WEST VIRGINIA SECRETARY OF STATE
KRIS WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Coal Mine Health And Safety TITLE-SERIES: 36-22

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

RULE NAME: Rule Governing No Act Permitted Endangering Security of Mine; Search for Intoxicants, Matches, Etc.

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

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 10/31/2026

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: John F Willems

ADDRESS: 1900 Kanawha Boulevard East, Building 1, Room W435

Charleston, WV 25305

EMAIL: jwillems@wvago.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:

Provide certain regulations that prevent miners from endangering the safety of a mine, including bringing intoxicants into a mine and being intoxicated in a mine.

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

Includes Kratom in the definition of intoxicant and provides for urine testing of Kratom

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Minimal economic impact may lead to minimal impact on tax revenues.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

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

Increase in safety of mines must be weighed against preventing some people who are intoxicated from working. Economic impact is estimated to be minimal.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

Economic impact is estimated to be minimal.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

John F Willems -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Title 36
Legislative Exempt Rule
Board of Coal Mine Health & Safety

Series 22
Rule Governing No Act Permitted Endangering Security of Mine; Search for Intoxicants, Matches, Etc.

§36-22-1. General.

1.1. Scope. -- Rule governing no act permitted endangering security of mine and search for intoxicants, matches, etc.

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

1.3. Filing Date. -- ~~January 11, 2021.~~

1.4. Effective Date. -- ~~February 11, 2021.~~

§36-22-2. Effect of Rule and Purpose of 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 W. Va. Code §§ 22A-1-1 et seq. relative to enforcement are applicable to the enforcement of this rule.

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

§36-22-3. Definitions.

3.1. All terms used in this rule, not defined herein, shall have the meanings set forth in W. Va. Code §§ 22A-1-2 et seq.

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

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

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

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

conducted. Searches of persons may be conducted in a mine or work area of a mine. If any person refuses to submit to a search, that person shall be required to leave such mine or work area of a mine until such time as a personal search in conducted.

4.4. No person shall at any time carry into any mine or work area of any mine any intoxicant or enter any mine or work area of any mine while under the influence of intoxicants. For the purpose of enforcement of this Section the word "intoxicant" shall mean alcoholic liquor as defined in W. Va. Code 60-1-5, or a controlled substance as defined in W. Va. Code 60A-1-101(e) not specifically prescribed by a physician who is fully aware of and has taken into account the job duties the person is expected to perform, or Kratom defined as a psychoactive substance composed of whole, crushed, or powdered dried leaves of the mitragyna speciosa tree, including any Kratom product that has been synthetically manipulated or chemically concentrated beyond the leaf's natural alkaloid profile.

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

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

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

4.5.3. Unexplained animated signs of intoxication or influence of drugs on the individual;

4.5.4. Other discernable signs of intoxication or influence of drugs on the individual.

4.5.5. A positive urine test for Kratom, defined by having a level of Kratom above 10 nanograms per milliliter.

4.6. Any miner who has been denied entry or removed from the mine pursuant to Section 4.5. of this rule shall be afforded the opportunity to receive a timely and appropriate medical examination to be provided by the operator. The operator shall afford the miner the opportunity for transportation to the medical facility where the examination will be performed. Such medical examination may include administration by a physician of tests prescribed and approved by the Department of Health of the State of West Virginia for the determination of a base of a controlled substance or alcohol pursuant to Chapter 17C, Article 5 of West Virginia Code. For determining whether an individual is under the influence, the provisions of 56 CSR 19 apply.

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