WEST VIRGINIA CODE CHAPTER 22A ARTICLE 2A

WV Legislature

§22A-2A-101. Use of diesel-powered equipment authorized.

Diesel-powered equipment for use in underground coal mines may only be approved, operated, and maintained in accordance with rules, requirements, and standards established pursuant to this article: *Provided*, That diesel-powered equipment may be moved from one mine, either in or out of the state, to another mine in the state and operated immediately, so long as the equipment is in compliance with the provisions of this article and the director is notified before the equipment is put in service.

WV Legislature

§22A-2A-102. Control of diesel safety and health hazards.

The purpose of this article is to reduce or eliminate the inherent hazards of electric-powered equipment in underground coal mines while recognizing that the introduction of an internal combustion engine into that environment presents a different set of safety and health risks for miners. The provisions of this article are intended to provide an integrated approach to the control of diesel safety and health hazards in underground coal mines.

WV Legislature

PART 2. DEFINITIONS.

§22A-2A-201. Applicability of definitions.

(a) For the purposes of this article, the words or phrases defined in this part have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

(b) When used in this article, the words and phrases defined in section two, article one of this chapter have the meaning ascribed to them in that section. Those definitions are applicable to this article unless a different meaning clearly appears from the context in which the word or phrase is used in this article.

WV Legislature

§22A-2A-202. Board defined.

"Board" means the Board of Coal Mine Health and Safety continued by section three, article six of this chapter.

WV Legislature

§22A-2A-203. Certificate of approval defined.

"Certificate of approval" means a formal document issued by MSHA stating that a complete assembly has met the requirements of part 36, title thirty of the code of federal regulations, 30 C.F.R. § 36.1, et seq., for mobile diesel-powered transportation equipment and authorizing the use and attachment of an official approval plate so indicating.

WV Legislature

§22A-2A-204. Commission defined.

"Commission" means the West Virginia Diesel Equipment Commission created under the provisions of section three hundred one of this article.

WV Legislature

§22A-2A-204a. Director defined.

"Director" means the Director of the Office of Miners' Health, Safety and Training established in section one, article one of this chapter.

WV Legislature

§22A-2A-205. Diesel fuel tank defined.

"Diesel fuel tank" means a closed metal vessel specifically designed for the storage or transport of diesel fuel.

WV Legislature

§22A-2A-206. Diesel fuel transportation unit defined.

"Diesel fuel transportation unit" means a self-propelled or portable wheeled vehicle used to transport a diesel fuel tank.

WV Legislature

§22A-2A-207. Diesel engine defined.

"Diesel engine" means any compression ignition internal combustion engine using the basic diesel cycle where combustion results from the spraying of fuel into air heated by compression.

WV Legislature

§22A-2A-208. Diesel power package defined.

"Diesel power package" means a diesel engine with an intake system, exhaust system and a safety shutdown system installed that meets the specific requirements for MSHA approval of diesel power packages intended for use in approved equipment in areas of underground coal mines where electric equipment is required to be permissible.

WV Legislature

§22A-2A-209. Exhaust emission defined.

"Exhaust emission" means any substance emitted to the atmosphere from the exhaust port of the combustion chamber of a diesel engine.

WV Legislature

§22A-2A-210. Exhaust emissions control and conditioning system defined.

"Exhaust emissions control and conditioning system" means a device or combination of devices that will collect and treat diesel exhaust emissions at the exhaust port of the engine and will reduce the volume of, or eliminate emissions of, diesel particulate matter, carbon monoxide and oxides of nitrogen in accordance with the requirements and standards of the commission established in accordance with the provisions of section four hundred three of this article.

WV Legislature

§22A-2A-211. MSHA defined.

“MSHA" means the Mine Safety and Health Administration of the United States Department of Labor.

WV Legislature

§22A-2A-212. Permanent underground diesel fuel storage facility defined.

"Permanent underground diesel fuel storage facility" means a facility designed and constructed to remain at one location for the storage or dispensing of diesel fuel, which does not move as mining progresses.

WV Legislature

§22A-2A-213. Safety can defined.

"Safety can" means a metal container intended for storage, transport or dispensing of diesel fuel, with a nominal capacity of five gallons, listed or approved by a nationally recognized independent testing laboratory.

WV Legislature

§22A-2A-214. Temporary underground diesel fuel storage area defined.

"Temporary underground diesel fuel storage area" means an area of a mine provided for the short-term storage of diesel fuel in a fuel transportation unit, which moves as mining progresses.

WV Legislature

§22A-2A-301. The West Virginia Diesel Equipment Commission abolished; transfer of duties and responsibilities; transfer of equipment and records; continuation of prior approvals of diesel equipment for use in underground coal mines; continuation of rules of the commission.

(a) The West Virginia Diesel Equipment Commission is hereby abolished. All duties and responsibilities heretofore imposed upon the commission are hereby imposed upon the Director of the Office of Miners' Health, Safety and Training.

(b) On the effective date of the reenactment of this section, all equipment and records necessary to effectuate the purposes of this article shall be transferred to the director.

(c) The rules of the commission in effect immediately prior to the effective date of the reenactment of this section shall remain in force and effect until promulgation of new or additional rules by the director pursuant to section three hundred eight of this article. To the extent the director finds that the commission rules in effect on the effective date of the reenactment of this section adequately fulfill any of the duties of the commission that are transferred to the director by the reenactment of any of the provisions of this article, such rules are deemed to be actions taken by the director to fulfill such duties.

(d) All approvals of diesel-powered equipment, diesel power packages or engines and exhaust emissions control and conditioning systems made by the commission and in effect prior to the effective date of this article shall remain in full force and effect.

WV Legislature

§22A-2A-302.

Repealed.

Acts, 2015 Reg. Sess., Ch. 52.

WV Legislature

§22A-2A-303.

Repealed.

Acts, 2015 Reg. Sess., Ch. 52.

WV Legislature

§22A-2A-304.

Repealed.

Acts, 2015 Reg. Sess., Ch. 52.

WV Legislature

§22A-2A-305.

Repealed.

Acts, 2015 Reg. Sess., Ch. 52.

WV Legislature

§22A-2A-306.

Repealed.

Acts, 2015 Reg. Sess., Ch. 52.

WV Legislature

§22A-2A-307.

Repealed.

Acts, 2015 Reg. Sess., Ch. 52.

WV Legislature

§22A-2A-308. Director's authority to promulgate legislative rules; continuation of rules adopted by the commission.

(a) The director has the power and authority to propose legislative rules to carry out and implement the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code. In proposing rules for legislative approval, the director shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines.

(b) All rules promulgated and adopted by the commission in effect prior to the effective date of this section shall remain in effect until changed or superseded by legislative rule enacted pursuant to subsection (a) of this section.

(c) The duties imposed upon the director in this article that were previously required to be performed by the adoption of rules by the commission and that were satisfied or fulfilled by rules adopted by the commission are deemed to be the acts of the director.

WV Legislature

§22A-2A-309. Director's authority to approve site-specific experimental testing prior to initial rules.

The director may approve limited site-specific requests for experimental and testing use of diesel-powered equipment in underground coal mines prior to promulgation of initial rules in accordance with subsections (b), (c), (d), (e), (f) and (g), section three hundred ten of this article.

WV Legislature

§22A-2A-310. Duties of director.

(a) It is the duty of the director to carry out and implement this article and to evaluate and adopt state-of-the-art technology and methods, reflected in engines and engine components, emission control equipment and procedures, which when applied to diesel-powered underground mining machinery, shall reasonably reduce or eliminate diesel exhaust emissions and enhance protections of the health and safety of miners. The technology and methods adopted by the director shall have been demonstrated to be reliable. In making a decision to adopt new technology and methods, the director shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines. Any state-of-the-art technology or methods adopted by the director shall not reduce or compromise the level of health and safety protection of miners.

(b) Upon application of a coal mine operator, the director shall consider site-specific requests for the use of diesel equipment in underground coal mines and for the use of alternative diesel-related health and safety technologies and methods. The director's action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon receipt of a site-specific application, the director shall conduct an investigation, which investigation shall include consultation with the mine operator and the authorized representatives of the miners at the mine. Authorized representatives of the miners shall include a mine health and safety committee elected by miners at the mine, a person or persons employed by an employee organization representing miners at the mine or a person or persons authorized as the representative or representatives of miners of the mine in accordance with MSHA regulations at 30 C. F. R. Pt. 40 (relating to representative of miners). Where there is no authorized representative of the miners, the director shall consult with a reasonable number of miners at the mine. Upon completion of the investigation, the director may approve the application for the site-specific request.

(1) Within one hundred eighty days of receipt of an application for use of alternative technologies or methods, the director shall complete its investigation. However, the director has an additional one hundred eighty days to complete investigations upon applications filed prior to the effective date of the reenactment of this section. The time period may be extended with the consent of the applicant.

(2) The director shall have thirty days upon completion of the investigation in which to render a final decision approving or rejecting the application.

(3) The director may not approve an application made under this section if, at the conclusion of the investigation, the director determines that the use of the alternative technology or method will reduce or compromise the level of health and safety protection of miners.

(4) The written approval of an application for the use of alternative technologies or methods

shall include the results of the director's investigation and describe the specific conditions of use for the alternative technology or method.

(5) The written decision to reject an application for the use of alternative technologies or methods shall include the results of the director's investigation and shall outline in detail the basis for the rejection.

(c) The director shall establish conditions for the use of diesel-powered equipment in shaft and slope construction operations at coal mines.

(d) The director shall have access to the services of the Board of Coal Mine Health and Safety necessary for the director to implement and carry out the provisions of this article. The board, at the request of the director, shall provide administrative support and assistance pursuant to section six, article six of this chapter to enable the director to carry out the duties imposed upon the director in this article.

(e) Any action taken by the commission, prior to the effective date of the reenactment of this section, or by the director to either approve or reject the use of an alternative technology or method, or establish conditions under subsection (c) of this section shall be final and binding and not subject to further review except where a decision by the commission, prior to the effective date of the reenactment of this section, or by the director may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission, prior to the effective date of the reenactment of this section, or by the director believes that the decision is an abuse of discretion or contrary to law, that party may file a petition for review with the circuit court of Kanawha County in accordance with the provisions of the administrative procedures act relating to judicial review of governmental determinations. The court, in finding that any decision made by the commission, prior to the effective date of the reenactment of this section, or by the director is an abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.

(f) Appropriations for the funding of the commission and to effectuate the purposes of this article shall be made to a budget account hereby established for that purpose in the General Revenue Fund. Expenditures from this fund are provided for in section six, article six of this chapter.

WV Legislature

PART 4. EXHAUST EMISSION REQUIREMENTS FOR DIESEL POWER PACKAGES.

§22A-2A-401. General provisions relating to requirements for exhaust emissions.

This part is intended to control the potential health hazards of diesel exhaust by requiring that diesel-powered machines be equipped with clean-burning engines, that exhaust emissions control and conditioning systems may be required on diesel engines as specified by the commission, that exhaust emissions be monitored and controlled and that standards be established for the allowable concentrations of exhaust emissions in a mine environment.

WV Legislature

§22A-2A-402. Approval of diesel power package or diesel engine.

Every diesel power package or diesel engine used in underground coal mining shall be approved by the director when it complies with applicable requirements, standards and procedures established by this article, and be certified or approved, as applicable, by MSHA and maintained in accordance with MSHA certification or approval.

WV Legislature

§22A-2A-403. Exhaust emissions control and conditioning systems.

(a) All exhaust emissions control and conditioning systems and their component devices for diesel-powered equipment for use in underground coal mines shall be approved by the director. Such approval requires compliance with applicable standards and procedures pursuant to this article for the use of the system or device in reducing or eliminating diesel particulate matter, carbon monoxide and oxides of nitrogen.

All exhaust emissions control and conditioning systems must undergo an initial series of laboratory tests, using test equipment requirements and standard procedures approved by the director for testing for gaseous and particulate emissions. The director shall compile a list of acceptable third-party laboratories where testing is performed competently and reliable results are produced.

(b) Requirements and standards for exhaust emissions control and conditioning systems include, but are not limited to, the following:

(1) A minimum standard, stated as an average percentage, for the reduction of diesel particulate matter emissions by a diesel particulate matter filter or other comparably effective emissions control device;

(2) A minimum standard, stated in parts per million, for the reduction of emissions of undiluted carbon monoxide, using an oxidation catalyst or other gaseous emissions control device;

(3) A minimum standard, stated in parts per million, for the reduction of emissions of oxides of nitrogen, using advanced control technology such as catalytic control technology or other comparably effective control methods; and

(4) Any additional requirements established by the rules of the commission prior to the enactment of this section, as may be supplemented or amended by legislative rules promulgated by the director or MSHA regulations relating to requirements for permissible mobile diesel-powered transportation equipment set forth in part 36, title thirty of the code of federal regulations, 30 C. F. R. §36.1, et seq.

WV Legislature

§22A-2A-404. Emissions monitoring and control.

The director shall establish procedures for monitoring and controlling emissions from diesel-powered equipment. The procedures shall include, but not be limited to, monitoring and controlling activities to be performed by a qualified person.

WV Legislature

§22A-2A-405. Exhaust gas monitoring and control.

(a) For monitoring and controlling exhaust gases, the director shall establish the maximum allowable ambient concentration of exhaust gases in the mine atmosphere. Standards for exhaust gases, stated in parts per million, shall be established for carbon monoxide and oxides of nitrogen. The rules shall establish the location in the mine at which the concentration of these exhaust gases is to be measured, the frequency at which measurements are to be made, and requirements prescribing the sampling instruments to be used in the measurement of exhaust gases.

(b) The director shall establish the concentration of exhaust gas, stated as a percentage of an exposure limit, that when present will require changes to be made in the use of diesel-powered equipment or the methods of mine ventilation, or will require other modifications in the mining process.

(c) The director shall provide for the remedial action to be taken if the concentration of any of the gases listed in subsection (a) of this section exceeds the exposure limit.

(d) In addition to the other maintenance requirements required by this article, the director shall establish requirements provide for service, maintenance and tests which are specific to an engine's fuel delivery system, timing or exhaust emissions control and conditioning system.

WV Legislature

Part 5. Ventilation.

§22A-2A-501. Ventilation.

(a) The director shall establish values to be maintained for the minimum quantities of ventilating air where diesel-powered equipment is operated. The purpose of these rules is to ensure that necessary minimum ventilating air quantity is provided where diesel-powered equipment is operated.

(b) The director shall require that each specific model of diesel-powered equipment shall be approved before it is taken underground. Each diesel engine shall have an assigned MSHA approval number securely attached to the engine with the information required by 30 C. F. R. §§7.90 and 7.105, the approval plate shall also specify the minimum ventilating air quantity required by the director for the specific piece of diesel-powered equipment. The minimum ventilating air quantity shall be determined by the director based on the amount of air necessary at all times to maintain the exhaust emissions at levels not exceeding the exposure limits established pursuant to section four hundred six of this article.

(c) The minimum quantities of air in any split where any individual unit of diesel-powered equipment is being operated shall be at least that specified on the approval plate for that equipment. Air quantity measurements to determine compliance with this requirement shall be made at the individual unit of diesel-powered equipment.

(d) The director shall establish the minimum quantities of air required in any split when multiple units are operated. Air quantity measurements to determine compliance with this requirement shall be made at the most downwind unit of diesel-powered equipment that is being operated in that air split.

(e) Minimum quantities of air in any split where any diesel-powered equipment is operated shall not be less than the minimum air quantities established pursuant to subsections (a) and (b) of this section and shall be specified in the mine diesel ventilation plan.

WV Legislature

Part 6. Fuel.

§22A-2A-601. Specifications for fuel.

(a) The director shall establish standards for fuel to be used in diesel-powered equipment in underground coal mines. A purpose of these standards is to require the use of low volatile fuels that will lower diesel engine gaseous and particulate emissions and will reduce equipment maintenance by limiting the amount of sulfur in the fuel. Another purpose of the standards for fuel is to reduce the risk of fire in underground mines by establishing a minimum flash point for the diesel fuel used.

(b) Each coal mine using diesel equipment underground shall establish a quality control plan for assuring that the diesel fuel used complies with the standards established pursuant to this section. The director shall also establish a procedure under which each mine operator will provide evidence that the diesel fuel used in diesel-powered equipment underground meets the standards for fuel established by the commission.

WV Legislature

§22A-2A-602. Fuel storage facilities.

(a) The director shall establish requirements for the safe storage of diesel fuel underground so as to minimize the risks associated with fire hazards in areas where diesel fuel is stored.

(b) (1) The director shall either provide:

(A) That all stationary underground diesel fuel tanks are prohibited; or

(B) That a stationary underground diesel fuel tank may only be authorized through a petitioning process that permits a stationary underground diesel fuel tank to be located in a permanent underground diesel fuel storage facility, on a site-specific basis. Stationary underground diesel fuel tanks may not be located in temporary underground diesel fuel storage areas.

(c) The director shall establish requirements for the transportation and storage of diesel fuel in diesel fuel tanks and safety cans.

(d) The director shall establish limits on the total amount of diesel fuel that may be stored in each permanent underground diesel fuel storage facility and in each temporary underground diesel fuel storage area.

WV Legislature

§22A-2A-603. Dispensing of diesel fuel.

The director shall establish requirements governing the refueling of diesel-powered equipment which shall, at a minimum, comply with the provisions of part 75 of the code of federal regulations dealing with the dispensing of diesel fuel, set forth in 30 C. F. R. §75.1905, effective April 25, 1997.

WV Legislature

§22A-2A-604. Location of fueling.

(a) Fueling of diesel-powered equipment is not to be conducted in the intake escapeways unless the mine design and entry configuration make it necessary. For those cases where fueling in the intake escapeways is necessary, the director shall establish a procedure whereby the mine operator shall submit a plan for approval, outlining the special safety precautions that will be taken to insure the protection of miners. The plan shall specify a fixed location where fueling will be conducted in the intake escapeway and all other safety precautions that will be taken, which shall include an examination of the area for spillage or fire by a qualified person.

(b) At least one person, specially trained in the cleanup and disposal of diesel fuel spills, shall be on duty at the mine when diesel-powered equipment or mobile fuel transportation equipment is being used or when any fueling of diesel-powered equipment is being conducted.

WV Legislature

PART 7. FIRE SUPPRESSION.

§22A-2A-701. Fire suppression systems for diesel-powered equipment and fuel transportation units.

Rules of the commission governing fire suppression systems for diesel-powered equipment and fuel transportation units shall, at a minimum, comply with the provisions of part 75 of the code of federal regulations dealing with fire suppression systems for diesel-powered equipment and fuel transportation units, set forth in 30 C.F.R. §75.1911, effective April 25, 1997.

WV Legislature

§22A-2A-702. Fire suppression for storage areas.

Rules of the commission governing fire suppression systems for permanent underground diesel fuel storage facilities shall, at a minimum, comply with the provisions of part 75 of the code of federal regulations dealing with fire suppression systems for permanent underground diesel fuel storage facilities, set forth in 30 C.F.R. §75.1912, effective April 25,1997.

WV Legislature

§22A-2A-703. Use of certain starting aids regulated or prohibited.

Rules of the commission shall regulate or prohibit the use of volatile or chemical starting aids.

WV Legislature

§22A-2A-704. Fire and safety training.

(a) Rules of the commission shall provide for all underground employees at the mine to receive special instruction related to fighting fires involving diesel fuel. This training may be included in annual refresher training under MSHA regulations set forth in 30 C.F.R. Pt. 48 (relating to training and retraining of miners), or included in the fire drills required under MSHA regulations set forth in 30 C.F.R. §75.1101.23 (relating to program of instruction; location and use of fire-fighting equipment; location of escapeways, exits and routes of travel; evacuation procedures; fire drills).

(b) Rules of the commission shall provide for all miners to be trained in precautions for safe and healthful handling and disposal of diesel-powered equipment filters.

WV Legislature

PART 8. MAINTENANCE.

§22A-2A-801. Maintenance of diesel-powered equipment.

(a) Rules of the commission shall require diesel-powered equipment to be maintained in an approved and safe condition or removed from service. Failure of the mine operator to comply with the maintenance requirements established by the board may result in revocation of the commission's approval of the diesel-powered equipment. The commission shall establish procedures for appropriate notification to be given to the mine operator, requiring the submission, evaluation and implementation of a plan to achieve and maintain compliance.

(b) Rules of the commission shall provide that service and maintenance of diesel-powered equipment shall be performed according to a specified routine maintenance schedule, on-board performance and maintenance diagnostics readings, emissions test results and component manufacturer's recommendations.

WV Legislature

§22A-2A-802. Training and qualification of persons working on diesel-powered equipment.

(a) Rules of the commission shall require that all maintenance, repairs, examinations and tests on diesel-powered equipment shall be performed by a person who, at a minimum, is trained and qualified in accordance with the provisions of part 75 of the code of federal regulations dealing with the training and qualification of persons working on diesel powered equipment, as set forth in 30 C.F.R. §75.1915, effective April 25, 1997.

(b) Rules of the commission shall require that the training and qualification program and record made available for inspection pursuant to the provisions of 30 C.F.R. §75.1915(c) be made available to the commission or its authorized representative.

WV Legislature

§22A-2A-803. Examination of equipment by operator.

Rules of the commission shall require that mobile diesel-powered equipment that is to be used during a shift be visually examined by the equipment operator before being placed in operation, and that equipment defects affecting safety be reported promptly to the mine operator. Rules of the commission shall specify the inspection procedures to be followed and the operating conditions under which the examination is to be made. Rules of the commission shall establish record-keeping requirements for such visual examinations.

WV Legislature

§22A-2A-804. Scheduled maintenance.

Rules of the commission shall establish the intervals at which a qualified person will evaluate and interpret the results of tests and examinations, perform maintenance and make all necessary adjustments or repairs or remove the diesel-powered equipment from service. The commission shall establish record-keeping requirements for persons performing maintenance.

WV Legislature

§22A-2A-805. On-board performance and maintenance diagnostics systems.

Rules of the commission shall require that on-board engine performance and maintenance diagnostics systems shall be capable of continuously monitoring and giving read-outs. The diagnostics system shall identify levels that exceed the engine or component manufacturer's recommendation, standards established by the commission or the applicable MSHA requirements.

WV Legislature

§22A-2A-806. Diagnostic testing.

(a) The commission shall require periodic examination and testing of all diesel-powered equipment by a person trained and qualified as required by rules of the commission.

(b) Rules of the commission shall prescribe the scope of the examination and testing and the procedures to be followed, and the rules requiring testing of undiluted exhaust emissions may exceed the written standard operating procedures for such testing and evaluation required by part 75 of the code of federal regulations, set forth in 30 C.F.R. §75.1915(g).

WV Legislature

§22A-2A-807. Records.

(a) Rules of the commission shall provide:

(1) That a record be made of all tests, examinations and maintenance and repairs of diesel-powered equipment;

(2) That the person performing the test, examination, maintenance or repair certify by date, time, engine hour reading and signature that the test, examination, maintenance or repair was made;

(3) That records of tests and examinations include the specific results of such tests and examinations;

(4) That records of maintenance and repairs include a description of the work or service that was performed, and the results of any subsequently required emissions testing.

(b) Rules of the commission shall specify the persons who are required to countersign records of tests, examinations, maintenance and repairs.

(c) Rules of the commission shall establish procedures and time periods for the retention of records and their availability for inspection by the commission and by miners and their representatives.

WV Legislature

PART 9. TRAINING.

§22A-2A-901. Training and general requirements.

(a) Rules of the commission shall establish programs for training equipment operators and members of the mine health and safety committee. Training shall include, but not be limited to, the following:

(1) Fundamentals of the operation of a diesel engine;

(2) Federal and state regulations governing the use of diesel-powered equipment;

(3) The mine operator's rules for safe operation;

(4) Specific features of each piece of equipment; and

(5) Problem recognition.

(b) Required training shall include equipment specific, hands-on orientation given in an area of the mine where the equipment will be operated. This orientation shall be specific to the type and make of the diesel machine and shall be presented in small groups.

(c) Rules of the commission shall establish a certification process for qualifying equipment operators to operate a specific type of diesel-powered equipment. An operator may be qualified to operate more than one type of equipment by completing additional equipment-specific training covering differences specific to each additional type of equipment.

(d) Rules of the commission shall require refresher training, separate from that required by MSHA regulations at 30 C.F.R. Pt. 48 (relating to the training and retraining of miners), and annual recertification.

WV Legislature

§22A-2A-1001. Existing state rules to be revised.

Unless otherwise revised, by August 31, 2018, the director shall revise state rules promulgated pursuant to the authority of this chapter as follows:

(1) To reflect the abolishment of the West Virginia Diesel Equipment Commission and transfer of duties and responsibilities to the director, pursuant to §22A-2A-301 of this code;

(2) To reflect that a mine operator shall be permitted to replace a filter or catalyst of the same make and model without contacting the Office of Miners' Health, Safety, and Training;

(3) To reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing, or exhaust emissions control and conditioning systems;

(4) To permit a mine operator to dispose of used intake air filters, exhaust diesel particulate matter filters, and engine oil filters in their original containers or other suitable enclosed containers and to remove them from the underground mine to the surface no less than once in a 24-hour period;

(5) To require that records of emissions tests, 200-hour maintenance tests, and repairs shall be countersigned once each week by the certified mine electrician or mine foreman, that scheduled maintenance and an independent analysis of engine oil occur at 200 hours of engine operation, and that diagnostic testing of engine operation occur at 200 hours;

(6) To remove the requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab;

(7) To modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every 30 seconds for 90 seconds;

(8) To modify the alternative condition by which equipment fails under 196 C. S. R. §1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline;

(9) To remove the requirement for eight hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations; and

(10) To permit the use of diesel generators in underground mines so long as the generator is vented directly to the return and at least one person is present within sight and sound of the generator: Provided, That all current state rules and statutes relating to the use of diesel-powered equipment and electricity generation remain in force.

WV Legislature