35.4.13. Persons shall keep clear of auger sections being swung into position.

35.4.14. Where practicable, no persons shall be in a direct line with the boreholes during mining operations.

35.5. Methane and oxygen.

35.5.1. Auger mining equipment shall not be operated in the vicinity of auger holes emitting dangerous quantities of methane or air until the atmosphere has been rendered harmless.

35.5.2. Internal combustion engines in the vicinity of auger holes shall be stopped while auger holes are being inspected.

35.5.3. Combustible materials, dinner pails, or other supplies shall not be stored in auger holes.

35.5.4. Auger mining machines shall be equipped with an approved gas detector or other detector approved by the director.

35.5.5. In each auger mining crew there shall be a person qualified in the care and use of an approved gas detector or other approved oxygen detecting measuring device.

35.5.6. Tests for oxygen deficiency shall be conducted with an approved gas detector or other means approved by the director and all tests for methane shall be conducted with an approved gas detector.

35.5.7. When an auger hole penetrates an abandoned or mined out area of an underground mine, tests for methane and oxygen deficiency shall be made at the collar of the hole by a qualified person, using approved devices to determine if dangerous quantities of methane or oxygen deficient air are present or being emitted. If such is found no further work shall be performed until the atmosphere has been made safe.

35.6. Inspections.

35.6.1. Auger operators shall inspect their machine before starting and operating to determine such machine is in a safe operating condition and all safety equipment is provided.

35.6.2. No work shall be performed under any overhang.

35.6.3. When a crew is engaged in connecting or disconnecting auger sections for maintenance, repair, or other reasons besides regular operations, at least one (1) person shall be assigned to observe the highwall for possible movement.

35.6.4. The face of all highwalls, for a distance of one hundred (100) feet on both sides of each drilling site, shall be inspected by the auger operator and the foreman before any augering operation is performed. All loose hazardous material shall be removed from the highwall before persons are permitted to enter the drilling area.

**§56-3-36. General Provisions.**

36.1. Horseplay - Horseplay, practical jokes, wrestling, fighting or other actions which threaten persons with personal injury, causing them to fear for their personal safety or causing damage resulting in interference with safe operations shall be prohibited.

36.2. Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility.

36.3. Housekeeping - Paths, walkways, stairways, and roadways shall be kept free of obstructions. Structures and inside work areas shall be kept free of oil, coal spillage, litter, and coal dust accumulations.

36.4. Smoking - Smoking or open flames shall not be permitted in the following areas:

36.4.1. Within fifty (50) feet of explosive storage area;

36.4.2. Within one hundred fifty (150) feet of flammable liquid storage areas;

36.4.3. Within one hundred fifty (150) feet of liquified and nonliquified gas storage areas; or

36.4.4. Within one hundred fifty (150) feet of the proximity of auger holes.

36.5. Compressed air or gases.

36.5.1. Safety chains or suitable locking devices shall be used at connections to machines or high-pressured hose lines where a connection failure would create a hazard.

36.5.2. Compressors and compressed-air receivers shall be equipped with automatic pressure relief

valves, pressure gauges, and drain valves.

36.5.3. All hoses exceeding one-half (1/2) inch inside diameter shall have a safety device at the surface of supply at the branch line to reduce pressure in case of hose failure.

36.6. No working alone - No person shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger the person's safety unless he/she can communicate with others, can be heard, or can be seen.

36.7. Stockpiles - Coal shall not be stockpiled at or near exposed or buried gas lines.

36.8. Reclaiming hazards - No person shall be permitted to walk or stand immediately above a reclaiming area at or near a slurrage or storage pile where the reclaiming operations may expose said person to a hazard.

**§56-3-37. Electricity.**

37.1. Performance of electrical work.

37.1.1. No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person.

37.1.2. Disconnecting devices shall be locked out and suitably tagged by ~~the person~~ each person who performs such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by ~~such~~ each persons.

37.1.3. ~~Disconnecting devices~~ Locks or tags shall be removed only by the persons who installed them or if such ~~person is~~ persons are unavailable, by ~~a~~ qualified persons authorized by the operator or the operator's agent.

37.1.4. Suitably tagged, as used in these subsections, means that a sign such as, "Danger, Hands Off, Do Not Close, Men Working On Line", shall be attached to the locked switches. The signs or tags shall bear the name, date, and certification of the workman who installed the tag.

37.1.5. Keys used to lock out switches shall be kept only on the persons who ~~is~~ are performing the work, ~~on the equipment~~ or if such persons are unavailable, ~~and~~ by qualified persons authorized by the operator or his/her agent. ~~the person's immediate supervisor.~~

37.1.6. Locks shall be provided by the operator.

37.1.7. All power circuits and electrical equipment shall be de-energized and locked or suitably tagged where locking out is not possible before work is ~~performed~~ done on such circuits and equipment, except when necessary for troubleshooting or testing. When performing electrical troubleshooting or testing on an energized electrical circuit, gloves rated for the maximum voltage of the circuit shall be worn when handling electrical testing equipment or once the plane of the electrical enclosure is broken.

37.1.7.a. No electrical troubleshooting or testing shall be performed on low-, medium-, or high-voltage distribution circuits or equipment except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the immediate supervision of a qualified person.

37.1.7.b. Before electrical troubleshooting or testing a low- or medium-voltage circuit contained in a compartment with a high voltage circuit, the high-voltage circuit must be deenergized, disconnected, grounded, locked out and tagged.

37.1.7.c. While electrical troubleshooting or testing is being done on equipment with energized circuits exposed, other repairs or maintenance shall not be performed on the equipment with the exposed circuit.

37.1.7.d. All test instruments and their accessories shall be rated and designed for the environment to which they will be exposed and for the manner in which they will be utilized.

37.1.7.e. Insulated gloves and other insulated personal protective equipment must:

37.1.7.e.1. Have a voltage rating that meets or exceeds ASTM F496-97 "Standard Specification for In-Service Care of Insulating Gloves and Sleeves" (1997).

37.1.7.e.2. Be examined before each use for visible signs of damage.

37.1.7.e.3. Leather protectors must always be worn with insulated rubber gloves.

37.1.7.e.4. Be removed from service or destroyed when damaged or defective.

37.1.7.e.5. Class 0 gloves used at 1000 volts or less must be electrically tested every six (6) months when in use and every year when not in use and properly stored. A record of these tests must be kept in a book prescribed by the Director and made available for authorized representatives of the West Virginia Office of Miner's Health, Safety and Training upon request.

37.1.7.e.6. Gloves used in conjunction with a hot stick and with high-voltage fault finders must be electrically tested six (6) months after initial use and every year when properly stored and not in use. A record of these tests must be kept in a book prescribed by the Director and made available for authorized representatives of the West Virginia Office of Miners' Health, Safety and Training upon request.

37.1.7.e.7. Hot sticks are required to be electrically tested every twelve (12) months. A record of the tests must be kept in a book prescribed by the Director and made available for authorized representatives of the West Virginia Office of Miners' Health, Safety and Training upon request.

37.1.7.e.8. Be provided by the employer.

37.2. Transformers.

37.2.1. All surface transformers, unless of the construction which will eliminate shock hazard, or unless installed at least eight (8) feet above ground, shall be:

37.2.1.a. Enclosed in a house; or

37.2.1.b. Surrounded by a fence at least six (6) feet high.

37.2.2. If the enclosure is of metal, it shall be grounded effectively, the gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

37.2.3. Transformers shall be provided with adequate overload protection. Overload protection shall be in accordance with the requirements set forth in the National Electric Code which is in effect at the time of installation.

37.2.4. "Danger - High Voltage" signs with voltage indicated shall be posted conspicuously at all:

37.2.4.a. Transformer enclosures;

37.2.4.b. High potential switch boards; and

37.2.4.c. Other high potential installations.

37.3. Electrical equipment generally.

37.3.1. Capacitors used for power factor ~~connections~~ correction shall have suitable drain off resistors or other means to protect workers against electrical shock following removal of power.

37.3.2. Dry insulated platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exists.

37.3.3. Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuit in the event of power failure.

37.3.4. All electric conductors shall be sufficient in size and have adequate current carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating materials. In no case will the requirements be less than those set forth in the ~~current~~ National Electric Code which is in effect at the time of installation.

37.3.5. All electrical connections or splices ~~and~~ in conductors shall be mechanically and electrically efficient and suitable connectors shall be used.

37.3.5.a. All electric connections or splices ~~and~~ on ~~insulating~~ insulated wires shall be reinsulated at least to the same degree of protection as the remainder of the wire.

37.3.5.b. Splices made shall provide continuity of all components.

37.3.6. All power wires, except trailing cables on mobile equipment, specially designed cables conducting high voltage power shall be supported on well installed insulators and shall not contact different potential passes within eighteen (18) inches of each other.

37.3.6.a. ~~Cables~~ All trailing and power cables shall be rated for no less than ~~insulated to the potential of~~ the highest voltage ~~wire or cable~~ for which they are used.

37.3.7. All electrical equipment shall be provided with switches or controls that are ~~safety~~ safely designed, constructed, and installed.

37.3.7.a. Power cable, trailing cable or conductor couplings or connections cannot be connected or disconnected while under load.

37.3.8. Single phase loads such as transformer primaries shall be connected phase to phase when

utilized on resistance grounded or ungrounded power systems.

37.4. Testing maintenance and repair of electrical equipment.

37.4.1. All electrical equipment, except circuit breakers, shall be examined daily, by a competent person to assure safe operating condition.

37.4.2. All electrical equipment shall be examined monthly, tested and properly maintained by a ~~certified electrician~~ qualified person.

37.4.3. When a ~~potential~~ potentially dangerous condition is found on electrical equipment, such equipment shall be removed from service until ~~the~~ such condition is corrected by a ~~certified electrician~~ qualified person.

37.4.4. A record of such examination and the action taken when the ~~potential~~ potentially dangerous condition is found shall be kept and made available to an authorized representative of the director and to the miners at such mine.

37.4.5. Circuit breakers and their auxiliary devices serving three-phase alternative current portable or mobile equipment shall be tested and examined at least once each month by a qualified person and a record of such examination shall be kept and made available to an authorized representative of the director and to the miners at such mine. Circuit breaker tests shall include:

37.4.5.a. Breaking continuity of the ground check conductor where ground check monitoring is used.

37.4.5.b. Actuating all of the auxiliary protective relays, and;

7.4.5.c. Visual observation of all components of the circuit breaker and its auxiliary devices.

37.4.6. Repairs or adjustments as are indicated by the tests and examinations provided for in this subsection shall be carried out immediately.

37.5. Circuit breakers.

37.5.1. Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electrical equipment and circuits against short circuit and overload. In no case will the requirements be less than those set forth in the National Electric Code which is in effect at the time of installation.

37.5.2. Three (3) phase motors on electrical equipment shall be provided with overload protection that will de-energize all three (3) phases in the event that any phase is overloaded.

37.5.3. As used in this subsection, adequate current interrupting capacity requires that the fuse or circuit breaker is capable of interrupting the maximum short circuit current that the circuit may conduct without destruction to the device.

37.5.4. ~~Electric~~ Portable or mobile electric equipment shall be provided with devices that will permit the equipment to be de-energized quickly in the event of an emergency.

37.5.5. One (1) circuit breaker may be used to protect two (2) or more branch circuits if the circuit breaker is adjusted to afford over current protection for the smallest conductor.

~~37.5.6. When not in use, power circuits shall be de-energized on idle days and idle shifts except that rectifiers and transformers may remain energized.~~

37.5.6. ~~37.5.7.~~ Power circuits serving three (3) phase alternating current ~~equipment serving~~ portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacities which are properly tested and maintained as prescribed by the director.

37.5.6.a. ~~37.5.7.a.~~ Breakers shall be equipped with devices to provide protection against under voltage, grounded phase, short circuit and over current.

37.5.7. ~~37.5.8.~~ Disconnecting devices shall be installed at the beginning of branch lines in high voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is de-energized when the switches are open.

37.5.8. ~~37.5.9.~~ Circuit breakers and disconnecting switches shall be marked for identification.

37.6. Cables.

37.6.1. Cables shall enter metal frames of motors, splice boxes and electrical compartments only through proper fittings.

37.6.2. When insulated wire, other than cables pass through metal frames, the hole shall be substantially bushed with insulated bushings.

37.6.3. Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections.

37.6.4. No cable will be hung or moved in a manner which will damage the insulation or conductors.

37.6.5. Trailing cables shall be adequately protected to prevent damage by mobile equipment.

37.6.6. Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device, approved by the director, of adequate current interrupting capacity in each ungrounded conductor.

37.6.7. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected and shall be labeled to show which unit they control.

37.6.8. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductor shall be broken last when the coupler is being uncoupled.

37.6.9. When two (2) or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting the trailing cable to the wrong size circuit breaker.

37.6.10. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated.

37.6.11. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used.

37.6.12. As used in this subsection, the term splice means a mechanical joining of one (1) or more conductors that have been severed.

37.6.13. When permanent splices in trailing cables are made, they shall be:

37.6.13.a. Mechanically strong with adequate electrical conductivity and flexibility;

37.6.13.b. Effectively insulated and sealed so as to exclude moisture;

37.6.13.c. Vulcanized or otherwise treated with suitable materials to provide ~~flame-resistant qualities and~~ good bonding to the outer jacket, and

37.6.13.d. Made in accordance with the manufacturers specifications.

37.6.14. Trailing cables for medium voltage circuits shall include:

37.6.14.a. Grounding conductors;

37.6.14.b. A ground check conductor; and

37.6.14.c. Grounded metallic shields around each power conductor or a grounded metallic shield over the assembly.

37.6.15. On equipment employing cable reels, cables without shields may be used if insulation is rated two thousand (2,000) volts or more.

37.7. Grounding.

37.7.1. All metallic shields, ~~armours~~ armors and conduits enclosing power conductors will be electrically continuous throughout and shall be grounded by method approved by an authorized electrical representative of the director.

37.7.2. Where grounding wires are used to ground metallic shields, ~~armours~~ armors, conduits, frames, casings and other metallic enclosures, such grounding wire will be approved if:

37.7.2.a. Where the power conductor used is #6 AWG or larger, the cross sectional area of the grounding wire is at least one-half (1/2) the cross sectional area of the power conductor.

37.7.2.b. Where the power conductor used is less than #6 AWG, the cross sectional area of the grounding wire is equal to the cross sectional area of the power conductor.

37.7.3. The attachment of grounding wires to other grounded power conductors will be approved if separate ~~clamps~~ connections, suitable for such purpose, are used and installed to provide a solid connection.

37.7.4. Metallic frame, casing, and other enclosures of electrical equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and shall have a ground

monitoring system, to monitor continuously the grounding circuit, to assure continuity, such ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the director or the director's authorized electrical representative, to assure such continuity, except a ~~temporary~~ waiver may be permitted by the director on a mine to mine basis ~~if the director determines that such equipment is not available~~.

37.7.5. In instances where single phase one hundred ten (110)-two hundred twenty (220) volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings or other enclosures of such equipment to a separate grounding conductor which established a continuous connection to a grounded center tap of the transformer.

37.7.6. Where greater than 48 volt batteries are being charged without removing them from battery powered mobile equipment, or are sitting on wooden blocks, the frames of the machine or battery case shall be grounded to the grounded frame of the charger to prevent the machine from becoming alive through failure of insulation in the charger. All ground conductor connections shall be clamped or bolted connections.

37.7.7. All buildings and structures shall be earth grounded if they are constructed of metal. Also, any building or structures which could become alive with electrical energy shall be effectively grounded.

37.7.8. Guy wires from poles supporting high voltage power lines shall be securely connected to the system grounding medium or shall be provided with insulators rated at the highest voltage installed near the pole end.

37.7.9. All 120 volt AC 15-20 amp circuits used to power portable hand tools shall be protected with ground fault circuit interrupting devices.

37.8. Energized lines generally.

37.8.1. All guy wires shall be marked or flagged when equipment is working in the area.

37.8.2. Energized power lines crossing an access road or work area shall be identified by warning signs visible from each direction.

37.8.2.a. Warning signs shall include height of lines for clearance and made of reflective material.

37.8.2.b. In no event shall any high voltage power line be installed less than fifteen (15) feet above ground, walkways, or working areas.

~~37.8.3. All equipment near energized power lines with the following voltages shall maintain the following clearances:~~

~~37.8.3.a. One hundred (100) to sixty-nine thousand (69,000) - ten (10) feet;~~

~~37.8.3.b. Sixty-nine thousand (69,000) to one hundred fourteen thousand (114,000) - twelve (12) feet;~~

~~37.8.3.c. One hundred fifteen thousand (115,000) to two hundred twenty-nine thousand (229,000) - fifteen (15) feet;~~

~~37.8.3.d. Two hundred thirty thousand (230,000) to three hundred forty-four thousand (344,000) - twenty (20) feet;~~

~~37.8.3.e. Three hundred forty-five thousand (345,000) to four hundred ninety-nine thousand (499,000) - twenty-five (25) feet;~~

~~37.8.3.f. Five hundred thousand (500,000) or more - thirty-five (35) feet.~~

37.8.3. Equipment or machinery operated on the surface of any coal mine shall not be operated within ten (10) feet of an overhead powerline unless the line is deenergized and visibly grounded at the point of work, or unless insulating barriers not part of or an attachment to the equipment have been erected to prevent physical contact with the lines. Where the voltage of overhead powerlines is sixty-nine thousand (69,000) volts or more, the minimum clearance between the lines and part of the equipment or load shall be as follows:

| Nominal Powerline Voltage (in 1,000 volts) | Minimum Distance (in feet) |
|---|---|
| 69 to 114 | 12 |
| 115 to 229 | 15 |
| 230 to 344 | 20 |
| 345 to 499 | 25 |
| 500 or more | 35 |

37.8.4. All personnel, except those directly involved in the operation, shall stay clear of the equipment working near energized lines.

37.8.5. If equipment comes in contact with an energized line, the operator shall stay in the equipment until notified by a certified electrician or foreman that the line is de-energized.

37.8.6. All electrical wiring and equipment installed shall ~~meet the requirements of the current National Electrical Code~~ not be less than the requirements set forth in the National Electric Code which is in effect at the time of installation.

37.9. High voltage.

37.9.1. High voltage lines on the surface shall be de-energized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high voltage lines, if such repairs are made by a qualified person in accordance with the procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide tests, and maintain protective devices in making such repairs.

37.9.2. No work shall be performed on any high voltage line on the surface which is supported by any pole or structure which also supports other high voltage lines until all lines supported on that pole are de-energized and grounded.

37.9.3. No high voltage lines shall be regarded as de-energized for the purpose of performing work

on it until it has been determined by a qualified person that such high voltage line has been de-energized and grounded.

37.9.4. Such qualified person shall, by visual observation, determine that the ~~connecting~~ disconnecting devices on the high voltage circuit are in the open position and insure that each ungrounded conductor of the high voltage circuit upon which work is to be done is properly connected to the system grounding medium.

37.9.5. An energized high voltage line may be repaired only when the operator has determined that such repairs cannot be scheduled during a period when the power circuit could be properly de-energized and grounded.

37.9.5.a. Such repairs will be performed on power circuits with a phase to phase nominal voltage no greater than fifteen thousand (15,000) volts.

37.9.5.b. The weather conditions shall be noted so that it would not interfere with such repairs or expose those persons assigned to such work to an imminent danger.

37.9.5.c. The operator shall designate a person qualified to perform such work as the person responsible for carrying out such repairs.

37.9.5.d. In order to insure protection for said person and other interested persons assigned to perform such repairs from the hazards of said repairs, said person must prepare and file with the operator:

37.9.5.d.1. A general description of the nature and location of the damage or defect to be repaired;

37.9.5.d.2. The general plan to be followed in making of such repairs;

37.9.5.d.3. A statement that a briefing of all qualified persons assigned to make such repairs was conducted informing them of the general plan, their individual assignments, and the dangers inherent in such assignments;

37.9.5.d.4. A list of proper protective equipment and clothing that will be provided and such other information as the person designated by the operator feels necessary to describe properly the means or methods to be employed in such repairs.

37.9.5.e. All statements obtained by the operator shall be recorded and contain a notation of the time, date, location and general nature of the repairs.

37.9.6. When two (2) or more persons are working on an energized high voltage surface line simultaneously and anyone of them is within reach of another, such persons shall not be allowed to work on different phases or equipment with different potentials.

37.9.7. All persons performing work on energized surface high voltage lines shall wear protective rubber lineman's gloves, sleeves, and climber guards if climbers are worn.

37.9.7.a. Protective rubber gloves shall not be worn wrong side out or without protective leather gloves.

37.9.7.b. Protective devices worn by a person assigned to perform work on high voltage surface lines shall be worn continuously from the time the person leaves the ground until he/she returns to the ground.

37.9.7.c. If protective devices are employed for extended periods, the person shall visually inspect the equipment assigned to said person for defects before each use and in no case, less than twice each day.

37.9.8. All rubber protective equipment used for work on energized high voltage surface lines shall be electrically tested by the operator in accordance with ASTM Standards.

37.9.9. Disconnecting or cutout switches on energized high voltage surface lines shall be operated only with insulated sticks, fuse tongs or pullers which are adequately insulated and maintained to protect the operator from the voltage to which the operator is exposed.

37.9.9.a. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.

37.9.10. No new additional circuits may be tied to a high voltage surface line when such line is energized.

37.9.11. Solely for purposes of grounding ungrounded high voltage power systems grounded messenger wires used to suspend the cable of such system may be used as a grounding medium.

37.9.12. All high voltage circuits supplying portable~~,~~ or mobile ~~or stationary~~ equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformer and a grounding circuit originating at the grounded side of the grounding resistor shall extend along the power conductors and serve as a grounding conductor for the frames which receives power from that circuit.

37.9.12.a. The grounding resistor shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred (100) volts under fault conditions.

37.9.12.b. The grounding resistor shall be rated for maximum ~~volt~~ fault current continuously and insulated from ground for a voltage equal to the phase to phase voltage of the system.

37.9.13. High voltage ~~resistant~~ resistance grounded system serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity and the fail-safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken or other no less effective device approved by the director or the director's authorized representatives to assure such continuity.

37.9.14. High voltage cables used in ~~resistant~~ resistance grounded systems shall be equipped with metallic shields around each power conductor with:

37.9.14.a. One (1) or more ground conductors having a total cross sectional area of not less than one-half (1/2) the power conductor, and

37.9.14.b. With an insulated internal or external conductor not smaller than #10 AWG for the

ground continuity check circuit.

37.10. Low- and medium-voltage.

37.10.1. Low- and medium-voltage three-phase alternating-current circuits used for portable and mobile equipment shall contain either a direct or derived neutral which shall be ~~aground~~ grounded through a suitable resistor at the power source, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from the circuit. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to twenty-five (25) amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

37.10.2. Low- and medium-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The fail-safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the director or his/her authorized representative to assure such continuity.

37.11. ~~37.10.~~ Movement of electrical equipment.

37.11.1. ~~37.10.1.~~ Power centers, portable transformers, cable couplings and enclosures shall be de-energized before they are moved from one (1) location to another.

37.11.2. ~~37.10.2.~~ When equipment powered by source other than such centers or transformers is not available the director may permit such centers or transformers to be moved while energized if the director determines that such equivalent or greater hazard may otherwise be created; and

37.11.2.a. ~~37.10.2.a.~~ If they are moved under the supervision of a qualified person; and

37.11.2.b. ~~37.10.2.b.~~ If such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the director and otherwise protected from hazard to the miner.

37.11.2.c. ~~37.10.2.c.~~ A record shall be kept of such examination.

37.11.3. ~~37.10.3.~~ High voltage cables other than trailing cables shall not be moved or handled at any time while energized as permitted under this section.

37.11.4. ~~37.10.4.~~ Energized high- or medium-voltage trailing cables may be moved only by ~~a qualified~~ persons trained in the proper handling of energized high- or medium-voltage trailing cables. ~~and the~~ The operator of such mines shall require that such persons wear approved and tested insulated ~~workmen's~~ gloves with leather protectors.

37.11.4.a. Electrical personal protective equipment shall be visually inspected before each use for signs of damage or defects.

37.11.4.b. Rubber gloves shall be examined and tested before each use to ensure their effectiveness and electrically tested every thirty (30) days in accordance with ASTM standards.

37.11.4.b.1. The rubber glove portion must be air tested at the beginning of each shift to ensure its effectiveness.

37.11.4.b.2. Both the leather protector and rubber insulating gloves must be visually examined before each use for signs of damage or defects.

37.11.4.b.3. Damaged rubber gloves must be removed from service or destroyed. Leather protectors must be maintained in good condition or replaced.

37.11.4.c. Damaged or defective protective equipment shall not be used, removed from service and destroyed immediately.

37.11.4.d. Personal protective equipment shall be electrically tested and stored in accordance with a nationally recognized standard, such as ASTM.

37.11.4.e. A record of these tests must be kept in a book prescribed by the director and made available for authorized representatives of the West Virginia Office of Miners' Health, Safety and Training upon request.

37.12. ~~37.11.~~ Other electrical apparatus or areas.

37.12.1. ~~37.11.1.~~ Ladders for electrical work shall be of nonmetal type.

37.12.2. ~~37.11.2.~~ No electrical machinery or apparatus shall have unguarded exposed energized parts.

37.12.3. ~~37.11.3.~~ Lighting plants shall be located so as not to obstruct or be a safety or health hazard to any part of the mining operation or miners.

37.12.4. ~~37.11.4~~ Employees performing work that requires them to come in contact with electrical equipment involving shock hazards shall be provided with suitable insulating gloves.

37.12.4.a. ~~37.11.4.a.~~ Suitable insulation shall be of approved type that will protect such person from voltage to which he/she is exposed.

37.12.5. ~~37.11.5.~~ All such protective equipment shall be furnished by the operator.

37.12.6. ~~37.11.6.~~ Rooms in which circuit breakers or controls are installed shall have two (2) separate and distinct travelable passageways, designated as escapeways.

37.12.7. ~~37.11.7.~~ Open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

37.12.8. ~~37.11.8.~~ All lights with less than eight (8) feet overhead clearance shall be guarded ~~and the lamps be installed in weatherproof sockets~~.

37.12.9. ~~37.11.9.~~ Lamps installed in a hazardous area must be of substantial construction ~~and fitted with a glass enclosure~~.

**§56-3-38. Hand-Held Electric Drills and Rotating Tools; Trailing Cables.**

38.1. Electric drills and other electrically operated rotating tools intended to be held in the hand shall have the electric switch constructed so as to break the circuit when the hand releases the switch or shall be equipped with friction or safety clutches.

**§56-3-39. Installation of Lighting.**

39.1. Electric lights or other approved methods of lighting shall be installed so that they do not come in contact with combustible materials, and the wires shall be supported by suitable insulators and fastened securely to the power conductors.

**§56-3-40. Compressed Gases and Welding.**

40.1. Handling and use of welding or cutting equipment generally.

40.1.1. The clothing of any person using any welding or cutting equipment in or about a surface mine shall be reasonably free of petroleum products.

40.1.2. When handling oxygen cylinders or apparatus the use of oily hands or gloves is prohibited.

40.1.3. Compressed gases shall not be used under direct pressure from tanks or cylinders but must be used under reduced pressures not exceeding that recommended by the manufacturers.

40.1.4. At no time shall compressed air be directed toward a person when in use.

40.1.5. A suitable wrench designed for compressed tanks shall be in the possession of the person authorized to use the equipment.

40.1.6. Oxygen and gas cylinders and their contents shall be used solely for their intended purposes.

40.1.7. Only an approved type spark-lighter shall be used for lighting torches.

40.1.8. All welding and cutting equipment shall be continuously maintained in a safe condition.

40.2. Storage of compressed gas cylinders.

40.2.1. Cylinders shall be securely stored in an upright position with valve protection caps hand tight.

40.2.2. The cylinder storage area shall be well ventilated, protected and at least twenty (20) feet from highly combustible materials such as oil or other flammables.

40.2.3. Signs at the cylinder storage area shall be conspicuously posted, "Danger No Smoking, Matches or Open Flame".

40.2.4. When storing oxygen cylinders and acetylene or other fuel gas cylinders inside buildings, a minimum distance of twenty (20) feet or a noncombustible barrier at least five (5) feet high having a fire resistance rating of at least one-half (1/2) hour shall be maintained between the oxygen cylinders and other fuel gas cylinders.

40.3. Transportation of compressed gas cylinders.

40.3.1. When tanks and cylinders are not used and they are being transported, valve protection caps shall be placed on all tanks or cylinders.

40.3.2. Oxygen tanks, gas tanks, or cylinders shall not be transported with the hoses or gauges attached.

40.3.3. When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced.

40.3.4. Gas cylinders shall not be transported on vehicles used to transport employees unless separate approved compartments are provided.

40.4. Welding preparations.

40.4.1. Any person assigned to use and work with welding and cutting tools shall be properly instructed of their uses and fully understand the danger of their misuse.

40.4.2. Any person welding, cutting, heating, brazing or soldering shall be provided with goggles or shields, gloves, safe type spark-lighter and proper torch tip cleaner.

40.4.3. Prior to welding, cutting, heating, brazing or soldering in areas likely to contain methane, an examination shall be made by a qualified person with an approved device. Additionally, examinations for methane shall be made immediately before and periodically during welding, cutting, heating, brazing or soldering and such work shall not commence or continue in air which contains one percent (1%) or more methane.

40.4.4. Welding operations shall be shielded when necessary and the area shall be well ventilated.

40.4.5. Fire watchers shall be used whenever welding, cutting, heating, brazing or soldering is performed at locations where a fire hazard exists.

40.4.6. Adequate fire protection shall be provided at the location where welding, cutting, heating, brazing and soldering is performed.

40.5. Acetylene welding.

40.5.1. Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, back flow check valves and gas cylinders shall be used.

40.5.2. Back flow check valves shall be attached to the exhaust side of a regulator before using.

40.5.3. Repairs involving the pressure system of compressors, receivers, or compressed-air-powered equipment shall be prohibited until the pressure has been relieved from the part of the system to be repaired.

40.5.4. Gas cylinders shall be protected from contacting sparks, hot slag or flame during welding, cutting, heating, brazing or soldering.

40.5.5. Regulators shall be adequately attached to the cylinders before using their contents.

40.5.6. The cylinder valve shall be opened partially for an instant, then closed before connecting a regulator. Any person performing said act shall stand to the side (not in front) of the outlet when opening the cylinder valve.

40.5.7. When removing a regulator from a cylinder bottle valve, the valve shall be closed and the gas released from the regulator.

40.5.8. Empty cylinders shall be marked as such and removed from the work area immediately.

40.5.9. Oxygen and acetylene tanks or cylinders or compressed gases shall be protected from power lines or energized electrical machinery or equipment.

40.5.10. Oxygen and acetylene tanks or cylinders shall be kept away from the place where the cutting is being done in order to prevent damage or accident and to prevent heat from affecting such tanks or cylinders.

40.6. Electrical welding.

40.6.1. All connections at the welding machine shall be checked before starting such operations.

40.6.2. The ground lead shall be adequately attached to the work.

40.6.3. Magnetic work clamps shall be free of adherent metal particles or spattex on contact surfaces.

40.6.4. Coiled welding cable shall be adequately separated to avoid serious overheating and damage to cable insulation.

40.6.5. The welding machine frame shall be adequately grounded.

40.6.6. The welding machine shall be free of leaks, cooling water, shielding gas and engine fuel.

40.6.7. Proper switches shall be provided for deenergizing the welding machine.

40.6.8. Electrode holders shall be located so they do not make electrical contact with persons, conducting objects, fuel or compressed gas cylinders. Energized electrode holders may be laid down or placed only in approved nonconductive trays or holders.

40.6.9. There shall be splice-free cables within ten (10) feet of the electrode holder.

40.6.10. The welding cable shall not coil or loop around parts of the welder's body.

40.6.11. When welding has ceased for any substantial period of time, all electrodes shall be removed from holders.

40.6.12. Holders shall be located so that accidental contact cannot occur.

40.6.13. Where work permits, arc welders shall be enclosed by individual booths or non-combustible screens painted with a finish of low reflectivity such as zinc oxide or lamp black.

40.7. Safety Hazards.

40.7.1. Welding, cutting, and burning shall be prohibited in dusty areas.

40.7.2. After welding operations, the area where metal particles could come into contact with other workers, shall be posted with signs to provide warning.

40.7.3. Welders shall report any equipment defect or safety hazard to their supervisor and discontinue welding until safety has been assured.

40.8. Maintenance and repairs.

40.8.1. Cylinders, valves, couplings, regulators, hoses and apparatus shall be kept free from oil, dirt, greasy substances, and maintained in good condition.

40.8.2. Test for leaks on hoses, valves, or gauges shall be made with a soft brush and soapy water or soap suds.

40.8.3. Welding machines, electrodes, and cables shall be examined weekly for wear and/or damage.

**§56-3-41. When Respiratory Equipment to be Worn; Control of Dust.**

41.1. Workers exposed for short periods to gas, dust, fume, and mist inhalation hazards shall wear permissible respiratory equipment.

41.2. Dust shall be controlled by the use of permissible dust collectors or other approved methods.

**§56-3-42. Miscellaneous Safety Provisions.**

42.1. Immediately prior to the beginning of each working shift, all equipment except licensed vehicles subject to state highway inspection requirements shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation daily for safety defects.

42.1.1. The person performing such examination shall record his/her findings in ink or indelible pencil on a form approved by the director.

42.1.1.a. The form shall be given to the mine foreman or the mine foreman's assistant within four (4) hours after the beginning of the start of the working shift.

42.1.2. The person performing the above examination shall sign the report form and the foreman receiving such form, shall initial upon receipt.

42.1.3. A record of all above such examinations shall be maintained for thirty (30) days and made available to an authorized representative of the director and to the miners at the mine.

42.1.4. Immediately prior to the beginning of each working shift, equipment operated by independent contractors in the removal of coal and overburden on a surface mine shall be examined by the equipment operator for safety defects.

42.1.4.a. The person performing such examination shall record his/her findings in ink or indelible pencil on a form approved by the director.

42.1.4.b. The form shall be signed by the person performing the examination; and

42.1.4.c. The form shall remain with the vehicle for thirty (30) days; and

42.1.4.d. Upon request the form will be made available to an authorized representative of the director.

42.1.5 Imminent danger equipment defects shall be corrected before the equipment is put into operation.

42.2. Operation of shovel, draglines, tractors, backhoes, loaders, etc.

42.2.1. Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

42.2.2. Operators of shovels, draglines, and backhoes shall sound a signal distinguishable from the surrounding noise level such as a whistle, bell, horn or other approved device, before moving forward or backward, and all persons not in the clear shall respond immediately.

42.2.3. Equipment operators shall not leave their cabs without lowering all raised equipment to the ground.

42.2.4. When the equipment operator is present, workers shall notify the equipment operator before getting on or off the equipment.

42.2.5. Persons shall not be permitted in the immediate vicinity of shovels, draglines, and backhoes unless in the line of duty.

42.2.6. Walkways and platforms on shovels, draglines and backhoes shall be maintained in a safe condition and shall be equipped with safe handrails, toe boards, walkways and platforms.

42.2.7. Equipment that revolves in a horizontal arc on a turntable shall have a minimum clearance of four (4) feet from the highwall or other obstructions.

42.2.8. The operator of shovels, draglines, and backhoes shall have a general knowledge of the location of the oiler at all times.

42.2.9. Operators of shovels and draglines shall not leave their cabs to wet the digging brake or dog, unless the master clutch is in the "off" position.

42.2.10. Operators of shovels and draglines shall have visual contact, when possible, with the person assigned to setting the digging brake or dog.

42.2.11. Operators shall not leave the cab of the shovel, dragline or crane without placing the controls into the "Off" position. Additionally, if the power should fail, the controls shall be placed in the "Off" position.

42.2.12. All ropes shall be securely attached to the drum and the dipper by at least four (4) suitable wire rope clips or properly wedged and shall have at least three (3) wraps of cable on at all times.

42.2.13. Riding a dipper or bucket shall be prohibited.

42.3. Maintenance and repairs.

42.3.1. All safety equipment on all machinery shall be maintained in a safe working condition.

42.3.2. Mobile and stationary equipment shall be maintained in safe operating condition and equipment in unsafe condition shall be removed from service immediately.

42.3.3. Good housekeeping shall be practiced on all equipment.

42.3.4. All heavy duty equipment shall be cleaned as necessary to maintain the equipment reasonably free of combustible substances.

42.3.5. Workers shall not work on or from a piece of mobile equipment in a raised position until it has been securely blocked in place.

42.3.6. No work shall be performed under machinery or equipment that has been raised until such machinery or equipment has been securely blocked in place.

42.3.7. While greasing or doing repair work on a boom of a shovel, dragline, or backhoe, the boom shall be lowered to a position whereby the work can be done from the ground or the workers shall use safety belts except shovels, draglines, or backhoes that are equipped with safe handrails or ladders.

42.3.8. Dippers of buckets or shovels, draglines and backhoes shall be lowered for repairs.

42.3.9. Repairs or maintenance shall not be performed on equipment until the power is off and the equipment is blocked against motion, except where the movement of the machine or parts is necessary to make adjustment.

42.4. Warning devices, lights, brakes.

42.4.1. Dump trucks used to haul coal or other material shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse.

42.4.2. Equipment such as fork lifts, front-end loaders, tractors, dozers, and graders shall be provided with an approved audible warning device.

42.4.3. Lights shall be provided on both ends of equipment when equipment is being worked other than during daylight hours. Additionally, lights on both ends of equipment shall be provided during other existing conditions such as fog, etc.

42.4.4. Power driven mobile equipment shall be equipped with adequate brakes.

42.4.5. All trucks and front-end loaders shall be equipped with adequate parking brakes.

42.5. Dump trucks and dumping.

42.5.1. Dump bodies of trucks shall be properly blocked when raised for any purpose except dumping of load.

42.5.2. No person shall be permitted in or on the cargo space of dump trucks while being loaded with coal or other materials.

42.5.3. No person shall be allowed in the cab or a dump truck while the truck is being loaded with power shovel, front-end loader, or backhoe unless the cab is shielded.

42.5.4. Truck cabs where rear vision is impaired shall be equipped with adequate rear view mirrors on both sides.

42.5.5. The dipper of a loading shovel shall be swung over the body of the truck and not the cab.

42.6. Dippers.

42.6.1. Riding on a dipper or bucket shall be prohibited.

42.6.2. Workers shall keep out from under suspended dippers at all times.

42.6.3. Trailing cables on shovels shall not be moved with the shovel dipper unless cable slings or sleds are used.

42.6.4. Operators shall not swing a dipper or bucket over passing haulage equipment.

42.7. Equipment generally.

42.7.1. No equipment or machinery shall be altered or modified in a manner that reduces the level of safety.

42.7.2. Road maintenance equipment such as graders or other equipment normally used shall be equipped with roof mounted approved flashing lights.

42.7.3. All equipment, when equipped with a safety bar for automatic transmission, shall be set in locked position before the operator leaves the cab.

42.7.4. Operators of dozers that are equipped with standard transmission, shall lock the park brake, place the transmission in a neutral position, and lock the clutch in before leaving the cab.

42.7.5. All steps and handrails on surface mining equipment shall be maintained in a safe condition.

42.7.6. Electrically powered mobile equipment shall not be left unattended unless:

42.7.6.a. The master switch is in the "Off" position;

42.7.6.b. All operating controls shall be placed in neutral position; and

42.7.6.c. The brakes set or other equivalent precautions taken against rolling.

42.7.7. A tow bar or other approved device shall be used for towing equipment and a safety chain

shall be used in conjunction with a tow bar.

42.7.8. All exhaust tail pieces shall be positioned and properly maintained to prevent carbon monoxide and other toxic fumes from entering an operator's compartment.

42.7.9. The operator of a grader shall face in the direction of travel except during grading operations in a local area.

42.8. Glass and doors.

42.8.1. Cab windows of glass on equipment shall be safety glass or equivalent material with good visibility, in good condition, not broken or cracked to such extent that it can be felt, and kept clean.

42.8.2. When required by the director, all mobile equipment shall be provided with windshield wipers which shall be maintained in good operating condition.

42.8.3. All doors on mobile equipment shall be maintained in good operating condition.

42.9. Guards.

42.9.1. Fan blades, shafts, gears, flywheels, coupling, and similar exposed moving machine parts which may be contacted by persons shall be adequately guarded.

42.9.2. Guards installed on equipment to prevent accidental contact with moving parts shall:

42.9.2.a. Be of substantial construction;

42.9.2.b. Not have openings large enough to admit a persons hand;

42.9.2.c. Be firmly bolted or otherwise installed in stationary position; and

42.9.2.d. Be of sufficient dimension to exclude the possibility of bodily contact while in motion.

42.10. Operation of mobile equipment.

42.10.1. Mobile equipment operators shall have full control of the equipment while in motion.

42.10.2. The type of equipment and posted operating speeds shall be prudent and consistent with conditions of roadways, grades, clearance, visibility and traffic.

42.10.3. All mobile equipment shall be completely stopped before a person gets on or off.

42.10.4. No person other than the operator shall be permitted to ride in or on equipment unless in line of duty, and only then when adequate safe seating facilities are provided.

42.10.5. Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated.

42.10.6. When necessary to protect the operator of the equipment, all rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors that are used on surface

coal mines shall be provided with substantial falling object protective structures.

42.10.7. Equipment shall be operated only by persons trained in the use of and authorized to operate such equipment.

42.10.8. Operators of all equipment shall keep a reasonable safe distance from the edge of all vertical or abrupt excavations or fills.

42.11. Loads.

42.11.1. Equipment which is to be hauled shall be secured.

42.11.2. Any load extending more than four (4) feet beyond the rear of the vehicle body shall be marked clearly with a red flag.

42.11.3. Dump trucks shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

42.12. Track type dozers.

42.12.1. Track type dozers shall meet the following standards:

42.12.1.a. Adequate fan blade guards.

42.12.1.b. Track brakes shall be working properly.

42.12.1.c. Steering clutches shall be in operating condition.

42.12.1.d. Portable fire extinguisher of at least five (5) pounds.

42.12.1.e. All floor boards shall be kept secured in place.

42.12.1.f. Safety bar lever for automatic transmission shall be in working condition.

42.12.1.g. Approved warning device which the operator can operate manually.

42.12.1.h. Cab protection when the dozer is being operated near the highwall or where there is a hazard from falling material.

42.13. Front-end loaders.

42.13.1. Rubber tire front-end loaders shall meet the following standards:

42.13.1.a. Portable fire extinguishers, of at least five (5) pounds.

42.13.1.b. Fan blade guards.

42.13.1.c. Adequate lights.

42.13.1.d. Approved warning devices.

42.13.1.e. If a loader is provided with a windshield type cab, the windshield shall be of safety type glass, or the equivalent with good visibility and shall be equipped with windshield wipers in good working condition.

42.13.1.f. Steering apparatus shall be functioning properly.

42.13.1.g. Adequate foot brakes - each individual wheel brake shall be working properly.

42.13.1.h. The parking brake shall have capability equivalent to hold the vehicles stationary on the twelve percent (12%) dry swept concrete grade under all conditions.

42.13.1.i. The service braking system using stored energy shall be equipped with a warning device that activates when the system energy drops below fifty percent (50%) of the manufacturer's specified minimum operating energy level.

42.14. Machinery.

42.14.1. All overhead belts shall be adequately guarded if the whipping action from a broken belt could be hazardous to a person below, or if within seven (7) feet of a person's work area or where persons may pass.

42.14.2. Belt conveyors in locations where fire would create a hazard to personnel shall be provided with switches to stop the drive pulley automatically in the event of excessive slippage.

42.14.3. Unguarded conveyor belt walkways, less than five (5) feet in width, shall be equipped with emergency stop switches or pull cord along their entire length.

42.15. Hand-held tools, power tools and safety devices.

42.15.1. Conditions of tools - all tools, power tools and similar equipment shall be maintained in a safe condition.

42.15.2. Hand-held power tools shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety device.

42.15.3. Employers shall not issue or permit the use of unsafe hand tools.

42.15.4. Adjustable, pipe, end and socket wrenches shall not be used when jaws are sprung to the point that slippage occurs.

42.15.5. Impact tools such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

42.15.6. The wooden handles of tools shall be kept tight and free of splinters or cracks and shall be kept tight in the tool.

42.15.7. Electric power operated tools shall be approved double-insulated or grounded type.

42.15.8. Only proper hoisting equipment shall be used for hoisting or lowering tools. The use of hoses or electric cords for such purpose is prohibited.

42.15.9. Pneumatic power tools shall be secured to the hose by some positive means to prevent the tools from becoming accidentally disconnected.

42.15.10. Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools.

42.15.11. The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

42.15.12. All fuel powered tool engines shall cease operations while being refueled, serviced, or maintained.

42.15.13. When fuel powered tools are used in enclosed spaces, the applicable requirements for concentrations of toxic gases and use of personal protective equipment shall apply.

42.15.14. Only approved fuel containers shall be used, and such containers shall be safely stored.

42.16. Jacks.

42.16.1. The manufacturer's rated capacity shall be legibly marked on all lifting jacks and shall not be exceeded.

42.16.2. All lifting jacks shall have a positive stop to prevent over-travel.

42.16.3. Blocking - When it is necessary to provide a firm foundation, the base of the lifting jack shall be blocked or cribbed.

42.16.3.a. Where there is a possibility of slippage of the metal cup or the jack, a wood block shall be placed between the cap and the load.

42.16.3.b. Work shall not be performed under any machinery until the proper blocking is in place and, with the exception of a jack, tight.

42.17. Stationary grinding machines, protective devices.

42.17.1. Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods and goggles or approved eye shields.

42.17.2. Adjustable tool rests shall be set as close as required to manufacturer's specifications.

42.17.3. Grinding wheels shall be operated according to the specification of the manufacturer.

42.18. Stationary grinding machines.

42.18.1. Grinding wheels shall be equipped with:

42.18.1.a. Safety washers of adequate size;

42.18.1.b. Substantial retaining hoods with maximum angular exposure of the grinding wheel periphery and sides of not more than ninety (90) degrees except that when work requires contact with the

wheel below the horizontal plane of the spindle, an angular exposure shall begin not more than forty-five (45) degrees above the horizontal plane of spindle.

42.18.1.b.1. Said safety guards shall be strong enough to withstand the effect of a bursting wheel.

42.18.1.c. Face shields or goggles, in good condition, to be worn by all operators;

42.18.1.d. Work rests on floor and bench mounted grinders which are rigidly supported, readily available, and which shall be kept at a distance not to exceed one-eighth (1/8) from the surface of the wheel;

42.18.1.e. All other applicable requirements of the American National Standards Institute Safety Code for the use, care, and protection of abrasive wheels; and

42.18.1.f. Dust collectors or exhaust ventilation systems vented to the outside of the building.

42.18.2. Safety hoods, (guards or flanges) shall be mounted so as to maintain proper alignment with the wheel, and shall be of sufficient strength to retain fragments of the wheel in the case of accidental breakage.

42.18.3. All abrasive wheels shall be ring-tested before mounting to insure they are free from cracks or defects, and shall fit freely on the spindle and not be forced on.

42.18.4. All grinding wheels shall be operated in accordance with the manufacturer's specifications.

42.19. Protective structures fall object and roll over protective structures.

42.19.1. All rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors, manufactured after January 1, 1969 shall be provided with roll over protective structures.

42.20. Tires and repairs.

42.20.1. A safety tire rack, cage, or equivalent protection shall be provided when inflating tires installed on split or rims equipped with locking rings or similar devices.

42.20.2. Tires shall be deflated before repairs on them are started and means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation.

42.20.3. Heat shall not be applied to lug bolts, rims or wheels while tires are inflated.

42.20.4. When work is being performed on models that are equipped with dual wheels both tires must be deflated for heating lugs before repair work begins.

42.20.5. No person shall be permitted in front of a tire being inflated either on or off equipment and persons engaged in inflating or deflating tires shall perform such work in an area isolated from other persons.

42.20.6. When fork lift trucks are used in mounting or transporting of tires, adequate means shall be taken to assure that tires are secured properly.

42.20.7. No person shall be permitted to stand between the hub of a vehicle and fork lift truck when used to change a tire.

42.20.8. A clip-on-air chuck shall be provided at all tire airing stations.

42.20.9. At least six (6) feet of air hose shall be provided between the valve stem and inflation gauge.

42.20.10. All tires shall be maintained in a safe condition.

42.20.11. Any tire with a defect which could be a hazard to the safe operations of a vehicle or to other persons shall be replaced immediately.

**§56-3-43. Ramps, Tipples, Cleaning Plants, and other Surface Areas.**

43.1. Surface installations generally.

43.1.1. Surface installations, generally all mine structures, enclosures, and other facilities (including custom coal preparation) shall be maintained in good condition.

43.1.2. In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures.

43.1.3. Opening in surface installations through which workers or material may fall shall be protected by railings, barriers, covers or other protective devices.

43.1.4. Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, switch panels, loading and dumping sites, working areas and parking areas.

43.1.5. Materials shall be stored and/or stacked in a manner to prevent stumbling or falling.

43.1.6. Compressed and liquid gas cylinders shall be secured in a safe manner.

43.2. Machinery guards.

43.2.1. Gears, sprockets; chains, drive, head, tail and take-up pulleys; flywheels; couplings; shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, shall be guarded adequately.

43.2.2. Except when testing is necessary, machinery guards shall be secured in place while being operated.

43.2.3. Belt rollers shall not be cleaned while belts are in motion.

43.3. Ramps and dumping.

43.3.1. Both sides of any tipple or cleaning plant dumping ramp shall be provided with securely anchored rubbing boards of ample dimensions.

43.3.2. An adequate dumping block at least eight (8) inches high shall be installed at all dumping points, excluding stockpiles.

43.3.3. Adequate protection shall be provided at dumping locations where persons may be endangered by falling material.

43.3.4. Dust control measures shall be taken where dust significantly reduces visibility of equipment operators.

43.3.5. All power lines in dumping areas shall, be maintained at least a minimum of six (6) feet above the largest piece of equipment used at such facility, including a dump truck in a raised position.

43.3.6. All dumping ramps shall be of sufficient width to insure safe operation of vehicles used thereon.

43.3.7. At no time shall any person be permitted to enter onto any coal bin, coal crusher, or any other coal dumping facility for means of breaking or removing coal or other materials that is of such a size that it will not drop through the grizzley, or screening device of said dumping facility, unless the equipment has been tagged out, de-energized, and locked out with a key or other approved adequate safeguards approved by the director.

43.3.8. Ramps and dumps shall be of solid construction and have ample width, clearance and head room and be kept reasonably free of accumulations of material and spillage.

43.3.9. Truck spotters shall be used when required by an authorized representative of the director.

43.3.10. When car couplers are to be aligned in such rotary dump areas, a hook or other device shall be used and a suitable lifting jack and handle shall be provided.

43.4. Fire protection.

43.4.1. Where cutting or welding is performed at any location, means of prompt extinguishment of any fire accidentally started shall be provided.

43.4.2. Adequate fire-fighting facilities, required by OMHST, shall be provided on all floors.

43.4.3. At least two (2) exits shall be provided for every floor of tipples and cleaning plants constructed after April 29, 1991.

43.4.4. Signs warning against smoking and open flames shall be posted so they can be readily seen in areas4or places where fire or explosion hazards exist.

43.4.5. Smoking or open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

43.5. Repairs of machinery.

43.5.1. Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used.

43.5.2. Machinery shall not be started until the persons lubricating or repairing it has given a clear signal.

43.5.3. Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations.

43.5.4. Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workers when necessary.

43.5.5. Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

43.6. Stairs, platforms, etc.

43.6.1. Stairways, elevated platforms and runways shall be equipped with handrails, except for railroad car trimmer platforms.

43.6.2. Where required, elevated platforms and stairways shall be provided with toeboards. They shall be kept clear of refuse and ice and maintained in good condition.

43.7. Belts, etc.

43.7.1. Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters.

43.7.2. Belt dressing shall not be applied while in motion.

43.7.3. Belt, chains and ropes shall not be guided onto power-driven moving pulleys, sprockets, or drums with the hand except equipment especially designed for hand feeding.

43.8. Conveyors and crossovers.

43.8.1. When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor.

43.8.2. When the entire length of the conveyor is not visible from the starting switch, a positive audible or visible warning system shall be installed and operated to warn persons when the conveyor will be started.

43.8.3. Crossovers shall be provided where necessary to cross conveyors.

43.8.3.a. All crossovers shall be of substantial construction with rails and maintained in good condition.

43.8.3.b. Moving conveyors shall be crossed only at designated crossover points.

43.8.4. A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tipple equipment is to be started.

43.8.5. Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation.

43.8.6. Guards, nets, or other suitable protection shall be provided where tramways pass over roadways, walkways or buildings.

43.8.7. Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.

43.9. Tipple or cleaning operations.

43.9.1. At least two (2) persons shall be continuously employed in the operation of a tipple or cleaning plant.

43.9.2. Good housekeeping shall be practiced in and around tipples and cleaning plants. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails and broken glass.

43.9.3. Adequate ventilation shall be provided in tipples and preparation plants.

43.9.4. Coal dust in or around tipples or cleaning plants shall not be permitted to exist or accumulate in dangerous amounts.

43.10. Travelways.

43.10.1. Safe means of access shall be provided and maintained to all working places.

43.10.2. Travelways, platforms and other access to areas where persons are required to travel or work, shall be kept free of all extraneous material and other stumbling or slipping hazards.

43.10.3. Inclined travelways shall be constructed of nonskid material or equipped with cleats.

43.10.4. Regularly used travelways shall be salted, sanded or cleared of snow and ice as soon as practicable.

43.11. Ladders.

43.11.1. All ladders shall be securely fastened.

43.11.2. More than ten (10) feet in height shall be provided with backguards.

43.11.3. Ladders shall be of substantial construction and maintained in good condition.

43.11.4. Wooden ladders shall not be painted.

43.11.5. Fixed ladders shall not incline backward at any point unless equipped with backguards.

43.11.6. Fixed ladders shall be anchored securely and installed with at least three (3) inches of toe clearance.

43.11.7. Side rails of fixed ladders shall project at least three (3) feet above landings, or substantial handholds shall be provided above the landing.

43.11.8. No person shall be permitted to work off of the top step of any ladders.

43.11.9. Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor.

43.11.10. The maximum length of a step ladder shall be twenty (20) feet.

43.11.11. The maximum length of an extension ladder shall be sixty (60) feet.

43.12. Hoisting.

43.12.1. Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted.

43.12.2. Persons shall stay clear of hoisted loads.

43.12.3. Tag lines shall be attached to hoisted materials that require steadying or guidance.

43.12.4. A hoist shall not lift leads greater than the rated capacity of the hoist being used.

43.13. Drawoff tunnels.

43.13.1. When it is necessary for a tunnel to be closed at one (1) end, an escapeway not less than thirty (30) inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) shall be installed which extends from the closed end of the tunnel to a safe location on the surface; and if the escapeways is inclined for more than thirty degrees (30°) from the horizontal, it shall be equipped with a ladder which runs the full length of the inclined portion of the escapeway.

43.13.2. Tunnels located below stockpiles, and coal storage silos, shall be adequately ventilated to maintain concentrations of methane below one percent (1%) per centum.

43.14. Ventilation and methane.

43.14.1. Tests for methane in structures, enclosures, or other facilities where coal is stored shall be conducted by a qualified person with an approved methane detector at least once during each operating shift.

43.14.2. Methane content in surface structures -If, at any time, the air in any enclosure contains 1.0 percent or more of methane, changes or adjustments in the ventilation of such installation shall be made at once so that the air shall contain less than one percent (1%) methane.

43.14.3. Dust accumulation in surface installations - Coal dust on surface structures, enclosures, or other facilities shall not be permitted to exist or accumulate in dangerous quantities.

43.15. Railroad equipment.

43.15.1. Railroad cars shall be maintained under control at all times.

43.15.2. Cars shall be dropped at a safe rate of speed and in such a manner that will insure that the car dropper maintains a safe position while working and traveling around the cars.

43.15.3. The car dropper shall control the trip from one (1) location and not drop more cars than can be controlled from such location.

43.15.4. A car dropper shall not drop more than three (3) cars at one (1) time with one (1) brake.

43.15.5. Railroad cars shall not be coupled or uncoupled manually from the inside of curves unless the railroad and cars are so designed to eliminate any hazard from coupling or uncoupling cars from inside curves.

43.15.6. No person shall ride the drawhead or coupler of a railroad car.

43.15.7. No person other than the car dropper shall ride cars.

43.15.8. No car dropper shall ride the end of a car about to be coupled with another car if other brakes are available.

43.15.9. Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion.

43.15.10. A car dropper shall only in case of an emergency, get on or off a moving car.

43.15.11. Rail cars shall not be left on side tracks unless ample clearance is provided for traffic on adjacent tracks.

43.15.12. Parked rail cars, unless held effectively by brakes, shall be blocked securely.

43.15.13. Railroad cars shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

43.15.14. A minimum of thirty (30) inches continuous clearance from the fartherest projection of moving railroad equipment shall be provided on at least one (1) side of the tracks.

43.15.14.a. Where it is not possible to provide thirty (30) inches of clearance, those areas shall be marked conspicuously.

43.15.15. Roadbeds, rails, joints, switches, frogs, and other elements on railroads shall be designed, installed and maintained in a safe manner consistent with the speed and type of haulage.

43.15.16. Positive - acting stopblocks, derail devices, track skates, or other adequate means shall be installed where ever necessary to protect persons from runaway railroad equipment.

43.15.17. Switch throws shall be installed so as to provide adequate clearance for switchmen.

43.15.18. Where necessary, bumper blocks or the equivalent shall be provided at all track dead ends.

43.15.19. Cars shall be inspected for broken steps, platforms and brake wheels and for defective brakes before dropping.

43.15.20. Equipment operating speeds shall be consistent with conditions of roadways, grades,

clearance, visibility, traffic and the type of equipment used.

43.15.21. Safety belts shall be worn and properly attached by all car droppers handling railroad cars. All such belts shall be of a design to allow maximum safety to provide for immediate uncoupling.

43.16. Railroad track construction and maintenance.

43.16.1. All parts of the track haulage road under the ownership or control of the operator shall be strictly constructed and maintained.

43.16.2. Rails shall be secured at all points by means of plates or welds.

43.16.2.a. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately.

43.16.3. Appropriate bolts shall be inserted and maintained in all bolt holes.

43.16.3.a. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.

43.16.4. All points shall be installed and maintained so as to prevent bad connections.

43.16.5. Varying weights of rail shall not be joined without proper adapters.

43.16.6. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.

43.16.7. Tracks shall be gauged so as to conform with the track mounted equipment.

43.16.8. Curves shall not be constructed so sharp as to put significant pressure on the trucks of the track mounted equipment.

43.16.9. Severely worn or damaged rails and ties shall be replaced immediately.

43.16.10. When mining operations are performed within any twenty-four (24) hour period, operations shall be inspected at least every twenty-four (24) hours to assure safe operation and compliance with the law and this rule.

43.16.10.a. The results of the inspection shall be recorded.

43.16.11. Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten (10) feet shall be provided with adequate space and protection in order that they may work safely.

43.16.12. Permanent ladders extending more than ten (10) feet shall be provided with back guards.

43.16.13. Walkways around thickness that are less than four (4) feet above the walkway shall be adequately guarded.

43.16.14. Employees required to work over thickener shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.

**§56-3-44. Coal Storage Bins; Recovery Tunnels; Coal Storage Piles.**

44.1. Coal storage bins hereafter constructed with vertical sides fifty (50) feet or over in height shall be provided with ventilators or louvers or both to provide adequate ventilation.

44.2. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

44.3. Where cutting or welding is performed at any location where coal is stored, means of prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and rock-dusted.

44.4. An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface.

44.4.1. The escapeway shall be at least thirty (30) inches in diameter and where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

44.5. Extreme caution shall be exercised by all employees required to work at or near coal storage piles during coal recovery operations to avoid injury by coal slides or by being in or drawn into a chute.

**§56-3-45. Fire Protection.**

45.1. Fire extinguishers.

45.1.1. A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment.

45.1.2. All portable fire extinguishers on equipment shall be properly secured.

45.2. Flammable liquids.

45.2.1. Flammable liquids, such as oils, greases, gasoline and such other like materials shall be stored in buildings, compartments or closed containers used for this purpose only.

45.2.2. The storage of surplus gasoline, oil, or other fuels, other than that which is in the fuel tank, shall be prohibited on any piece of equipment except for:

45.2.2.a. Diesel equipment using gasoline starting engines are allowed to store one (1) extra gallon of gasoline in an approved safety can (flash arresting screen with self-closing lid).

45.2.2.a.1. The one (1) extra gallon of gasoline may be stored on the equipment if it is securely fastened in a location on the equipment out of the way of moving objects.

45.2.3. Flammable liquids shall not be used to clean machinery.

45.2.4. Combustible materials, grease, lubricants, paints, flammable liquids, shall not be permitted to accumulate where fire hazards exist.

45.3. Fueling and storage.

45.3.1. Internal combustion engines, except diesels, shall be shut off and stopped before being fueled.

45.3.2. Areas surrounding flammable liquid storage tanks, electric substations and transformers shall be kept free from grass, (dry) weeds, underbrush, and other combustible materials, for at least twenty-five (25) feet in all directions.

45.3.3. Fuel lines on fuel storage tanks shall be equipped with valves to cut off fuel at the source and shall be located and maintained to minimize fire hazard.

45.3.4. Smoking and use of open lights are prohibited in all places in which flammable materials are stored and in other places where there is a fire hazard.

45.4. Maintenance of fire fighting equipment.

45.4.1. Fire fighting equipment shall be continuously maintained in a usable and operative condition.

45.4.2. Fire extinguishers shall be examined at least once every six (6) months.

45.4.2.a. The date of such examination shall be recorded on a permanent tag attached to the extinguisher.

45.5. Warnings - Warning signs prohibiting smoking and open flames shall be posted where they can be readily observed in areas or locations where fire or explosion hazards exist.

45.6. Drills - Fire drills and demonstrations with various types of available fire-fighting equipment shall be held for employees at least once annually.

45.6.1. A record of such demonstration shall be recorded.

**§56-3-46. Duties of Persons Subject to this Rule; Rules and Regulations of Operators.**

46.1. It shall be the duty of the operators, mine foremen, supervisors, mine examiners, and other officials to comply with and to see that others comply with the provision of this rule.

46.2. It shall be the duty of all employees to comply with this rule and to cooperate with management and OMHST in carrying out the provisions hereof.

46.3. Reasonable rules and regulations of an operator for the protection of employees and preservation of property that are in harmony with the provisions of this rule shall be complied with.

46.3.1. Reasonable rules and regulations shall be printed on cardboard or in book form in the English language;

46.3.2. Posted at some conspicuous place about the mine or mines; and

46.3.3. Given to each employee upon request.

**§56-3-47. Protective Equipment and Clothing.**

47.1. Eye protection.

47.1.1. Welders and helpers shall use adequate shields or goggles to protect their eyes.

47.1.2. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other eye hazards.

47.2. Clothing.

47.2.1. Employees engaged in haulage operations and all other persons employed around moving equipment shall wear snug-fitting clothing.

47.2.2. Protective gloves shall be worn when material which may injure hands is handled.

47.2.3. Gloves with gauntleted cuffs shall not be worn around moving equipment.

47.3. Safety hats and safety toed shoes.

47.3.1. Safety hats and safety toed shoes shall be worn by all persons while in or around tipples or cleaning plants.

47.3.2. Safety toed shoes shall be worn by all persons while in or around a surface mine tipple or cleaning plant.

47.3.3. All surface mine employees shall be required to wear safety helmets when working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns: Provided,

47.3.3.a. Employees shall not be required to wear a safety helmet while operating machinery equipped with a falling object protective structure which satisfies the impact and penetration requirements established by the American National Standards Institute, Safety Requirements for Industrial Head protection, Standard Z89.1, unless the director finds that the dangers set forth herein may be present. Provided, however,

47.3.3.b. Employees shall be required to wear safety helmets while not operating said equipment subject to the preceding subsection, including periods of travel to and from such equipment.

47.3.4. The safety helmets required in this subsection shall meet the specifications for such helmets as prescribed by the mine health and safety administration.

47.4. Life jackets and belts.

47.4.1. Persons shall wear safety belts and lifelines where there is a danger of falling.

47.4.2. A person shall continuously tend the lifeline when bins, tanks, auger holes, or other dangerous areas are entered.

47.4.3. Life jackets or belts shall be worn where there is a danger from falling into water.

**§56-3-48. First Aid Equipment.**

48.1. First aid stations and equipment - Each operator of a surface coal mine, tipple, and preparation plant shall maintain a supply of first aid equipment. First aid equipment shall be located within one thousand (1,000) feet of the working pit, unless a ten (10) unit first aid kit is provided in the pit. When ten (10) unit kits are provided in the pit, such first aid equipment may be maintained within two thousand (2,000) feet of the pit area.

48.2. Each first aid equipment kit shall contain the following:

(1) One (1) stretcher.

(2) One (1) broken-back board, or approved combination stretcher.

(3) Twenty-four (24) triangular bandages.

(4) Eight (8) four-inch (4") bandage compresses.

(5) Sixteen (16) two-inch (2") bandage compresses.

(6) Twelve (12) one-inch (1") adhesive compresses.

(7) One (1) foille.

(8) Two (2) approved blankets.

(9) One (1) rubber blanket.

(10) Two (2) tourniquets.

(11) One (1) one-ounce (1 oz.) bottle of aromatic spirits of ammonia.

(12) Two (2) inflatable plastic leg splints.

(13) Two (2) inflatable plastic arm splints.

(14) Six (6) small splints, metal or wooden.

(15) Two (2) cold packs.

48.3. Proper storage of first aid supplies.

48.3.1. All first aid supplies required to be maintained shall be stored in suitable sanitary, dust-tight, moisture proof containers and shall be accessible to the miners.

48.4. Automated external defibrillator (AED) unit. One AED shall be required to be stored on the permitted area of all surface operations in a controlled environment in accordance with manufacturers' recommendations. All mine personnel shall be trained on the operation of the AED, and a written record shall be retained.

48.5. Emergency arrangements.

48.5.1. Each operator of a mine shall make arrangements with a licensed physician, medical service, medical clinic, or hospital to provide emergency medical assistance while any person is on duty at a mine.

48.5.2. Each operator of a mine shall make arrangements with an approved ambulance service or otherwise provide for an approved emergency transportation while any person is on duty at a mine.

48.5.3. Each operator shall have arrangements made with an ambulance service, or other emergency transportation facilities for injured persons to be transported from the work site to a licensed physician, medical service, medical clinic, or hospital provided pursuant to subsection (b) above, while people are actually employed at the operation.

48.5.4. Each operator of a surface coal mine shall immediately after making arrangements required under this section, or immediately after any change of such agreement, post at the appropriate places at the mine, the names, titles, addresses, and telephone numbers of all persons and/or services currently available under such arrangements to provide medical assistance and transportation of injured persons at the mine.

48.6. Emergency communications.

48.6.1. Each operator of a surface mine shall provide two (2)-way communication at all times miners are present between all work sites at the mine and an emergency communication center which may be at the mine office or elsewhere at the mine.

48.6.2. Each operator of a surface coal mine shall establish and maintain a direct two-way (2) communication system from such emergency communication center at the mine to the nearest point of medical assistance for use in an emergency.

48.6.2.a. The emergency communication system shall be by telephone.

48.6.2.b. If telephone communication from the emergency communication center to the nearest point of medical assistance is not possible at any one (1) mine, the director may allow by permit such communication by radio transmission to any emergency assistance facility (e.g., state police, sheriff, local hospital) which has available the means of communication with the person or persons providing the requisite emergency medical assistance or transportation.

**§56-3-49. Thermal Coal Dryers and Plants.**

49.1. Thermal coal dryer plants shall be hereafter constructed, maintained and operated in compliance with the following provisions.

49.1.1. Good housekeeping shall be practiced in and around thermal dryer plants.

49.1.2. Adequate fire-fighting facilities shall be provided on all floors.

49.1.3. When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate fire-fighting apparatus shall be readily available during the operation.

49.1.4. Only qualified persons shall be permitted to operate dryers; however, this provision shall not prohibit qualified persons from training other persons to become qualified operators.

49.1.5. Dryer control panels shall be provided with audible and visible alarm devices; such devices should be adjusted to function at somewhat less than maximum dryer temperature.

49.1.6. A bypass or relief stack equipped with an automatically operated damper shall be provided for by passing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.

49.1.7. Thermal coal dryers hereafter installed shall not be enclosed except that roof may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fire proof structure.

49.1.8. Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.

49.1.9. Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.

49.1.10. Dryers shall be equipped with quick-response heat control devices which in the event of super elevated temperatures, will automatically divert the hot inlet gases into a bypass stack, thereby bypassing the drying chamber and at the same time stopping the fuel from being supplied to the air heater.

49.1.11. All dryers, conveyors and other fine coal transporting machines shall be constructed as dust-tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.

49.1.12. Dryers shall be examined thoroughly after normal and emergency shutdown for fires and coal dust accumulations.

49.1.13. Dryer controls, valves, and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.

49.1.14. The gauges of temperature control instruments shall be of the recording type.

49.1.15. Operating rules suitable for the characteristics of each dryer system and the materials processed shall be developed and shall be available at the control panel.

49.1.16. Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

49.1.17. Adequate illumination shall be provided.

49.1.18. Dryers shall not be operated beyond their rated evaporation capacity.

49.1.19. Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

49.1.20. After shutdown, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding start-ups.

49.1.21. Thermal coal dryers previously installed in a tipple of cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.

49.1.22. When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer bins or any other dusty area, permissible cap lamps shall be used for illumination.

**§56-3-50. Explosion or Accident; Notice; Investigation by OMHST.**

50.1. For the purposes of this section, the term accident means:

50.1.1. The death of an individual at a mine;

50.1.2. An injury to an individual at a mine which has a reasonable potential to cause death;

50.1.3. The entrapment of an individual;

50.1.4. The unplanned inundation of a mine by a liquid or gas;

50.1.5. The unplanned ignition or explosion of gas or dust;

50.1.6. The unplanned ignition or explosion of a blasting agent or an explosive;

50.1.7. An unplanned fire in or about a mine not extinguished within five (5) minutes of ignition;

50.1.8. 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;

50.1.9. A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one (1) hour;

50.1.10. 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 the failure of an impoundment, refuse pile or culm bank;

50.1.11. 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; and

50.1.12. An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

50.2. Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice, within fifteen (15) minutes of ascertaining the occurrence of an accident, to the mine and industrial accident emergency operations center at the statewide telephone number established by the director of the division of homeland security and emergency management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: Provided, That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section eight, article five of said chapter,

or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: Provided, however, that if immediately upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of the mine provides notice to the local organization for emergency services as defined in W. Va. Code 15-8-5, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code, then, in order to comply with this subsection, the operator or mine foreman in charge of the mine shall also give notice to the mine and industrial accident emergency operations center at the statewide number identified in this subsection within fifteen (15) minutes of completing the telephone call to the local organization for emergency services or the appropriate local emergency telephone system operator, as applicable: Provided further that nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

50.3. The director shall impose, pursuant to rules authorized in this section, a civil administrative penalty of up to one hundred thousand dollars ($100,000) on the operator if it is determined that the operator or the mine foremen in charge of the mine failed to give immediate notice as required in this section. The director may later amend the assessment of a penalty under this section if so warranted: Provided, That the director may waive imposition of the civil administrative penalty at any time if he/she finds that the failure to give immediate notice was caused by circumstances wholly outside the control of the operator: Provided, however, that the assessment of the civil administrative penalty set forth in this subsection may be appealed to the board of appeals, and the board of appeals may, by a vote of two board of appeals members, reduce the amount of the civil administrative penalty upon a finding of mitigating circumstances warranting the imposition of a lesser amount.

50.4. If anyone is fatally injured, the inspector shall immediately go to the scene of the accident and make recommendations and render assistance as he/she may deem necessary for the future safety of the workers and investigate the cause of the explosion or accident and make a record. He/she shall preserve the record with the other records in his/her office. The cost of the investigation records shall be paid by OMHST. A copy shall be furnished to the operator and other interested parties. To enable him/her to make an investigation, he/she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

**§56-3-51. Preservation of Evidence Following Accident or Disaster.**

51.1. Following a mine accident resulting in the death of one (1) or more persons and following any mine disaster, the evidence surrounding such occurrence shall not be disturbed after recovery of bodies or injured persons until an investigation by OMHST has been completed.

**§56-3-52. Quarterly Report by Operator.**

52.1. The operator of every surface mine shall, on or before the end of each quarter, file with the director a report covering the preceding quarter on forms furnished by the director.

52.2. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined, on each permit issued by OMHST.

**§56-3-53. Emergency Medical Personnel.**

53.1. Emergency personnel in coal mines, emergency medical personnel.

53.1.1. The following emergency personnel and emergency medical personnel shall be employed

in every mine in the state.

53.1.1.a. At least one (1) emergency medical attendant as defined in W. Va. Code §22A-8-1 *et seq.*;

53.1.1.b. A paramedic as defined in title 64, series 48, section 2.38 of the West Virginia Code of State Rules; or

53.1.1.c. A physician assistant as defined in W. Va. Code § 30-3E-1.

53.1.2. Every operator shall be required to provide each of the emergency personnel and emergency medical personnel listed in the above subdivision for every seventy (70) employees for every seventy (70) employees or any part thereof who are engaged at one (1) time, in the extraction, production or preparation of coal.

53.1.3. The provisions of this section shall not apply to mines employing no more than ten (10) employees.

53.1.4. Emergency personnel and emergency medical personnel shall be employed at their regular duties at a central location convenient for quick response to emergencies, and further shall have available to them at all times such equipment as shall be prescribed by the director, in consultation with the commissioner of the bureau for public health.

**§56-3-54. First Aid Training of Coal Mine Employees.**

54.1. Each coal mine operator shall provide every new employee within six (6) months of the date of his/her employment with the opportunity for first aid training as prescribed by the director unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first aid training of not less than five (5) hours within each twenty-four (24) months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training.

**§56-3-55. Certificate of Competency and Qualification or Permit of Apprenticeship Required of all Surface and Underground Mines.**

55.1. Except as hereinafter provided, no person shall work or be employed for the purpose of performing normal duties as a surface or underground miner in any mine in this State unless he/she holds at the time he/she performs such duties a certificate of competency and qualification or a permit of apprenticeship issued under the provisions of chapter 22A of the code.

**§56-3-56. Permit of Apprenticeship - Surface Miner.**

56.1. A permit of apprenticeship - surface miner, shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in the surface mining industry, including, but not limited to general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, health and sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tipple safety, state and federal mining laws and such other subjects as may be required by the board of coal mine health and safety.

56.2. Each applicant for a permit of apprenticeship shall complete a program of education and training

of at least forty (40) hours, which program shall be determined by the board of coal mine health and safety and provided for and implemented by the director.

56.3. If a sufficient number of qualified applicants having successfully completed the state training provided by OMHST are not available, the operator may request approval from the director to conduct its own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided by the state.

**§56-3-57. Supervision of Apprentices.**

57.1. Each holder of a permit of apprenticeship shall be known as an apprentice.

57.2. Any miner holding a certificate of competency and qualification may have one (1) person working with said miner, and under his/her supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining.

57.3. Any mine foreman or assistant mine foreman may have three (3) persons working with him/her under his/her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining.

57.4. A mine foreman, assistant mine foreman supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five (5) apprentices under his/her supervision and direction, as apprentices for the purpose of learning and being instructed in the duties and calling of mining or where the operator is using a production section under program for training of apprentice miners, approved by the board of coal mine health and safety.

57.5. Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one (1) person who holds a certificate of competency and qualification.

57.6. In all cases, it shall be the duty of every miner operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such person in safe mining practices.

57.7. Each apprentice shall wear a red hat which identifies the apprentice as such while employed at or near a mine.

57.8. No person shall be employed as an apprentice for a period in excess of eight (8) months, except that in the event of illness or injury, time extensions shall be permitted as established by the director.

**§56-3-58. Certificate of Competency and Qualification - Underground or Surface Miner.**

58.1. A certificate of competency and qualification as an underground miner or as surface miner shall be issued by the director to any person who has at least six (6) months total experience as an apprentice and demonstrated his/her competence as a miner by successful completion of an examination given by the director or his/her representative in a manner and place to be determined by the board of coal mine health and safety.

58.2. All examinations shall be conducted in the English language and shall be of a practical nature, so as to determine the competency and qualifications of the applicant to engage in the mining of coal with reasonable safety to the applicant and his/her fellow employees:

58.3. Notice of the time and place of such examination shall be given to management at the mine, to the local union there if there is a local union, and notice shall also be posted at the place or places in the vicinity of the mine where notices to employees are ordinarily posted.

58.4. Examinations shall also be held at such times and places, and after such notice, as the board finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification.

**§56-3-59. Refusal to Issue Certificate; Appeal.**

59.1. If the director or the director's authorized representative finds that an applicant is not qualified and competent, the director or his/her authorized representative shall so notify the applicant not more than ten (10) days after the date of examination.

59.2. Any applicant aggrieved by an action of the director in failing or refusing to issue a certificate or qualification and competency may, within ten (10) days of notice of the action complained of, appeal to the director who shall promptly give the applicant a hearing and either affirm the action or take such action as should have been taken.

**§56-3-60. Limitations of Article.**

60.1. All persons possessing certificates of qualification issued by OMHST, entitling them to act as mine foreman fire bosses; or assistant mine foreman fire bosses; shall be eligible to engage at any time as miners in the mines of this state.

60.2. Supervisory and technically trained employees of the operator, whose work contributes only indirectly to mine operations, shall not be required to possess a miner's certificate.

60.3. Notwithstanding the provisions of chapter 22A of the code, every person working as a surface miner in this state on or before July 1, 1974, shall, upon application to the director, be issued a certificate of competency and qualification.

**§56-3-61. Violations; Penalties.**

61.1. Any person who knowingly works in or at a mine without a certificate issued under the provisions of this rule, any person who knowingly employs an uncertified miner to work in or at a coal mine in this state, or, any operator who fails to insure the supervision of miners holding a certificate of apprenticeship as provided for in this rule, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500).

**§56-3-62. Operators Filing of Plans - Oil and Gas Wells.**

62.1. Before a coal operator conducts surface or strip mining operations within two hundred (200) feet of any well, including the removal of coal and other material, the operator shall file with OMHST and furnish to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within two hundred (200) feet of the well, together with a notice, or a form furnished by OMHST, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well.

62.2. The coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum insurance coverage required by W. Va. Code §22A-2-75 and the rules promulgated thereto and thereunder.

62.3. Once these mining maps and plans are filed with OMHST, the coal operator may proceed with its surface or strip mining operations in the manner and as projected on such plans or maps, so long as such surface mining operations do not unreasonably interfere with access to, or operation of, the well or do not damage the well.

**§56-3-63. Annual Examination of Persons Using Approved Gas Detectors; Record of Examination; Maintenance of Approved Gas Detectors, Etc.**

63.1. No person shall be qualified for testing for methane and for oxygen deficiency unless such person has been trained and demonstrates to the satisfaction of an authorized representative of the director that the person is qualified to test for methane with an approved gas detector. Records of such examinations shall be kept by the operator and the director.

63.2. Persons whose duties require them to use an approved gas detector, that have been qualified by OMHST to test for methane and oxygen deficiency, shall be examined at least annually to their competence by a certified surface mine foreman, and a record that such examination was given, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to OMHST.

63.3. Persons whose duties require them to administer the annual examinations for methane and oxygen deficiency shall be examined annually by a qualified official from OMHST.

63.4. Each operator shall provide for the proper maintenance and care of the approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and before each shift, care shall be taken to insure that such lamp or other device is in a permissible condition.

63.5. Approved gas detectors shall be given proper maintenance and inspection before each working shift in a manner recommended by the manufacturing company and approved by the director.

63.6. Approved gas detectors shall be given proper maintenance and shall be tested in accordance with the manufacturer's recommendations before each working shift and calibrated every thirty (30) calendar days.

**TABLE 56-3**

| Transmitter Power (Watts) (except FM mobile) | | | Minimum Distance (Feet) |
|---|---|---|---|
| 5 | - | 25 | 100 |
| 25 | - | 50 | 150 |
| 50 | - | 100 | 220 |
| 100 | - | 250 | 350 |
| 250 | - | 500 | 450 |
| 500 | - | 1000 | 650 |
| 1000 | - | 2500 | 1000 |
| 2500 | - | 5000 | 1500 |
| 5000 | - | 10000 | 2200 |

| | | | |
|---|---|---|---|
| 10000 | - | 25000 | 3500 |
| 25000 | - | 50000 | 5000 |
| 50000 | - | 100000 | 7000 |

| Transmitter Power (Watts) (FM mobile) | | | Minimum Distance (Feet) |
|---|---|---|---|
| 1 | - | 10 | 5 |
| 10 | - | 30 | 10 |
| 30 | - | 60 | 15 |
| 60 | - | 250 | 30 |