WEST VIRGINIA CODE CHAPTER 22A

WV Legislature

§22A-1-1. Continuation of the office of miners' health, safety and training; purpose.

(a) The office of miners' health, safety and training is continued and is a separate office within the Department of Commerce, labor and environmental resources. The office shall be administered, in accordance with the provisions of this article, under the supervision and direction of the director of the office of miners' health, safety and training.

(b) The division of health, safety and training shall have as its purpose the supervision of the execution and enforcement of the provisions of this chapter and, in carrying out the aforesaid purposes, it shall give prime consideration to the protection of the safety and health of persons employed within or at the mines of this state. In addition, the division shall, consistent with the aforesaid prime consideration, protect and preserve mining property and property used in connection therewith.

WV Legislature

§22A-1-2. Definitions.

Unless the context in which used clearly requires a different meaning, the following definitions apply to this chapter:

(a) General. —

(1) Accident: The term "accident" means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

(2) Agent: The term "agent" means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

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

(4) Face equipment: The term "face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated inby the last open crosscut in an entry or room.

(5) Imminent danger: The term "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

(6) Mine: The term "mine" includes the shafts, slopes, drifts, or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

(7) Miner: The term "miner" means any individual working in a coal mine.

(8) Operator: The term "operator" means any firm, corporation, partnership, or individual operating any coal mine, or part thereof, or engaged in the construction of any facility associated with a coal mine.

(9) Permissible: The term "permissible" means any equipment, device, or explosive that has been approved as permissible by the federal Mine Safety and Health Administration and/or the United States Bureau of Mines and meets all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by that agency or the bureau.

(10) Person: The term "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization.

WV Legislature

(11) Work of preparing the coal: The term "work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal or lignite and such other work of preparing such coal as is usually done by the operator of the coal mine.

(b) Office of Miners' Health, Safety and Training. —

(1) Board of appeals: The term "board of appeals" means as provided for in §22A-5-*1 et seq*. of this code.

(2) Director: The term "director" means the Director of the Office of Miners' Health, Safety, and Training provided for in §22A-1-3 of this code.

(3) Mine inspector: The term "mine inspector" means a state mine inspector provided for in §22A-1-8 of this code.

(4) Office: The term "office" means, when referring to a specific office, the Office of Miners' Health, Safety, and Training provided for in this article. The term "office", when used generically, includes any office, board, agency, unit, organizational entity, or component thereof.

(c) Mine areas. —

(1) Abandoned workings: The term "abandoned 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.

(2) Active workings: The term "active workings" means all places in a mine that are ventilated and inspected regularly.

(3) Drift: The term "drift" means a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

(4) Excavations and workings: The term "excavations and workings" means any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms, and working places, whether abandoned or in use.

(5) Inactive workings: The term "inactive workings" includes all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

(6) Mechanical working section: The term "mechanical working section" means an area of a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working places that are generally contiguous; and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

WV Legislature

(7) Panel: The term “panel” means workings that are or have been developed off of submain entries which do not exceed 3,000 feet in length.

(8) Return air: The term “return air” means a volume of air that has passed through and ventilated all the working places in a mine section.

(9) Shaft: The term “shaft” means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals and material, in connection with the mining of coal.

(10) Slope: The term “slope” means a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(11) Working face: The term “working face” means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(12) Working place: The term “working place” means the area of a coal mine inby the last open crosscut.

(13) Working section: The term “working section” means all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term “working unit” means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

(d) Mine personnel. —

(1) 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.

(2) Certified electrician: The term “certified electrician” means any person who is qualified as a mine electrician and who has passed an examination given by the office, or has at least three 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 the office or any person who is qualified as a mine electrician in any state that recognizes certified electricians licensed in West Virginia.

(3) 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.

WV Legislature

(4) Interested persons: The term “interested persons” includes the operator, members of any mine safety committee at the mine affected and other duly authorized representatives of the mine workers and the office.

(5) Mine foreman: The term “mine foreman” means the certified person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

(6) Qualified person: The term “qualified person” means a person who has completed an examination and is considered qualified on record by the office.

(7) Shot firer: The term “shot firer” means any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his or her knowledge of mine gases, and approved gas detecting devices by examination and certification given him or her by the office.

(8) Superintendent: The term “superintendent” means the person who has, on behalf of the operator, immediate supervision of one or more mines.

(9) 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 or employees and who is acting pursuant to such specific designation and instructions.

(e) Electrical. —

(1) 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.

(2) Borehole cable: The term “borehole cable” means a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mine.

(3) Branch circuit: The term “branch circuit” means any circuit, alternating current or direct current, connected to and leading from the main power lines.

(4) Cable: The term “cable” means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

(5) Circuit breaker: The term “circuit breaker” means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(6) Delta connected: The term “delta connected” means a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

(7) Effectively grounded: The term “effectively grounded” is an expression which means

WV Legislature

grounded through a grounding connection of sufficiently low impedance (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.

(8) Flame-resistant cable, portable: The term “flame-resistant cable, portable” means a portable flame-resistant cable that has passed the flame tests of the federal Mine Safety and Health Administration.

(9) 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 of any equipment, device or wiring system with a mine track or other effective grounding medium.

(10) Grounded (earthed): The term “grounded (earthed)” means that the system, circuit, or apparatus referred to is provided with a ground.

(11) High voltage: The term “high voltage” means voltages of more than 1,000 volts.

(12) Lightning arrestor: The term “lightning arrestor” means a protective device for limiting surge voltage on equipment by discharging or bypassing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

(13) Low voltage: The term “low voltage” means up to and including 660 volts.

(14) Medium voltage: The term “medium voltage” means voltages from 661 to 1,000 volts.

(15) 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 or more low-voltage power circuits are taken.

(16) Neutral (derived): The term “neutral (derived)” means a neutral point or connection established by the addition of a “zig-zag” or grounding transformer to a normally underground power system.

(17) Neutral point: The term “neutral point” means the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.

(18) 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.

(19) Wye-connected: The term “wye-connected” means a power system connection in which one end of each phase windings or transformers or a.c. generators are connected together to

WV Legislature

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.

(20) Zig-zag transformer (grounding transformer): The term “zig-zag transformer (grounding transformer)” means a transformer intended primarily to provide a neutral point for grounding purposes.

WV Legislature

§22A-1-3. Director of the Office of Miners' Health, Safety and Training.

(a) The Director of the Office of Miners' Health, Safety and Training is responsible for surface and underground safety inspections of coal mines and the administration of the Office of Miners' Health, Safety and Training.

(b) The director is the chief executive officer of the office. Subject to provisions of law, he or she shall organize the office into those offices, sections, agencies and other units of activity found by the director to be desirable for the orderly, efficient and economical administration of the office. The director may appoint any other employees needed for the operation of the office and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(c) 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.

(d) The Director of the Office of Miners' Health, Safety and Training shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years' education or training in underground mining safety, and three years' experience in underground mining and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. Special reference shall be given to his or her administrative experience and ability. The director shall devote all of his or her time to the duties of the position of director and shall not be directly interested financially in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or any other state. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee: Provided, That, in the event of a vacancy in the position of director, the Governor may fill the director's position on an interim basis by appointing an acting director to exercise the powers of the director. The acting director shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years' education, training or experience in underground coal mining safety and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the acting director will be responsible during his or her interim service in the office of director. The interim service appointment cannot last for more than one year, after which a permanent director must be appointed.

(e) The director shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of his or her official duties, the director shall take the oath required of public officials prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the

WV Legislature

Governor, in the penal sum of $10,000. The executed oath and bond shall be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from office funds.

WV Legislature

§22A-1-4. Powers and duties of the Director of the Office of Miners' Health, Safety and Training.

(a) The Director of the Office of Miners' Health, Safety and Training is hereby empowered and it is his or her duty to administer and enforce the provisions of this chapter 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.

(b) The Director of the Office of Miners' Health, Safety and Training has full charge of the division. The director has the power and duty to:

(1) Supervise and direct the execution and enforcement of the provisions of this article.

(2) Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out his or her responsibilities and fix their compensation, except as otherwise provided in this article.

(3) Assign mine inspectors to divisions or districts in accordance with the provisions of section eight of this article as may be necessary to fully and effectively carry out the provisions of this law, 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.

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

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

(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 article.

(7) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(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

WV Legislature

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.

(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 by this chapter. Any witness so called or subpoenaed shall receive $40 per diem and shall receive mileage at the rate of $.15 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.

(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 or her representative.

(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 article for violation of the substance abuse provisions of article one-a of this chapter with other states that subject similar persons to disciplinary action for violation of a substance abuse policy.

(12) The director shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code, 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 section one, article one-a of this chapter for violation of an employer's substance abuse policy.

(13) Perform all other duties which are expressly imposed upon him or her by the provisions of this chapter.

(14) Impose reasonable fees upon applicants taking tests administered pursuant to the requirements of this chapter.

(15) Impose reasonable fees for the issuance of certifications required under this chapter.

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

(17) Make all records of the office open for inspection of interested persons and the public.

WV Legislature

(c) The Director of the Office of Miners' Health, Safety and Training, or his or 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 section four, article thirteen-bb, chapter eleven of this code. At the expiration of the time period, the director shall publish the list of approved innovative mine safety technologies as provided in section four, article thirteen-bb, chapter eleven of this code.

WV Legislature

§22A-1-5. Offices continued in the Office of Miners' Health, Safety and Training.

(a) There are hereby continued in the Office of Miners' Health, Safety and Training the following offices:

(1) The Board of Coal Mine Health and Safety established pursuant to article six of this chapter;

(2) The Coal Mine Safety and Technical Review Committee established pursuant to article six of this chapter; and

(3) The Board of Appeals provided for pursuant to the provisions of article five of this chapter.

(b) Nothing in this article may authorize the director or the secretary of the Department of Commerce, Labor and Environmental resources to alter, discontinue or abolish any office, board or commission or the functions thereof, which are established by status.

WV Legislature

§22A-1-6. Director's authority to promulgate rules.

The director has the power and authority to propose or promulgate rules to organize the office and to carry out and implement the provisions of this chapter relating to health and safety inspections and enforcement. All rules in effect on the effective date of this article which pertain to the provisions of this chapter as they relate to health and safety inspection and enforcement shall remain in effect until changed or superseded by the director, or as appropriate. Except when specifically exempted by the provisions of this chapter, all rules or changes thereto shall be proposed or promulgated by the director in accordance with the provisions of chapter twenty-nine-a of this code.

WV Legislature

§22A-1-7. Savings provisions.

All orders, determinations, rules, permits, grants, contracts, certificates, licenses and privileges which have been issued, made, granted, or allowed to become effective by the Governor, any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which were transferred from the Division of Energy to the Secretary of the Department of Commerce, Labor and Environmental Resources, to the director, or to the office, and which were in effect on the date such transfer occurred, shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked in accordance with law by the Governor, the secretary, the director, or other authorized official, a court of competent jurisdiction or by operation of law.

WV Legislature

§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.

(a) Notwithstanding any other provisions of this code to the contrary, mine inspectors shall be selected, serve, and be removed as provided in this article.

(1) The director shall divide the state into a sufficient number of regions, so as to equalize, as far as practical, the work of each inspector. The director may assign inspectors to districts and may designate and assign not more than one inspector-at-large and one assistant inspector-at-large to each region. The director may designate the places of abode of inspectors at points convenient to the mines of their respective districts and, in the case of inspectors-at-large and assistant inspectors-at-large, their respective regions.

(2) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

Each original appointment shall be made by the director for a probationary period of not more than one year.

(3) The director shall prepare a register of qualified eligible candidates for mine inspector. Candidates shall be selected from the register. In the event the number of qualified eligible candidates on the register is three or fewer, the director shall undertake efforts to develop a new register containing more than three qualified eligible candidates.

(4) The director shall make each appointment from among the three candidates on the register having the highest grades. The director may, for good cause and at least 30 days prior to making an appointment, strike any candidate from the register. The director shall immediately notify the candidate in writing of their removal. Upon his or her written request, the candidate can be placed back upon the register. Such a request may not be unreasonably denied by the director.

(5) The name of any candidate passed over for appointment for three years shall be deleted from the register.

(b) After having served for a probationary period of one year to the satisfaction of the director, a mine inspector is eligible for permanent tenure, subject to dismissal only for cause in accordance with the applicable provisions of §22A-1-12 of this code. A mine inspector, while in office, may not be directly or indirectly interested as an employee, owner, lessor, operator, stockholder, superintendent, or engineer of any coal mine. Before entering upon the discharge of the duties as a mine inspector, he or she shall take the oath of office

WV Legislature

prescribed by Section 5, Article IV of the Constitution of West Virginia, a certificate of which oath shall be filed in the office of the Secretary of State.

(c) The inspectors, inspectors-at-large, and assistant inspectors-at-large, together with the director, shall make all inspections authorized by this article and §22A-2-1 *et seq*. of this code and shall perform such other duties as are imposed upon mine inspectors by this chapter and by any applicable legislative rules.

WV Legislature

§22A-1-9. Mine safety instructors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to mine safety instructors.

(a) The office shall employ a sufficient number of mine safety instructors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a mine safety instructor, the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been in mines in this state: *Provided*, That graduation from any accredited college of mining engineering may be considered equivalent to two years of practical experience;

(3) Have had practical experience with dangerous gases found in coal mines, and have good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws and rules; and

(4) Hold a West Virginia foreman-fireboss certification; or have at least three years of experience as an actual working team member of a mine rescue team; or have at least three years of experience as a member of a first aid team or emergency medical technician team; or have had at least three years of experience as the safety director; or have had at least three years of experience as an active member of a mine safety committee.

For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced miner prior to actually performing such duties.

(c) In order to qualify for appointment as a mine safety instructor, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character, and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by a mine safety instructor and are subject to the approval of the director.

(1) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

WV Legislature

(2) If the director finds after investigation and examination that an applicant: (A) Is eligible for appointment; and (B) has passed each required examination with a grade of at least 75 percent or an overall combined average score of 80 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Mine safety instructors shall be paid an annual salary of not less than $37,400, which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. Mine safety instructors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to mine safety instructors.

WV Legislature

§22A-1-10. Mine inspectors may be appointed to fill vacancy in division.

Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within the office, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position by the director.

WV Legislature

§22A-1-10a. Salary increase for state mine inspectors and other inspectors.

State mine inspectors, including electrical inspectors, underground mine inspectors, surface mine inspectors, and any other class of inspector described in this chapter, shall receive a $5,000 salary increase on the effective date of this section.

WV Legislature

§22A-1-11. Employment of electrical inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to electrical inspectors.

(a) The office shall employ a sufficient number of electrical inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as an electrical inspector, the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits; and

(2) Have had five years of practical electrical experience in coal mines, at least two of which were in mines in this state, or a degree in electrical engineering from an accredited electrical engineering school and three years of practical electrical experience in underground coal mining. For the purposes of this section, practical electrical experience means the performance of duties requiring a person to be a certified electrician, as that term is defined in §22A-1-2(d)(2) of this code, prior to actually performing such duties.

(c) (1) In order to qualify for appointment as an electrical inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by an electrical inspector and are subject to approval of the director.

(2) If the director finds after investigation and examination that an applicant: (A) Is eligible for appointment; and (B) has passed the required examinations with an average grade of at least 90 percent, the director shall add the applicant’s name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(3) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(d) Electrical inspectors shall be paid an annual salary of not less than $42,828, which shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. Electrical inspectors shall devote all of their time to the duties of the office.

WV Legislature

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualifications, appointment, tenure and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to mine electrical inspectors.

WV Legislature

§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications; examinations; salary and expenses; reinstatement; removal.

(a) The office shall employ as many underground mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a mine inspector the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation, and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been in mines of this state: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience;

(3) Have had practical experience with dangerous gases found in coal mines; and

(4) Have good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices, and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced underground miner prior to actually performing such duties.

(c) In order to qualify for appointment as an underground mine inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character, and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by an underground mine inspector and are subject to the approval of the director. If the director finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed each required examination, with a grade of at least 75 percent or an overall combined average score of 80 percent, the director shall add the applicant’s name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(d) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(1) Any such appointment; and

(2) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(e) Underground mine inspectors shall be paid an annual salary of not less than $38,160;

WVLegislature

assistant inspectors-at-large, not less than $44,448; and inspectors-at-large, not less than $46,104, each of which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. In accordance with established rules of the state's Travel Management Office, underground mine inspectors shall also be allowed and paid expenses necessarily incident to the performance of their official duties. Reimbursement for expenses may be made only upon the timely submission of a properly itemized expense account settlement completed by the underground mine inspector, approved and countersigned by the director, or his or her designee, verifying that the expenses were actually incurred in the performance of official duties. Underground mine inspectors shall devote all of their time to the duties of the office and shall be afforded compensatory time or compensation of at least the regular rate for all time in excess of 40 hours per week.

(f) (1) An underground mine inspector, after receiving 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 similarly good cause.

(2) The director may remove an underground mine inspector at any time for the reasons set forth in §22A-1-12(e)(1) of this code. Upon such removal, the inspector shall be provided a written notice of removal, describing any causes for removal and setting forth with particularity the facts on which the removal was based. Not less than 20 reputable citizens, who are operators or employees in mines in this state, may petition the director for the removal of an underground mine inspector. If the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the alleged facts to be made. If, after the investigation, the director finds that there is substantial evidence that warrants removal of the inspector, the director shall remove the inspector and provide him or her a written notice of removal, describing any causes for removal and setting forth with particularity the evidence found in the investigation. In all cases of removal, the inspector may request, in writing, a hearing before the Board of Coal Mine Health and Safety within 15 days of receipt of the notice of removal. The director shall provide the inspector written notice of the right to a hearing in the notice of removal.

(3) If the inspector requests a hearing in writing, the board shall promptly schedule a hearing and provide notice to the inspector of the time and place for such hearing, at which time and place the board shall hear all evidence offered in support of the removal and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at the hearing. A continuance may not be granted except for good cause shown. The administrator of the board, or in their absence a member of the board designated by the board, has the power to administer oaths and subpoena witnesses.

(4) If any removed mine inspector requests a hearing and thereafter willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the basis that the testimony or answer might incriminate him or her or refuses

WV Legislature

to waive immunity from prosecution because of any relevant matter about which the inspector may be asked to testify, then the inspector shall forfeit his or her position.

(5) If the inspector fails to request a hearing in writing, or after requesting a hearing in writing and such hearing having been held, the board finds that the inspector should be removed based on a preponderance of the evidence, the board shall enter an order to that effect. Should the board find that the inspector should not have been removed, the inspector shall be reinstated. The decision of the board is final and is not subject to judicial review.

WV Legislature

§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.

(a) The office shall employ as many surface mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a surface mine inspector the applicant shall:

(1) Be a citizen of West Virginia, in good health, not less than 24 years of age, of good character and reputation and of temperate habits;

(2) Have had at least five years of practical experience in coal mines, at least two of which have been on surface mines in this state: *Provided*, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; and

(3) Have good theoretical and practical knowledge of surface mines, surface mining methods, sound safety practices, and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced surface miner prior to actually performing the duties.

(c) In order to qualify for appointment as a surface mine inspector, an eligible applicant shall submit to written, oral, and practical examinations administered by the director and furnish evidence of good health, character and other facts establishing eligibility as the director may require. The examinations shall relate to the duties to be performed by a surface mine inspector and are subject to the approval of the director.

(1) If the director finds after investigation and examination that an applicant:: (A) Is eligible for appointment; and (B) has passed each required examination with a grade of at least 75 percent, or an overall combined average score of 80 percent, the director shall add the applicant's name and grades to the register of qualified eligible candidates. The director shall then appoint one of the candidates from the three having the highest grades.

(2) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(A) Any such appointment; and

(B) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

www.legislature

(d) Surface mine inspectors shall be paid an annual salary of not less than $37,332, which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. Surface mine inspectors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to surface mine inspectors.

WV Legislature

§22A-1-13a. Study of mine inspector qualification, compensation, training and inspection programs.

The director is directed to conduct a study of the minimum qualifications for mine inspectors, the minimum compensation paid to mine inspectors and the overall training program established for mine inspectors. The study shall identify ways to attract and retain new, qualified mine inspectors to minimize the effect of the anticipated retirement of a significant number of current inspectors. Additionally, the study shall examine ways to improve the training programs for mine inspectors by focusing on technological advances in coal mining techniques, best practices used in modern coal mines and proper mine ventilation. Further, the director shall perform an assessment of the resources and qualification of inspectors necessary to approve mine ventilation plans. Finally, the study shall make recommendations on how to reassess mine inspection priorities to ensure that mines having a history of numerous safety violations are inspected more frequently than mines having a history of comparatively few safety violations while preserving the minimum number of inspections required by the code. By December 31, 2012, the Office of Miners' Health, Safety and Training shall report to the Legislature's Joint Committee on Government and Finance with recommendations regarding the implementation of its findings.

WV Legislature

§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice of an inspection; reports after fatal accidents.

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

(b) If miners or one of their authorized representatives, have reason to believe, at any time, 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: Provided, That miners are always encouraged to work with mine management with regards to safety concerns.

(c) 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 their respective districts at least four times annually, 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 working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in the mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in the mine. No other person shall, with the intent of undermining the integrity of an unannounced mine inspection, provide advance notice of any inspection or of an inspector's presence at a mine to any person at that mine. Any person who, with the requisite intent, knowingly causes or conspires to provide advance notice of any inspection or of an inspector's presence at a mine is guilty of a felony and, upon conviction thereof, shall be fined not more than $15,000 or imprisoned in a state correctional facility not less than one year and not more than five years, or both fined and imprisoned.

(d) In addition to the other duties imposed by this article and article two of this chapter, it is the duty of each inspector to note each violation he or she finds and issue a finding, 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.

(e) An inspector shall require the operator or other employer to investigate all complaints received by the Office of Miners' Health, Safety and Training involving a certified person's substance abuse or alcohol related impairment at a mine. Within thirty days following notification by the Office of Miners' Health, Safety and Training to the operator or other employer of the complaint, the operator or other employer shall file with the Director a summary of its investigation into the alleged substance abuse or alcohol related impairment

WV Legislature

of a certified person.

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

(g) 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, as well as a salaried employee of management, at the time of the inspection shall be given an opportunity to accompany the authorized representative of the director on the inspection.

WV Legislature

§22A-1-15. Findings, orders and notices.

(a) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists, the representative shall determine the area throughout which the danger exists and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the imminent danger no longer exists.

(b) If upon any inspection of a coal mine an authorized representative of the director finds that there has been a violation of the law, but the violation has not created an imminent danger, he or 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 the director also finds that the period of time should not be further extended, the director shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the violation has been abated.

(c) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant to subsection (a) of this section, the director shall review the compliance record of the mine.

(1) A review of the compliance record conducted in accordance with this subsection shall, at a minimum, include a review of the following:

(A) Any closure order issued pursuant to subsection (a) of this section;

(B) Any closure order issued pursuant to subsection (b) of this section;

(C) Any enforcement measures taken pursuant to this chapter, other than those authorized under subsections (a) and (b) of this section;

(D) Any evidence of the operator's lack of good faith in abating significant and substantial violations at the mine;

(E) Any accident, injury or illness record that demonstrates a serious safety or health management problem at the mine; and

(F) Any mitigating circumstances.

WV Legislature

(2) If, after review of the mine's compliance record, the director determines that the mine has a history of repeated significant and substantial violations of a particular standard caused by unwarrantable failure to comply or a history of repeated significant and substantial violations of standards related to the same hazard caused by unwarrantable failure to comply and the history or histories demonstrate the operator's disregard for the health and safety of miners, the director shall issue a closure order for the entire mine or area throughout which the director determines the dangerous condition exists and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the mine or area throughout which the director determines the dangerous condition until a thorough inspection of the mine or area has been conducted by the office and the director determines that the operator has abated all violations related to the imminent danger and any violations unearthed in the course of the inspection.

(d) All employees on the inside and outside of a mine who are idled 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 for more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are 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 hours of the shift.

(e) The following persons are not required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in the area is necessary, in the judgment of the operator or an authorized representative of the director, to eliminate the condition described in the order;

(2) Any public official whose official duties require him or her to enter the area;

(3) Any representative of the miners in the 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 a person and whose presence in the area is necessary for the investigation of the conditions described in the order; and

(4) Any consultant to any of the persons set forth in this subsection.

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

(g) Each notice or order issued under this section shall be given promptly to the operator of

WV Legislature

the coal mine or the operator's agent by an authorized representative of the director issuing the notice or order and all the notices and orders shall be in writing and shall be signed by the representative and posted on the bulletin board at the mine.

(h) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the director.

(i) Each finding, order and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making the finding, order or notice.

(j) Definitions. –- For the purposes of this section only, the following terms have the following meanings:

(1) "Unwarrantable failure" means aggravated conduct, constituting more than ordinary negligence, by a mine operator in relation to a violation of this chapter of the code; and

(2) "Significant and substantial violation" shall have the same meaning as that established in 6 FMSHRC 1 (1984).

WV Legislature

§22A-1-16. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.

In order that the electrical inspector may properly perform the duties required of him or her, he or she shall devote his or her whole time and attention to the duties of the office, and the inspector has the right to enter any coal mine for the purpose of inspecting electrical equipment, and if he or she finds during an inspection any defects in the electrical equipment which are covered by law and may be detrimental to the lives or health of the workmen, the inspector has the authority to order the operator, in writing, to remedy such defects within a prescribed time, and to prohibit the continued operation of such electrical equipment after such time, unless such defects have been corrected.

The electrical inspector shall examine each mine in his or her division at least once each year or as often as the director may deem necessary.

It is the duty of the electrical inspector, after completing the examination of a mine, to prepare a report describing his or her findings in said mine in a manner and form designated by the director. The original report shall be forwarded to the operator or the operator's representative whose duty it is to post it in some conspicuous place open to examination by any interested person or persons. The report shall show the date of inspection, a list of equipment, and any other information that the director may deem necessary.

WV Legislature

§22A-1-17. Review of orders and notices by the director.

(a) (1) An operator, issued an order pursuant to the provisions of section fifteen of this article, 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 days of receipt thereof or within thirty days of its modification or termination. An operator, issued a notice pursuant to subsection (b), section fifteen of this article, or any representative of miners in any mine affected by such notice, may, if the operator believes that the period of the time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty 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 the director deems 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 to the time fixed in such notice. The filing of an application for review under this law does not operate as a stay of any order or notice.

(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 days prior to the hearing.

(b) Upon receiving the report of such investigation, the director shall make findings of fact, and 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 findings therein.

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

(d) 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 any order, or from any order issued under section fifteen of this article, except an order issued under section sixteen of this article, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he or she may prescribe, if:

(1) A hearing has been held in which all parties were given an opportunity to be heard;

(2) The applicant shows that there is substantial likelihood that the findings of the director will be favorable to the applicant; and

(3) Such relief will not adversely affect the health and safety of miners in the coal mine.

WV Legislature

No temporary relief shall be granted in the case of a notice issued under section fifteen of this article.

WV Legislature

§22A-1-18. Posting of notices, orders and decisions; delivery to agent of operator; names and addresses to be filed by operators.

(a) 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 this law or 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. A copy of any notice, order or decision required by this law 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.

(b) The director shall cause a copy of any notice, order or decision required by this law 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.

(c) In order to ensure prompt compliance with any notice, order or decision issued under this law, 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 ensure compliance with such notice, order or decision.

(d) Each operator of a coal mine shall file with the director the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the director. 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 law affecting such mine. In any case, 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 has 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 subsection does not make such official subject to any penalty under this law.

WV Legislature

§22A-1-19. Judicial review.

(a) Any order or decision issued by the director under this law, is 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 law and files within thirty days from date of such order or decision.

(b) 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.

(c) In the case of a proceeding to review any order or decision issued by the director under this law, except an order or decision pertaining to an order issued under subsection (a), section fifteen of this article or an order or decision pertaining to a notice issued under subsection (b), section fifteen of this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

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

(B) The person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) The judgment of the court is subject to review only by the Supreme Court of Appeals of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the director.

(e) 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.

(f) 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.

WV Legislature

§22A-1-20. Injunctions.

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: (a) Violates or fails or refuses to comply with any order or decision issued under this law; or (b) interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this law; or (c) refuses to admit such representatives to the mine; or (d) 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 (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of this law; or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. 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 clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. 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.

WV Legislature

§22A-1-21. Penalties.

(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than $5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of §29A-3-1 et seq. of this code.

(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than $250 for each occurrence of the violation. Any miner issued a violation under this subsection shall either appeal the violation or pay the civil penalty within 30 days after receipt of the violation. Any violation not appealed or paid within 30 days shall become delinquent.

Any civil penalty that becomes delinquent on or after July 1, 2019, and has not been paid shall be deemed a failure by the miner to perform a duty mandated pursuant to this article for purposes of §22A-1-31 of this code.

(4) A civil penalty under subdivision (1) or (2) ,subsection (a) of this section or subdivision (1) or (2), subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as

WV Legislature

modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under §22A-1-20 of this code and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under §22A-1-15 of this code, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under §22A-1-22(a) or §22A-1-22(b) of this code, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than $5,000 and for a second or subsequent violation assessed a civil penalty of not more than $10,000, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;

(B) Failure or refusal to comply with any order issued under §22A-1-15 of this code;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under §22A-1-22 of this code.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least $5,000 and not more than $10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated

WV Legislature

in a final decision issued under this law, except an order incorporated in a decision issued under §22A-1-22(a) or §22A-1-22(b) of this code, any director, officer, or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or confined in jail not more than one year, or both fined and confined. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same fine and confinement that may be imposed upon a person under subsection (d) of this section.

(f) Any person who willfully violates any safety standard pursuant to this chapter or a rule promulgated thereunder that causes a fatality or who willfully orders or carries out such violation that causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or confined in a state correctional facility not less than one year and not more than five years, or both fined and confined.

(g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety and Training Fund. All civil penalty assessments collected under this section shall be collected by the director and deposited with the Treasurer of the State of West Virginia to the credit of the Special Health, Safety and Training Fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

WV Legislature

§22A-1-22. Discrimination.

(a) No person shall discharge or in any other way discriminate against or cause to be discharged or 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: (1) Has notified the director, his or her authorized representative, or an operator, directly or indirectly, of any alleged violation or danger; (2) has filed, instituted or caused to be filed or instituted any proceeding under this law; (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this law. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done subdivision (1), (2) or (3) above.

(b) Any miner or a representative of miners 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 days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. 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 violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Mailing of the notice of hearing to the charged party at the party's last address of record as reflected in the records of the office is adequate notice to the charged party. Such notice shall be by certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his or her former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board's finding therein. If the proceedings under this section relative to discharge are not completed within forty-five days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the miner the board shall not reinstate the miner until the final determination.

(c) 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 to have been reasonably incurred by the applicant for, or in

WV Legislature

connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

WV Legislature

§22A-1-23. Records and reports.

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

WV Legislature

§22A-1-24. Mine foreman examiner for mine foremen-fire bosses and assistant mine foremen-fire bosses; salary.

The director shall appoint a mine foreman examiner to examine and certify mine foremen-fire bosses, assistant mine foremen-fire bosses and mine examiners or fire bosses. Such mine foremen examiners shall be paid a minimum salary of $31,032 per year.

WV Legislature

§22A-1-25. Duties of mine foreman examiner.

The duties of the mine foreman examiner are to:

(a) Prepare and conduct examinations of mine foremen, assistant mine foremen and fire bosses;

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

WV Legislature

§22A-1-26. Place and time for examinations.

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

The examinations shall be given at any location where there are at least five men to be tested and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the capitol complex in Charleston. All records pertaining to the examinations shall be kept at such office.

WV Legislature

§22A-1-27. Preparation of examinations; notice of intention to take examination; investigation of applicants.

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

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 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.

WV Legislature

§22A-1-28. Certificates of qualification heretofore granted.

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

WV Legislature

§22A-1-29. Mine foreman examiner to certify successful applicants to director.

The mine foreman examiner shall certify to the director, on a form furnished by the director, every person whose examination shall disclose the person's fitness for the duties of mine foreman, assistant mine foreman and fire boss, 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.

WV Legislature

§22A-1-30. Record of examination.

The mine foreman examiner shall send to the director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the office as public documents.

WV Legislature

§22A-1-31. Withdrawal of certification.

(a) Charge of breach of duty. - A mine inspector or the director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to this article or article two of this chapter. The charge shall state the name of the person charged, the duty or duties he or she is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) Evaluation of charge by board of appeals. - Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board 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. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the director's receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. 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. 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.

(c) Hearing. - 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. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board 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. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

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

WV Legislature

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.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board 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. No renewal of the certificate shall be granted except as herein provided.

(d) Failure to cooperate. - Any person charged who without just cause refuses or fails to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his or her certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) Penalties. - The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty 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 elsewhere in this chapter.

(f) Integrity of penalties imposed. - No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under this chapter, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

WV Legislature

§22A-1-32. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.

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

WV Legislature

§22A-1-33. Mine rescue stations; equipment.

The director is hereby authorized to purchase, equip and operate for the use of said office such mine rescue stations and equipment as he or she may deem necessary.

WV Legislature

§22A-1-34. Mine rescue crews.

The director is hereby authorized to have trained and employed at the rescue stations, operated by the office within the state, such rescue crews as he or she may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of $32 per month, and captains shall receive $35 per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time.

WV Legislature

§22A-1-35. Mine rescue teams.

(a) The operator shall provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(3) A West Virginia Office of Miners' Health, Safety, and Training Mine Rescue Team shall serve as a second or backup team for mines within the state and qualify as one of the two teams required under subdivision (1) of this subsection and in accordance with 30 CFR, Part 49.20(4) for all mines with no backup team available within a one-hour drive to the mine. The operator shall contact the office and notify them of the need for mine rescue services beginning July 1, 2019. The director shall utilize surplus funds from the West Virginia Office of Miners' Health, Safety, and Training's special revenue fund to provide backup mine rescue services.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion, or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than 70 mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained, and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue

WV Legislature

team on the effective date of this statute.

(h) An applicant for initial mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator and a copy shall be furnished to the director.

(i) Upon completion of the initial training, all mine rescue team members shall receive at least 40 hours of refresher training annually. This training shall be given at least four hours each month, or for a period of eight hours every two months, and shall include:

(1) Sessions underground at least once every six months;

(2) The wearing and use of a breathing apparatus by team members for a period of at least two hours, while under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus; and

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an explosion, fire, or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of the mine operator.

(k) During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

(1) For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) The mine operator shall provide two-way communication and a lifeline or its equivalent at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than 1,000 feet inby the fresh air base: *Provided*, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those

WV Legislature

persons directing the mine rescue or recovery operations: *Provided, however*, That the mine operator shall provide a lifeline or its equivalent in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member's breathing apparatus depletes to 60 atmospheres, or its equivalent.

(l) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each self-contained compressed oxygen breathing apparatus, as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding 30 days and

WV Legislature

shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with §22A-1-15 of this code.

(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have 24 hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within 30 days of the effective date of this statute: *Provided*, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator's mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

WV Legislature

§22A-1-36. Mandatory safety programs; penalties.

(a) The director, in consultation with the state Board of Coal Mine Health and Safety, shall promulgate rules in accordance with §29A-1-1 et seq. of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in §22A-1-36(b) of this code. The rules may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, or any other factor deemed relevant by the director.

(b) Within six months of the date when the rules required in §22A-1-36(a) of this code become final, each operator shall develop and submit to the director a comprehensive mine safety program for each mine, in accordance with such rules. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director regarding the modification or revision of such program, prior to submission of such program to the director. Upon submission of such program the director has 90 days to approve, reject, or modify such program. If the program is rejected, the director shall give the operator a reasonable time to correct and resubmit such program. An up-to-date copy of each program shall be placed on file in the office and further copies shall be made available to the miners of each mine and their representatives. Each operator shall undertake all efforts necessary to assure total compliance with the appropriate safety program at each mine and shall fully implement all portions of such program. Once approved, a comprehensive mine safety program shall not be subject to annual review by the director: Provided, That a program may be subject to annual review by the director after a fatality or serious accident involving bodily harm has occurred, or, if the operator has shown a pattern of mine safety violations as defined by §22A-1-15(2) of this code, such a finding shall also warrant annual review by the director. The director shall promulgate emergency rules in order to comply with this subsection.

(c) Any person violating any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

WV Legislature

§22A-1-37. Certification of surface mine foremen.

(a) In every surface mine, regulated under the provisions of article three or four, chapter twenty-two of this code, where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article seven of this chapter as a mine foreman. Each applicant for certification as a mine foreman shall, at the time of issuance of a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least three years' experience in surface mining, which shall include at least eighteen months' experience on or at a working section of a surface mine, or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had at least two years' practical experience in a surface mine, which shall include at least eighteen months' experience on or at a working section of a surface mine; and (3) have demonstrated knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects, by completing such training, education and examinations as may be required under article seven of this chapter.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one person, one or more assistant mine foreman may be designated. Such persons shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article seven of this chapter. Each applicant for certification as assistant mine foreman shall, at the time of issuance of a certificate of competency, possess all of the qualifications required of a mine foreman: Provided, That at the time of certification the person is required to have at least two years' experience in surface mining, which shall include eighteen months on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve months' practical experience in a surface mine, all of which shall have been on or at a working section.

(c) The director shall promulgate such rules as may be necessary to carry out the provisions of this section.

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§22A-1-38. Applicability and enforcement of laws safeguarding life and property; rules; authority of director regarding enforcing safety laws.

All provisions of this chapter intended to safeguard life and property shall extend to all surface-mining operations, regulated under articles three and four, chapter twenty-two of this code, insofar as such laws are applicable thereto. The director shall promulgate reasonable rules in accordance with the provisions of chapter twenty-nine-a of this 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 the director and shall be enforced according to the provisions of this chapter.

WV Legislature

§22A-1-39. Reciprocity of mine foreman certification and experienced miner certification.

(a) Beginning April 1, 1999, and notwithstanding any other provisions in this code to the contrary, the director, in consultation with the board of miner training, education and certification, established pursuant to the provisions of article seven of this chapter, shall make reciprocity of mine foreman certification and experienced miner certification available to any person certified by a state which accepts West Virginia's mine foreman or experienced miner certifications, if that state's qualifications, examination and certification criteria are substantially equivalent to those utilized by this state.

(b) A person requesting either of these certifications by reciprocity shall submit photographic identification, a current copy of his or her certification card or certificate, verifiable documentation of all degrees held, continuing education successfully completed, and documentation of other training, if required for the certification, and shall also comply with any other criteria as the director, in consultation with the board of miner training, education and certification, may reasonably require from time to time to effectively carry out the provisions of this section: Provided, That the criteria shall include, but is not limited to, the following minimum requirements: (1) When a reciprocity agreement applicable to mine foreman certification has been established with another state, any applicant holding a mine foreman certificate from that state shall take the component of the West Virginia mine foreman certification examination that pertains only to specific West Virginia mining laws and rules and shall pass the examination with a score of at least eighty percent prior to being issued a West Virginia mine foreman certificate; (2) when a reciprocity agreement applicable to experienced miner certification has been established with another state, any applicant holding an experienced miner's certificate from that state shall receive hazard training in accordance with provisions contained in 30 CFR Part 48.11 if the applicant is an underground miner, or in accordance with the provisions contained in 30 CFR Part 48.31 if the applicant is a surface miner, and shall receive instruction in West Virginia mining laws and rules pertinent to any duties that are or will be assigned the miner prior to the miner performing any duties; and (3) records of all training and instruction shall be kept in a book provided exclusively for that purpose which shall be made available upon request to an authorized representative of the director and to authorized representatives of miners in or at the mine.

WV Legislature

§22A-1-40. Reporting violations, accident investigations; witness interviews.

(a) To the extent permitted by law, any person meeting with, or providing a statement to, the director may request to do so on a confidential basis without the consent, presence, involvement or knowledge of any third party. Upon such a request, the director shall keep the identity of any individual providing such a statement and the statement itself confidential, to the extent permitted by law, and the statement shall be exempt from disclosure under article one, chapter twenty-nine-b of this code. Nothing in this section precludes a person from being represented when speaking with the director. Further, nothing in this section precludes a person under subpoena or who is voluntarily speaking with the director from authorizing any other person from participation in such meeting or statement.

(b) If any miner is entrapped, fatally injured or otherwise unable, as the result of an accident, to designate a representative to observe witness interviews and investigatory hearings conducted in an accident investigation, the miner's closest relative may designate one representative who may, subject to subsection (a) of this section, attend witness interviews and investigatory hearings regarding the accident for the sole purpose of observing such interviews and hearings and conveying information to the accident victim's family: Provided, That the right of a designated representative to observe witness interviews and investigatory hearings pursuant to this subsection shall be subject to subsection (a) of this section and shall not extend to interviews or investigatory hearings of a criminal nature conducted by state or federal inspectors or other state or federal law enforcement officers. No more than five representatives designated pursuant to this section may attend witness interviews and investigatory hearings for the purpose of observing such interviews and hearings and conveying information to accident victims' families.

(c) The director shall, in consultation with the Board of Coal Mine Health and Safety, develop a list of persons skilled in the fields of grief and crisis management, communications and family support. Following any mining accident involving entrapped miners or fatal injuries, the director shall promptly provide the list of such individuals to the families of the accident victim or victims. The individuals contained on the list developed by the director shall be available as a resource to families of accident victims who seek their assistance. The list shall also contain a reference to this code section and a statement that the family has the right to designate a representative of their choosing regardless of whether that person is named on the list.

WV Legislature

§22A-1-41. The Coal Jobs and Safety Act of 2015; legislative findings.

(a) Legislative findings. --

(1) In the past six years, West Virginia's coal industry has been battered by constant judicial and regulatory assaults, which have disproportionately raised the cost of mining coal in West Virginia compared with production costs in other coal producing states. These increased costs of production have caused West Virginia coal to become uncompetitive with other coals in the declining worldwide and domestic coal markets.

(2) Coal production in West Virginia has fallen from one hundred sixty-five million tons in 2008 to approximately one hundred fifteen million tons in 2014, a decline of thirty-one percent. Much of this decline has been concentrated in the southern coalfields.

(3) The number of active mines producing coal has decreased by more than fifty-three percent, from two hundred fifty-nine in 2008 to just one hundred twenty-one today.

(4) During that same period, direct coal mining employment has decreased by approximately four thousand jobs, from a high of twenty-two thousand three hundred thirty-six in 2011 to just eighteen thousand two hundred today, a decline of nineteen percent.

(5) When the coal-related jobs multiplier, established by the West Virginia University and Marshall University Colleges of Business, 2010 Joint Economic Impact Report, is factored in the total direct and indirect jobs impact on the West Virginia economy shows a twenty thousand six hundred eighty-job decline in mining and mine-dependent employment in the state from one hundred thousand eleven six hundred eighty in 2011 to ninety-one thousand today. The impact of this damage to the West Virginia economy is demonstrated by the rapid rise of unemployment in the coalfields with some counties now reporting an unemployment rate of more than ten percent.

(6) The economic stress to the coal industry and to the state as a whole is evident in the estimated loss of nearly $300 million in direct mining wages paid since 2011. This loss is exponentially higher when you factor in indirect wages lost as mining support jobs decline.

(7) As a direct result of the damage to the coal industry, West Virginia has also lost significant tax revenues, as coal severance taxes have declined by approximately twenty-four percent in just the past two years – from a high of $527 million in 2012 to an estimated $406 million in 2014. This damage reverberates through the total economy, with reductions in money available to fund schools, highways, basic services and health care – needs that increase when income and health care is lost with the loss of jobs.

(8) All of these challenges must be addressed and overcome if we are to continue to provide the economic foundation for our state's economy. The encouragement of economic growth and development in the coal industry in this state is in the public interest and promotes the general welfare of the people of this state.

WV Legislature

(b) Coal Jobs and Safety Act of 2015. -- Therefore, in order to encourage the recovery of the West Virginia coal industry and to increase direct and indirect employment thus created, the Legislature enacts the Coal Jobs and Safety Act of 2015 and it is collectively comprised of:

(1) This section;

(2) The amendments to:

(A) Sections thirteen and nineteen, article three, chapter twenty-two of this code;

(B) Sections six and eight, article eleven, chapter twenty-two of this code;

(C) Section one, article one-a of this chapter;

(D) Sections six, twenty-eight and thirty-seven, article two of this chapter;

(E) Section one hundred one, article two-a, chapter twenty-two-a of this code; and

(F) Sections three hundred one, three hundred eight, three hundred nine, three hundred ten, four hundred two, four hundred three, four hundred four, four hundred five, five hundred one, six hundred one, six hundred two, six hundred three and six hundred four, article two-a of this chapter; and

(3) The following new sections:

(A) Section twenty-two-a, article eleven, chapter twenty-two of this code; and

(B) Section two hundred four-a, article two-a of this chapter that were adopted and enacted during the 2015 Regular Session of the Legislature.

WV Legislature

§22A-1-42. Surface ground control plan; automated external defibrillator.

(a) 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.

(b) Automated external defibrillators (AEDs) shall be required on all surface mining operations. The director shall promulgate emergency rules in order to comply with this section of code, giving special consideration to the climate sensitive nature of AEDs.

WV Legislature

§22A-1-43. Hold harmless clause; decision to enter mine.

(a) If any injury or death shall occur to any person who has entered any mine, whether active workings, inactive workings, or abandoned workings, without permission, neither:

(1) The owner of that mine or property; nor

(2) The State of West Virginia or any of its political subdivisions, or any agency operating under color of law thereunder; nor

(3) Any person, organization, or entity involved in any rescue or attempted rescue of such person who has committed an entry without permission, shall be held liable in any court or other forum for such injury or death.

(b) The director is authorized to make the decision on whether a mine is too dangerous, and this decision is not subject to review by a court of this state.

(c) A company shall not be required or ordered to conduct rescue operations.

WV Legislature

§22A-1-44. Temporary exemption for environmental regulations.

In the event of an unauthorized entry by any person or persons into any mine whether active workings, inactive workings, or abandoned workings, neither the owner of that mine or property, nor any other person, organization, or entity involved in any rescue or attempted rescue of such person, may be held liable for any violation of any environmental regulation, if such violation occurred as part of any rescue efforts.

WV Legislature

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

(a) Every employer of certified persons, as defined in §22A-1-2 of this code, shall implement a substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, 10-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners' Health, Safety, and Training:

(A) Amphetamines;

(B) Cannabinoids/THC;

(C) Cocaine;

(D) Opiates;

(E) Phencyclidine (PCP);

(F) Benzodiazepines;

(G) Propoxyphene;

(H) Methadone;

(I) Barbiturates; and

(J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 C. F. R. Part 40, which may be amended, from time to time, by legislative rule of the Office of Miners' Health, Safety, and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

(2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection. "Random testing" means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons' Social Security numbers, payroll identification numbers, or other comparable identifying numbers; and

WV Legislature

(3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

(b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a former employer following a termination of the employer/employee relationship or transferring to a West Virginia mine from an employer's out-of-state mine to the extent that any substance abuse test required by the employer in the other jurisdiction does not comply with the minimum standards for substance abuse testing required by this article. Furthermore, the provisions of this section apply to all employers that employ certified persons who work in mines, regardless of whether that employer is an operator, contractor, subcontractor or otherwise.

(c) Any employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer.

(d) (1) Every employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) Any positive drug or alcohol test of a certified person. However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(2) With respect to any certified person subject to a collective bargaining agreement, the employer shall notify the director, on a form prescribed by the director, within seven days of any of the following:

(A) Any positive drug or alcohol test of a certified person. However, for purposes of determining whether a drug test is positive the certified employee may not rely on a prescription dated more than one year prior to the date of the drug test result;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(3) When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

WV Legislature

(4) Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to §22A-1-2 of this code.

(e) Suspension or revocation of a certified person's certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the director's immediately and temporarily suspending the certified person's West Virginia certificate until such time as the certified person's certification is reinstated in the other jurisdiction.

(f) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require an employer to alter, amend, revise or otherwise change, in any respect, a previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: *Provided*, That each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the minimum requirements of this article. For purposes of this section, a "safety-sensitive position" means an employment position where the employee's job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

WV Legislature

§22A-1A-2. Board of Appeals hearing procedures.

(a) Any hearing conducted after the temporary suspension of a certified person's certificate pursuant to this article shall be conducted within 60 days of the temporary suspension. The Board of Appeals shall make every effort to hold the hearing within 40 days of the temporary suspension.

(b) All hearings of the Board of Appeals pursuant to this section shall be conducted in accordance with the provisions of §22A-1-31 of this code. In addition to the rules and procedures in §22A-1-31 of this code in hearings under this section, 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. The Board of Appeals may suspend the certificate or certificates of a certified person for violation of this article or for any other violation of this chapter pertaining to substance abuse. The Board of Appeals may impose further disciplinary actions for repeat violations. The director shall have the authority to propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code to establish the disciplinary actions referenced in this section following the receipt of recommendations from the Board of Coal Mine Health and Safety following completion of the study required pursuant to §22A-6-14 of this code. The legislative rules authorized by this subsection shall not, however, include any provisions requiring an employer to take or refrain from taking any specific personnel action or mandating any employer to establish or maintain an employer-funded substance abuse rehabilitation program.

(c) No person whose certification is suspended or revoked under this section may perform any duties under any other certification issued under this chapter during the period of the suspension imposed by the Board of Appeals. For all miners determined to have a positive drug or alcohol test as determined pursuant to the provisions of this article, the board shall suspend the miner's certification card(s) for a minimum of six months from the date of the drug test. This six-month minimum suspension shall also apply to miners who enter into a treatment program after testing positive in a drug test administered pursuant to the provisions of this article and are placed under probationary treatment and testing agreements by the board. The director shall promulgate an emergency rule and legislative rule by July 1, 2019, requiring all miners who have a positive drug or alcohol test shall have their miner certification card(s) suspended for a minimum of six months.

(d) Any party adversely affected by a final order or decision issued by the Board of Appeals hereunder is entitled to judicial review thereof pursuant to §29A-5-4 of this code.

WV Legislature

§22A-1A-3. Disclosure of records exempt; exceptions.

Records of substance abuse and alcohol screening tests, written or otherwise, received by the Office of Miners' Health, Safety and Training, its employees, agents and representatives are confidential communications and are exempt from disclosure under article one, chapter twenty-nine-b of the code, except as follows:

(a) Where release of the information is authorized solely pursuant to a written consent form signed voluntarily by the person tested. The consent form shall contain the following:

(1) The name of the person who is authorized to obtain the information;

(2) The purpose of the disclosure;

(3) The precise information to be disclosed;

(4) The duration of the consent; and

(5) The signature of the person authorizing the release of the information;

(b) Where the release of the information is compelled by the Board of Appeals or a court of competent jurisdiction;

(c) Where the release of the information is relevant to a legal claim asserted by the person tested;

(d) Where the information is used by the entity conducting the substance abuse or alcohol screening test in defense of a civil or administrative action related to the testing or results, or to consult with its legal counsel; or

(e) Where release of the information is deemed appropriate by the Board of Appeals or a court of competent jurisdiction in a disciplinary proceeding.

WV Legislature

§22A-1A-4. Effective date.

The provisions of this article are effective beginning January 1, 2013.

WV Legislature

§22A-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archive; final survey and map; penalties.

The mapping of all coal mines shall be supervised by a competent engineer or land surveyor. The work of such engineer or land surveyor shall be supervised by either a civil engineer or a mining engineer certified by the board of registration for professional engineers, which exists by authority of section four, article thirteen, chapter thirty of this code, or a licensed land surveyor approved by the Board of Examiners of Land Surveyors as provided by section three, article thirteen-a of said chapter. To each map supervised by the engineer or land surveyor there shall be affixed thereto the seal of a certified or professional engineer or licensed land surveyor, which shall be identical to the design authorized by the Board of Registration for Professional Engineers, as provided in section sixteen, article thirteen of said chapter or Board of Examiners of Land Surveyors as provided by section eleven, article thirteen-a of said chapter. Every map certified shall have the professional engineer's or land surveyor's signature and certificate, in addition to his or her seal, in the following form:

"I, the undersigned, hereby certify that this map is correct and shows all the information, to the best of my knowledge and belief, required by the laws of this state, and covers the period ending _____

_____ P. E.

(Either Civil or Mining Engineer

or Land Surveyor)."

The operator of every underground coal mine shall make, or cause to be made, an accurate map of such mine, on a scale of not less than one hundred, and not more than five hundred feet to the inch. The map of such mine shall show:

(1) Name and address of the mine;

(2) The scale and orientation of the map;

(3) The property or boundary lines of the mine;

(4) The shafts, slopes, drifts, tunnels, entries, rooms, crosscuts and all other excavations and auger and strip mined areas of the coalbed being mined;

(5) All drill holes that penetrate the coalbed being mined;

(6) Dip of the coalbed;

(7) The outcrop of the coalbed within the bounds of the property assigned to the mine;

WV Legislature

(8) The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;

(9) The elevation of the floor at intervals of not more than two hundred feet in:

(a) At least one entry of each working section, and main and cross entries;

(b) The last line of open crosscuts of each working section and main and cross entries before such sections and main and cross entries are abandoned; and

(c) Rooms advancing toward or adjacent to property or boundary lines or adjacent mines;

(10) Contour lines passing through whole number elevations of the coalbed being mined, the spacing of such lines not to exceed ten-foot elevation levels, except that a broader spacing of contour lines may be approved for steeply pitching coalbeds by the person authorized so to do under the federal act; and contour lines may be placed on overlays or tracings attached to mine maps;

(11) As far as practicable the outline of existing and extracted pillars;

(12) Entries and air courses with the direction of airflow indicated by arrows;

(13) The location of all surface mine ventilation fans, which location may be designated on the mine map by symbols;

(14) Escapeways;

(15) The known underground workings in the same coalbed on the adjoining properties within one thousand feet of such mine workings and projections;

(16) The location of any body of water dammed in the mine or held back in any portion of the mine, but such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines, as provided under subdivision (10) of this section;

(17) The elevation of any body of water dammed in the mine or held back in any portion of the mine;

(18) The abandoned portion or portions of the mine;

(19) The location and description of at least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

(20) Mines above or below;

(21) Water pools above;

WV Legislature

(22) The location of the principal streams and bodies of water on the surface;

(23) Either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine;

(24) The location of all high pressure pipelines, high voltage power lines and principal roads;

(25) The location of railroad tracks and public highways leading to the mine and mine buildings of a permanent nature with identifying names shown;

(26) Where the overburden is less than one hundred feet, occupied dwellings; and

(27) Such other information as may be required under the federal act or by the Office of Miners' Health, Safety and Training.

The operator of every underground coal mine shall extend, or cause to be extended, on or before March 1 and on or before September 1, of each year, such mine map thereof to accurately show the progress of the workings as of July 1, and January 1, of each year. Such map shall be kept up to date by temporary notations, which shall include:

(1) The location of each working face of each working place;

(2) Pillars mined or other such second mining;

(3) Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators and permanent stoppings, and the direction of air currents indicated; and

(4) Escapeways designated by means of symbols.

Such map shall be revised and supplemented at intervals prescribed under the federal act on the basis of a survey made or certified by such engineer or surveyor, and shall be kept by the operator in a fireproof repository located in an area on the surface chosen by the operator to minimize the danger of destruction by fire or other hazard.

Such map and any revision and supplement thereof shall be available for inspection by a federal mine inspector, by mine health and safety instructors, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing or residing on surface areas of such mines or areas adjacent to such mines, and a copy of such map and any revision and supplement thereof shall be promptly filed with the office of miners' health, safety and training. The operator shall also furnish to persons expressly entitled thereto under the federal act, upon request, one or more copies of such maps and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of the federal act and this chapter and in connection with the functions and responsibilities of the secretary of housing and

WV Legislature

urban development.

Surveying calculations and mapping of underground coal mines which were or are opened or reopened after July 1, 1969, shall be done by the rectangular coordinate traversing method and meridians carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

Underground coal mines operating on July 1, 1969, and not using the rectangular coordinate traversing method shall, within two years of such date, convert to this procedure for surveying calculations and mapping. Meridians shall be carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the coal mine operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

The operator of such underground coal mine shall, by reasonable proof, demonstrate to the director or to any federal mine inspector concerned, at any time, that a diligent search was made for all existing and available maps and survey data for the workings on the adjoining properties. The operator shall further be able to show proof to the director or to any federal mine inspector concerned, that a suitable method was used to insure accuracy in the methods used in transposing other workings to the map of such mine.

There shall be an archive of underground coal mine maps maintained at the office of the director. The archive shall:

(1) Be secured in a fireproof and burglarproof vault;

(2) Have an appropriate map identification system; and

(3) Have adequate map microfilming facilities.

Whenever an operator permanently closes or abandons an underground coal mine, or temporarily closes an underground coal mine for a period of more than ninety days, he or she shall promptly notify the office of miners' health, safety and training and the federal mine inspector of the district in which such mine is located of such closure. Within sixty days of the permanent closure or abandonment of an underground coal mine, or, when an underground coal mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the office of miners' health, safety and

training and such federal mine inspector a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified by a certified or professional engineer or licensed surveyor as aforesaid and shall be available for public inspection.

Any person having a map or surveying data of any worked out or abandoned underground coal mine shall make such map or data available to the Office of Miners' Health, Safety and Training to copy or reproduce such material.

Any person who fails or refuses to discharge any duty imposed upon him or her by this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000.

WV Legislature

§22A-2-2. Submittal of detailed ventilation plan to director.

(a) A mine operator shall give the director a copy of the United States Department of Labor's Mine Safety and Health Administration (MSHA)-approved plan and any addenda as soon as the operator receives the approval from MSHA. The MSHA-approved plan shall serve as the state-approved plan: *Provided*, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or state rules.

(b) In the event of an unforeseen situation requiring immediate action on a plan revision, the operator shall submit the proposed revision to the director and the miners' representative, if any, employed by the operator at the mine when the proposed revision is submitted to MSHA. The director shall work with the operator to review and comment on the proposed plan revision to MSHA as quickly as possible.

(c) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addenda thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine for the period of time that they are in effect.

WV Legislature

§22A-2-3. Fans.

(a) The ventilation of mines, the systems for which extend for more than 200 feet underground, and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in 15 minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in 15 minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners, or other persons holding a certificate to make preshift examination. If ventilation is restored to the mine before miners reach the surface, the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than 15 feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: Provided, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: Provided, however, That there is another opening having a weak wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to provide adequate ventilation to the working faces: Provided, That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working place is restored. During such stoppage, the ventilation shall be, by means of the primary air current conducted into the place, in a manner to prevent accumulation of methane.

WVLegislature

(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends, and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the Office of Miners' Health, Safety, and Training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

(h) The MSHA-approved plan relating to fans shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in state code or code of state rules.

WV Legislature

§22A-2-4. Ventilation of mines in general.

(a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or drift, shall provide and maintain adequate ventilation for each mine. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or set of entries may not be less than 9,000 cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces in a working section between the intake and return airway entries where coal is being cut, mined, drilled for blasting, or loaded shall be ventilated with a minimum quantity of 3,000 cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than 9,000 cubic feet of air per minute if at least 9,000 cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. The operator shall provide to the safety committee access to anemometers and smoke tubes while performing their duties. All active underground working places in a mine shall be ventilated by a current of air containing not less than 19.5 percent of oxygen, not more than 0.50 percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

(b) Airflow shall be maintained in all intake and return air courses of a mine and, where multiple fans are used, neutral areas created by pressure equalization between main fans is not permitted. Production activities in working faces shall cease while tubing, line brattice, or other ventilation devices are being installed by the machine operator.

(c) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise, the line brattice or other devices shall be repaired immediately.

(d) Brattice cloth used underground shall be of flame-resistant material. The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive, and noxious gases, dust, and explosive fumes.

(e) Each working unit newly developed in virgin coal shall be ventilated by a separate split of air. In areas already under development and in areas where physical conditions prevent compliance with this provision, the director may grant temporary relief from compliance until such time as physical conditions make compliance possible. The quantity of air reaching the last crosscut may not be less than 9,000 cubic feet of air per minute and shall under any condition have sufficient volume and velocity to reduce and carry away smoke and flammable or harmful gases from each working face in the section.

(f) As working places advance, crosscuts for air shall be made not more than 105 feet apart.

WV Legislature

Where necessary to render harmless and carry away noxious or flammable gases, line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. All crosscuts between the main intake and return airways not required for passage of air and equipment shall be closed with stoppings substantially built with incombustible or fire-resistant material so as to keep working places well ventilated. In mines where it becomes necessary to provide larger pillars for adequate roof support, working places may not be driven more than 200 feet without providing a connection that will allow the free flow of air currents. In such cases, a minimum of 12,000 cubic feet of air a minute shall be delivered to the last open crosscut and as much more as is necessary to dilute and render harmless and carry away flammable and noxious gases.

(g) In special instances for the construction of sidetracks, haulage ways, airways, or openings in shaft bottom or slope bottom layouts where the size and strength of pillars is important, the director may issue a permit approving greater distances. The permit shall specify the conditions under which such places may be driven.

(h) In all mines, a system of bleeder openings on air courses, designed to provide positive movement of air through or around abandoned or caved areas, or both through and around, sufficient to prevent dangerous accumulation of gas in such areas, and to minimize the effect of variations in atmospheric pressure shall be made a part of pillar recovery plans projected.

(i) If a bleeder return is closed as a result of roof falls or water during pillar recovery operations, pillar operations may continue without reopening the bleeder return if at least 20,000 cubic feet of air per minute is delivered to the intake of the pillar line.

(j) An operator or mine foreman may not permit any person to work where he or she is unable to maintain the quantity and quality of the air current as required by this section. This section does not prohibit the employment of individuals to make the place of employment safe.

(k) The ventilation of any mine shall be arranged by means of air locks, overcasts, or undercasts, in such a manner that the use of doors may be kept to a minimum on passageways where individuals or equipment travel. Where doors are used in a mine, they shall be erected in pairs so as to provide a ventilated air lock unless the doors are operated mechanically.

(l) A crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

(m) Overcasts or undercasts shall be constructed of incombustible material and maintained in good condition.

(n) All run through check curtains shall be substantially constructed of translucent material, except that where belting material must be used because of high velocity, there shall be a window of translucent material at least 30 inches square or one-half the height of the coal

WV Legislature

seam, whichever is less.

(o) The MSHA-approved plan shall serve as the state-approved plan and comply with all provisions of state mining law as set forth in this code or the Code of State Rules.

WV Legislature

§22A-2-4a. Use of belt air.

(a) Definitions. — For purposes of this section, "belt air" means the use of a belt conveyor entry as an intake air course to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed.

(b) Upon the effective date of the enactment of this section, belt air may not be used to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed: Provided, That if an alternative method of ventilation will at all times guarantee no less than the same measure of protection afforded the miners of an underground mine by the foregoing or if the application of the foregoing to an underground mine will result in a diminution of safety to the miners in the mine, the director may approve the interim use of belt air pursuant to the following. The MSHA-approved plan for use of belt air shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall contain all provisions of state mining law as set forth in state code or code of state rules.

WV Legislature

§22A-2-5. Unused and abandoned parts of mine.

(a) In any mine, all workings which are abandoned after July 1, 1971, shall be sealed or ventilated. If the workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be considered to be abandoned until the panel is abandoned.

(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any working mine, unless permission is granted by the director with unanimous agreement of the technical and mine safety review committee. Air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. Air which has been used to ventilate an area from which the pillars have been removed shall not be used to ventilate any working place in a mine, except that the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent, are reopened, the director shall be notified.

(c) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, a professional engineer registered with the Board of Registration for Professional Engineers pursuant to §30-13-1 et seq. of this code shall certify the design of all new seals as meeting the criteria established by the director. Every seal design shall have the professional engineer's certificate and signature, in addition to his or her seal, in the following form:

"I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations.

_____P.E."

(d) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the director shall approve the construction of all new seals in accordance with rules authorized in this section. The construction shall also be:

(1) Certified by the mine foreman-fire boss of the mine as being in accordance with the design certified by a professional engineer pursuant to §22A-2-5(c) of this code; and

(2) (A) Constructed of solid concrete blocks and in accordance with the other provisions of 30 CFR 75.335(a)(1); or

(B) Constructed in a manner that the director has approved as having the capability to withstand pressure equal to or greater than a seal constructed in accordance with the

WV Legislature

provisions of 30 CFR 75.335(a)(1).

(e) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the operator shall inspect the physical condition of all seals and measure the atmosphere behind all seals in accordance with protocols developed by the Board of Coal Mine Health and Safety, pursuant to rules authorized in this section and consistent with a mine-specific atmospheric measurement plan submitted to and approved by the director. The atmospheric measurements shall include, but not be limited to, the methane and oxygen concentrations and the barometric pressure. The atmospheric measurements also shall be recorded with ink or indelible pencil in a book kept for that purpose on the surface at a location designated by the operator. The protocols shall specify appropriate methods for inspecting the physical condition of seals, measuring the mine atmosphere in sealed workings, and inerting the mine atmosphere behind the seals, where appropriate.

(f) (1) In all mines containing workings sealed using seals constructed in accordance with the provisions of 30 CFR 75.335(a)(2) which are constructed: (A) Of cementitious foam blocks; or (B) with methods or materials that the Board of Coal Mine Health and Safety determines do not provide an adequate level of protection to miners, the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals or constructing new seals in place of or immediately outby the seals. After being remediated, all seals must have the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1). The design, development, submission and implementation of the remediation plan is the responsibility of the operator of each mine. Pursuant to rules authorized in this section, the Board of Coal Mine Health and Safety shall specify appropriate methods of enhancing the seals.

(2) Notwithstanding any provision of this code to the contrary, if the director determines that any seal described in §22A-2-5(f)(1) of this code is incapable of being remediated in a safe and effective manner, the mine foreman-fire boss shall, at least once every 24 hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. The daily inspections and measurements shall otherwise be performed in accordance with the protocols and atmospheric measurement plan established pursuant to §22A-2-5(e) of this code.

(g) Upon the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, second mining of lower coal on retreat, also known as bottom mining, shall not be permitted in workings that will be sealed unless an operator has first submitted and received approval by the director of a remediation plan that sets forth measures that will be taken to mitigate the effects of remnant ramps and other conditions created by bottom mining on retreat which can increase the force of explosions originating in and emanating out of workings that have been bottom mined. The director shall require that certification in a manner similar to that set forth in §22A-2-5(c) of this code shall be obtained by the operator from a professional engineer and the mine foreman-fire

WV Legislature

boss for the plan design and plan implementation, respectively.

(h) No later than 60 days after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the Board of Coal Mine Health and Safety shall develop and promulgate rules pursuant to the provisions of §22A-6-4 of this code to implement and enforce the provisions of this section.

(i) Upon the issuance of mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines by the Secretary of the United States Department of Labor pursuant to 30 U. S. C. §811, as amended by section 10 of the federal Mine Improvement and New Emergency Response Act of 2006, the director, working in consultation with the Board of Coal Mine Health and Safety, shall, within 30 days, provide the Governor with his or her recommendations, if any, for the enactment, repeal, or amendment of any statute or rules which would enhance the safe sealing of abandoned mine workings and the health and safety of miners.

(j) The MSHA-approved plan for seals shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.

WV Legislature

§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; premovement requirements; certified and qualified persons.

Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel. When equipment is being transported or trammed where trolley wire is energized on the split of air in which said equipment is being transported or trammed, no person shall be permitted to be inby the equipment in the ventilating split that is passing over such equipment, except those directly involved with transporting or tramming the equipment, and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

WV Legislature

MINE FOREMAN

§22A-2-7. When underground mine foreman-fire boss required; assistants; certification.

(a) In every underground mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article seven of this chapter as a mine foreman-fire boss. Each applicant for certification as a mine foreman-fire boss shall, at the time he or she is issued a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least five years' experience in the underground working, ventilation and drainage of a coal mine, which shall include at least eighteen months' experience on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical engineering or civil engineering and have had at least four years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; and (3) have demonstrated his or her knowledge of dangerous mine gases and their detection, mine safety, first aid, safety appliances, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him or her under article seven of this chapter.

(b) In mines in which the operations are so extensive that the duties devolving upon the mine foreman-fire boss cannot be discharged by one man, one or more assistant mine foremen-fire bosses may be designated. Such persons shall act under the instruction of the mine foreman-fire boss, who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article seven of this chapter. Each applicant for certification as assistant mine foreman-fire boss shall, at the time he or she is issued a certificate of competency, possess all of the qualifications required of a mine foreman-fire boss: Provided, That he or she shall at the time he or she is certified be required to have at least three years' experience in the underground working, ventilation and drainage of coal mines, which shall include eighteen months on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had twelve months' practical experience in an underground mine, all of which shall have been on or at a working section or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining

WV Legislature

engineering technology, mechanical or civil engineering and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine.

(c) Until January 1, 1977, in mines in which the operations are so extensive that all the duties devolving upon the mine foreman-fire boss cannot be discharged by one person, competent persons having had at least three years' experience in coal mines may be designated as assistants, who shall act under the mine foreman-fire boss' instructions and the mine foreman-fire boss is responsible for their conduct in the discharge of their duties under such designation.

(d) Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman-fire boss in any mine in this state until the next regular mine foreman-fire boss' examination held by the office of miners' health, safety and training, but not to exceed a maximum of ninety days.

(e) After July 1, 1974, all duties heretofore performed by persons certified as mine foreman, assistant mine foreman or fire boss shall be performed by persons certified as underground mine foreman-fire boss or an assistant underground mine foreman-fire boss.

After July 1, 1974, every certificate heretofore issued to an assistant mine foreman or fire boss shall be deemed to be of equal value to a certificate issued hereafter to an assistant mine foreman-fire boss, and every certificate heretofore issued to a mine foreman shall be deemed to be of equal value to a certificate issued hereafter to a mine foreman-fire boss.

WV Legislature

§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.

(a) The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He or she shall see that, as the miners advance their excavations, proper breakthroughs are made so as to ventilate properly the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient suitable props, caps, timbers, roof bolts or other approved methods of roof supports are furnished for the places where they are to be used and delivered at suitable points. The mine foreman shall have all water drained or hauled out of the working places where practicable, before the miners enter, and such working places shall be kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts through the rooms by means of checks or doors placed on the entries or other suitable places, and he or she shall not permit any room to be opened in advance of the ventilation current. The mine foreman, or other certified persons designated by him or her, shall measure the air current with an anemometer or other approved device at least weekly at the inlet and outlet at or near the faces of the advanced headings, and shall keep a record of such measurements in a book or upon a form prescribed by the director. Signs directing the way to outlets or escapeways shall be conspicuously placed throughout the mine.

(b) After July 1, 1971, hinged man doors, at least thirty inches square or the height of the coal seam, shall be installed between the intake and return at intervals of three hundred feet when the height of the coal is below forty-eight inches and at intervals of six hundred feet when the height of the coal is above forty-eight inches.

(c) The duties of the mine foreman and assistant mine foreman shall include the instruction of apprentice miners in the hazards incident to any new work assignments; to assure that any individual given a work assignment in the working face without prior experience on the face is instructed in the hazards incident thereto and supervised by a miner with experience in the tasks to be performed.

WV Legislature

§22A-2-9. Slopes, incline planes and haulage roads.

The mine foreman shall require that all slopes, incline planes and haulage roads used by any person in the mine shall conform to the provisions of this article.

WV Legislature

§22A-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.

On all haulways, where hauling is done by machinery of any kind, the mine foreman shall provide for a proper system of signals, and a conspicuous light or approved trip reflector on the rear of every trip or train of cars when in motion in a mine. When hoisting or lowering of miners occurs in the morning before daylight, or in the evening after darkness, at any mine operated by shaft, the mine foreman shall provide and maintain at the shaft mouth a light of stationary character, sufficient to show the landing and all surrounding objects distinctly, and sufficient light of a stationary character shall be located at the bottom of the shaft so that persons coming to the bottom may clearly discern the cages and other objects contiguous thereto. The mine foreman shall require that no cages on which miners are riding shall be lifted or lowered at a rate of speed greater than one thousand feet per minute and that no mine cars, either empty or loaded, shall be hoisted while miners are being lowered, and no cage having an unstable self-dump platform shall be used for the carrying of miners unless the same is provided with some device by which it may be securely locked when miners are being hoisted or lowered into the mine: Provided, however, That during the initial development of a mine, and only until the shafts are joined, miners shall be permitted to ride cages with one empty car which has been bolted or strapped to the cage.

WV Legislature

§22A-2-11. Boreholes.

It shall further be the duty of the mine foreman to have boreholes kept not less than twenty feet in advance of the face, one each twenty feet on sides of the working places that are being driven toward and in dangerous proximity to an abandoned mine or part of a mine which may contain inflammable gases or which is filled with water. These holes shall be drilled whenever any working place in an underground mine approaches within fifty feet of abandoned workings in such mine, as shown by surveys made and certified by a competent engineer or surveyor, or within two hundred feet of any abandoned workings of such mine which cannot be inspected.

WV Legislature

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using approved methane-detecting devices; records of examination; maintenance of methane detectors, etc.

(a) The Office of Miners' Health, Safety, and Training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within 12 weeks after any person is first employed as a miner. It is further the duty and responsibility of the Office of Miners' Health, Safety, and Training to see that the course is given to all persons as above provided after their first being employed in any mine in this state. In addition to other enforcement actions available to the director, upon a finding by the director of the existence of a pattern of conduct creating a hazardous condition at a mine, the director shall notify the Board of Coal Mine Health and Safety, which shall cause additional training to occur at the mine addressing such safety issue or issues identified by the director, pursuant to §22A-7-1 *et seq*. of this code. The Director of the Office of Miners' Health, Safety, and Training is authorized to promulgate emergency and legislative rules in consultation with the Board of Coal Mine Health and Safety establishing a course of instruction.

(b) It is 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 the mine is, before beginning work therein, instructed in the particular danger incident to his or her work in the mine, and furnished a copy of the mining laws and rules of the mine. It is the duty of every mine operator who employs apprentices, as that term is used in §22A-8-3 and §22A-8-4 of this code to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his or her assistant mine foreman remain responsible for the apprentice. During the first 120 days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in a location that the mine foreman, assistant mine foreman, or experienced miner can effectively respond to cries for help of the apprentice: *Provided*, That if the apprentice has completed an approved training program as approved by the Board of Coal Mine Health and Safety, this period may be reduced by an amount not to exceed 30 days. The location shall be on the same side of any belt, conveyor, or mining equipment.

(c) Persons whose duties require them to use an approved methane-detecting device or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the Office of Miners' Health, Safety, and Training and a record of the examination shall be kept by the operator and the office. Approved methane-detecting devices and other approved methane detectors shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance

WV Legislature

and care of the permissible approved methane-detecting device or any other approved device for detecting methane and oxygen deficiency by a person trained in the maintenance, and, before each shift, care shall be taken to ensure that the approved methane-detecting device or other device is in a permissible condition and maintained according to manufacturer's specifications.

WV Legislature

§22A-2-13. Daily inspection of working places; records.

Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his or her assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep under this chapter. The mine foreman, assistant mine foreman, or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine foreman or his or her assistants upon observing a violation or potential violation of §22A-2-1 et seq. of this code or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself or herself. Should the mine foreman or his or her assistants find a place to be in a dangerous condition, they 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.

He or she shall place his or her initials, time and the date at or near each place he or she examines. He or she shall also record any dangerous conditions and practices found during his or her examination in a book provided for that purpose.

WV Legislature

§22A-2-14. Safety inspections; removal of gases.

It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all working places under his or her supervision for hazards at least once every two hours during each coal-producing shift, or more often if necessary for safety. In all mines such examinations shall include tests with an approved detector for methane and oxygen deficiency. It shall also be his or her duty to remove as soon as possible after its discovery any accumulations of explosive or noxious gases in active workings, and where practicable, any accumulations of explosive or noxious gases in the worked out and abandoned portions of the mine. It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine each mine within three hours prior to the beginning of a shift and before any miner in such shift enters the active workings of the mine.

WV Legislature

§22A-2-15. Dangerous places.

The mine foreman shall direct and see that all dangerous places and the entrance or entrances to worked out and abandoned places in all mines are properly dangered off across the openings.

WV Legislature

§22A-2-16. Examinations of reports of fire bosses.

The mine foreman shall, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book of the fire bosses. The mine foreman shall supervise the fire boss or fire bosses, except as provided in section twenty-one of this article. No less frequently than bi-weekly, the superintendent or, if there is no superintendent, the senior person at the mine shall obtain complete copies of the books of the fire bosses, and acknowledge that he or she has reviewed such copies and acted accordingly. This acknowledgment shall be made by signing a book prescribed by the director for that purpose.

WV Legislature

§22A-2-17. Ascertainment, record and removal of all dangers.

The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists. He or his assistants or certified persons designated by him shall at least once each week travel and examine the air courses, roads and openings that give access to old workings or falls and make a record of the condition of all places where danger has been found, with ink or indelible pencil in a book provided for that purpose.

WV Legislature

§22A-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.

The mine foreman shall notify, in writing, the operator or superintendent of the mine, and the director, of his 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 to comply with the provisions hereof. 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.

WV Legislature

§22A-2-19. Death or resignation of mine foreman; successor.

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

WV Legislature

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

(a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or her shift or prior to his or her entering the mine to make his or her examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him or her to be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make the fire boss examinations shall be assigned a definite underground area of the mine, and, in making his or her examination shall examine all active working places in the assigned area and make tests with an approved device for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face and ribs in the working places and on active roadways and travelways, approaches to abandoned workings, accessible falls in active sections and areas where any person is scheduled to work or travel underground. He or she shall place his or her initials and the date at or near the face of each place he or she examines. Should he or she find a condition which he or she considers dangerous to persons entering the areas, he or she shall place a conspicuous danger sign at all entrances to the place or places. Only persons authorized by the mine management may enter the places while the sign is posted and only for the purpose of eliminating the dangerous condition. Upon completing his or her examination he or she shall report by suitable communication system or in person the results of this examination to a certified person trained as a certified miner with at least two years mining experience designated by mine management to receive and record the report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in coal-producing shifts. He or she shall also record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept for the purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

(b) Supplemental examination. - When it becomes necessary to have workers enter areas of the mine not covered during the preshift examination, a supplemental examination shall be performed by a fire boss or certified person acting as such within three hours before any person enters the area. The fire boss or certified person acting as such shall examine the area for hazardous conditions, determine if air is traveling in its proper direction and test for oxygen deficiency and methane.

(c) Each examined area shall be certified by date, time and the initials of the examiner.

(d) The results of the examination shall be recorded with ink or indelible pencil by the examiner in the book referenced in subsection (a) of this section before he or she leaves the mine on that shift.

§22A-2-21. Fire bosses to have no superior officers.

In the performance of the duties devolving upon fire bosses, or certified persons acting as such, they shall have no superior officers, but all the employees working inside of such mine or mines shall be subordinate to them in their particular work.

WV Legislature

§22A-2-22. Unlawful to enter mine until fire boss reports it safe; exceptions.

No person shall enter such mine or mines for any purpose at the beginning of work upon shift therein until such signal or warning has been given by the fire boss or bosses as to the safety thereof, as by statute provided, except under the direction of the fire boss or bosses, and then for the purpose of assisting in making the mine safe: Provided, however, That miners regularly employed on a shift during which the mine is being preshift examined by a fire boss or certified person shall be permitted to leave or enter the mine in the performance of their duties.

WV Legislature

§22A-2-23. Authority of fire boss to perform other duties.

Notwithstanding any other provision in this article contained, any person who holds a certificate issued by the Office of Miners' Health, Safety and Training certifying his or her competency to act as fire boss may perform the duties of a fire boss and any other duties, statutory or otherwise, for which he or she is qualified, in the same mine or section and on the same day or shift.

WV Legislature

§22A-2-24. Control of coal dust; rock dusting.

(a) In all mines, dangerous accumulations of fine, dry coal and coal dust shall be removed from the mine, and all dry and dusty operating sections and haulageways and conveyors and back entries shall be rock dusted or dust allayed by other methods as may be approved by the director.

(b) All mines or locations in mines that are too wet or too high in incombustible content for a coal dust explosion to initiate or propagate are not required to be rock dusted during the time any of these conditions prevail. Coal dust and other dust in suspension in unusual quantities shall be allayed by sprinkling or other dust allaying devices.

(c) In all dry and dusty mines or sections thereof, rock dust shall be applied and maintained upon the roof, floor and sides of all operating sections, haulageways and parallel entries connected thereto by open crosscuts. Back entries shall be rock dusted. Rock dust shall be so applied to include the last open crosscut of rooms and entries, and to within forty feet of faces. Rock dust shall be maintained in a quantity that the incombustible content of the mine dust that could initiate or propagate an explosion shall not be less than eighty percent. The incombustible content of mine dust in return entries shall also be equal to or greater than eighty percent.

(d) Rock dust shall not contain more than five percent by volume of quartz or free silica particles and shall be pulverized so that one hundred percent will pass through a twenty mesh screen and seventy percent or more will pass through a two hundred mesh screen.

(e) If requested by the director, an operator shall provide records establishing the quantity of bulk and bag rock dust purchased for a period not to exceed the immediately preceding six months.

WV Legislature

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification, or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his or her authorized representative and shall be available to the miners and their representatives. The MSHA-approved roof control plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

WV Legislature

(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner.

(g) Any action taken against a miner due, in whole or in part, to his or her refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to §22A-1-22 of this code. Upon a finding of discrimination by the appeals board pursuant to §22A-1-22(b) of this code, the miner shall be awarded by the appeals board all reliefs available pursuant to §22A-1-22(b) and §22A-1-22(c) of this code.

WV Legislature

§22A-2-26. Roof support; specific requirements.

(a) Generally. — The method of mining followed in any coal mine may not expose the miner to unusual dangers from roof falls, and the MSHA-approved plan shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all provisions of state mining law as set forth in this code or code of state rules.

(b) Roadways, intersections, and arches. — The width of roadways shall not exceed 16 feet unless additional support is added cross sectional. During the development of intersections, the roof between the tangents of the arches in the entry or room shall be supported with artificial roof supports prior to the development of such intersections. All areas where the arch is broken shall be considered as having unsupported roof and such roof should have artificial roof supports installed prior to any other work being performed in the area.

(c) Examinations and corrections. — Where miners are exposed to danger from falls of roof, face and ribs, the operator shall examine and test the roof, face and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately. A probe or probes for methane detectors shall be provided on each working section other than longwall sections and sections mined solely with continuous miners with integral roof bolters.

(d) Roof bolt recovery. — Roof bolts shall not be recovered where complete extraction of pillars is attempted, where adjacent to clay veins or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

WV Legislature

§22A-2-27. Canopies or cabs; electric face equipment.

An authorized representative of the director may require in any coal mine where the height of the coal bed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.

WV Legislature

§22A-2-28. Equipment to conform with height of seam.

The use of underground mining equipment of a size that does not conform to the height of the seam being mined, which creates unsafe working conditions for the miner operating the equipment or others, is prohibited: Provided, That the addition of or use of sideboards on shuttle cars shall be permitted if the shuttle car is equipped with cameras: Provided, however, That shuttle cars with sideboards as manufactured by an equipment manufacturer shall be permitted to be used without the use of cameras if permitted by the director. The Board of Coal Mine Health and Safety shall promulgate such rules as are necessary to effectuate this section.

WV Legislature

EXPLOSIVES AND BLASTING

§22A-2-29. Use of authorized explosives; storage or use of unauthorized explosives.

Permissible explosives or permissible blasting devices only shall be used in blasting coal or other material in underground coal mines. It shall be unlawful to have, use or store any nonpermissible explosives or nonpermissible blasting devices in any coal mine or on the premises of the mine, without a permit from the director.

WV Legislature

§22A-2-30. Surface magazines for explosives.

Separate surface magazines shall be provided for storage of explosives, detonators and blasting heater elements. Surface magazines shall be constructed of incombustible materials, be reasonably bulletproof and with no metal or sparking material exposed inside the magazine. Surface magazines shall be provided with doors constructed of at least one-fourth inch steel plate lined with a two-inch thickness of wood or the equivalent, properly screened ventilators, and with no openings except for entrances and ventilation, and shall be kept locked securely when unattended. The area for a distance of at least twenty-five feet in all directions shall be kept free of materials of a combustible nature; suitable warning signs shall be erected, so located that a bullet passing directly through the face of the sign will not strike the magazine. The location of magazines shall be not less than two hundred feet from any mine openings, occupied buildings or public roads unless barricaded. If magazines are illuminated electrically, the lamps shall be of vapor-proof type, properly installed and wired, and smoking and open lights shall be prohibited in or near any magazine.

WV Legislature

§22A-2-31. Transportation of explosives.

Individual containers used to carry permissible explosives or detonators shall be constructed of substantial, nonconductive materials, kept closed and maintained in good condition. When explosives or detonators are transported underground in cars moved by means of locomotives, ropes, or other motive power, they shall be in substantially covered cars or in special substantially built covered containers used specifically for transporting detonators or explosives. Any container used for transportation or storage of explosives shall be properly identified or marked. Explosives or detonators shall not be hauled into or out of a mine within five minutes preceding or following a man trip. Where explosives and detonators are transported underground by belts, they shall be handled in the following manner: In the original and unopened cases, in special closed cases constructed of nonconductive material, or in suitable, individual containers. Clearance requirements shall be a minimum of eighteen inches; stop controls shall be provided at loading and unloading points, and an attendant shall supervise the loading and unloading. Neither explosives nor detonators shall be transported on flight or shaking conveyors, mechanical loading machines, locomotives, scrapers, cutting machines, drill trucks, or any self-propelled mobile equipment. If explosives and detonators are transported in the same explosives car or in the same special container, they shall be separated by at least four inches of hardwood partition or the equivalent; the bodies of such cars or containers shall be constructed or lined with nonconductive material. No hand loader shall take into any mine any larger quantity of explosives or detonators than he may reasonably expect to use in any one shift.

WV Legislature

§22A-2-32. Underground storage of explosives.

Explosives and detonators stored underground shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, and be located at least fifteen feet from roadways and power wires in a well rock-dusted location, protected from falls of roof. If not kept in separate boxes or magazines not less than five feet apart, they may be kept in the same box or magazine if separated by at least a four-inch hardwood partition or the equivalent. Not more than a forty-eight hour supply of explosives or detonators shall be stored underground in section boxes or magazines. These boxes or magazines shall be kept at least one hundred feet from the faces and out of the direct line of blasting.

WV Legislature

§22A-2-33. Preparation of shots; blasting practices.

(a) Only a certified "shot firer" designated by mine management shall be permitted to handle explosives and do blasting. Only electric detonators of proper strength fired with permissible shot firing units shall be used except under special permits as hereinafter provided, and drillholes shall be stemmed with at least 24 inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth, unless other permissible stemming devices or methods are used. Drillholes shall not be drilled beyond the limits of the cut, and as far as practicable, cuttings and dust shall be cleaned from the holes before the charge is inserted. Charges of explosives exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if drillholes are six feet or more in depth. Ample warning shall be given before shots are fired, and care shall be taken to determine that all persons are in the clear before firing. Miners shall be removed from adjoining places and other places when there is danger of shots blowing through. No shots shall be fired in any place known to liberate explosive gas, until such place has been properly examined by a competent person who is designated by mine management for that purpose, and no shots shall be fired in any place where gas is detected with an approved gas detecting device until such gas has been removed by means of ventilation. After firing any shot, or shots, the person firing the same shall not return to the working face until the smoke has been cleared away and then he or she shall make a careful examination of the working face before leaving the place or before performing any other work in the place.

(b) Multiple shooting in coal or rock or both is authorized only under permit issued by the director. Permission to shoot more than 10 shots simultaneously may be granted by the director only after consultation with interested persons, and such shooting will be performed by special methods and under precautions prescribed by the director. All multiple shooting in bottom or roof rock shall be performed in intake air, except by special permit from the director, after consultation with interested persons, as heretofore provided. Multiple blasting of more than 10 shots performed under any permit granted by the director under this section shall be done only on noncoal-producing shifts or idle days, except as may be provided as a condition of the permit granted.

(c) Regular or short-interval delay detonators may be used for blasting purposes with written permission from the director. Regular delay detonators shall not be used for blasting coal, but may be used for grading above or below coal seams and during shaft, slope, tunnel work and in faults or wants. Where short-interval delay detonators are permitted by said director to be used, the shot firing circuit must be tested with a blasting galvanometer before firing, and the leg wires connected in series. No instantaneous, regular, or zero-delay detonators are to be fired in conjunction with short-interval delay detonators. The delay interval between dependent rows must not be less than 25 milliseconds or more than 100 milliseconds, and the entire series of any one round shall not provide a delay of more than 500 milliseconds between the first and last shot. The total number of charged holes to be fired during any one round must not exceed the limit permitted by the director. Misfires must be tested with a blasting galvanometer before removing.

WV Legislature

(d) Electrical equipment shall not be operated in the face areas, and only work in connection with timbering and general safety shall be performed while boreholes are being charged. Shots shall be fired promptly after charging. Mudcaps (adobes) or any other unconfined shots shall not be permitted in any coal mine. No solid shooting shall be permitted without written permission of the office.

(e) Blasting cables shall be well insulated and shall be 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. The cable, when new, shall be at least 125 feet in length and never less than 100 feet. Shooting cables shall be kept away from power wires and all other sources of electric current, connected to the leg wires by the person who fires the shot, staggered as to length or well separated at the detonator leg wires, and shunted at the battery until ready to connect to the blasting unit.

WV Legislature

§22A-2-34. Misfires of explosives.

(a) Where misfires occur with electric detonators, a waiting period of at least five minutes shall elapse before anyone returns to the shot. After such failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

(b) Explosives shall be removed by firing a separate charge at least two feet away from and parallel to the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

(c) A careful search of the working place, and, if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole, to recover any undetonated explosive.

(d) The handling of a misfired shot shall be under the direct supervision of the mine foreman or a certified person designated by him

WV Legislature

§22A-2-35. Other blasting devices.

(a) The provisions governing the handling, storage, transportation and use of permissible explosives shall apply to all other blasting devices employing a heater element when used underground.

(b) Where compressed air is used for blasting, the airlines shall be grounded at the compressor and, if practical, at other low-resistant ground connections along the lines. They shall not be connected in any way to rails, waterlines or other electric return conductors and shall be adequately insulated and protected where they cross electric wires, underneath track or at places where equipment passes over or under. Steel, copper or other airlines connected therewith shall not be handled or repaired when air pressure is in the line. Shutoff valves shall be installed every thousand feet in all compressed-air blasting lines and at all points where branch lines leave the main line and blowdown valves shall not be less than fifty feet from the face and shall be around a corner.

(c) When misfires occur with any other blasting devices, they shall be handled in a safe manner and under the supervision of the mine foreman or a certified person designated by him

WV Legislature

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he or she shall be readily available at all times when men are in the mine. He or she shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift there shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derails shall be placed near the top and at all intermediate landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man trips or man cages, and the miners shall remain in such station until the man trip or man cage is available.

(b) No operator of any coal mine worked by shaft, slope or incline, shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery shall allow any person, except such as may be designated for this purpose by the operator, to interfere with any part of the machinery; and no person shall interfere with any part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his or her duties. Where the mine is operated or worked by shaft or slope, a minimum space of two and one-half square feet per person shall be available for each person on any cage or car where men are transported. In no instance shall more than twenty miners be transported on a cage or car without the approval of the director. No person shall ride on a loaded cage or car in any shaft, slope, or incline: Provided, That this does not prevent any trip rider from riding in the performance of his or her authorized duties. No engineer is required for automatically operated cages, elevators, or platforms. Cages and elevators shall have an emergency power source unless provided with other escapeway facilities.

(c) Each automatic elevator shall be provided with a telephone or other effective

WV Legislature

communication system by which aid or assistance can be obtained promptly.

(d) A stop switch shall be provided in the automatic elevator compartment that will permit the elevator to be stopped at any location in the shaft.

WV Legislature

§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

(a) Use of haulage roads and equipment along with signals and inspection shall meet standards established by the U. S. Mine Safety and Health Administration. The roadbed, rails, joints, switches, frogs, and other elements of all haulage roads shall be constructed, installed, and maintained in a manner consistent with speed and type of haulage operations being conducted to ensure safe operation. Where transportation of personnel is exclusively by rail, track shall be maintained to within 1,500 feet of the nearest working face, except that when any section is fully developed and being prepared for retreating, then the track shall be maintained to within 1,500 feet of that retreat mining section if a rubber tired vehicle is readily available: Provided, That in any case where such track is maintained to within a distance of more than 500 feet and not more than 1,500 feet of the nearest working face, a self-propelled, rubber-tired vehicle capable of transporting an injured worker shall be readily available.

(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throws and stands, where possible, shall be placed on the clearance side.

(c) Haulage roads on entries shall have a continuous, unobstructed clearance of at least 24 inches from the farthest projection of any moving equipment on the clearance side.

(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or "tight" side, there shall be at least 12 inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies, or other material: Provided, That not more than 24 inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors which in no event shall be less than 24 inches.

(i) Shelter holes shall be provided along haulage entries. Such shelter holes shall be spaced not more than 105 feet apart, except when variances are authorized by the director with unanimous agreement of the Mine Safety and Technical Review Committee. Shelter holes shall be on the side of the entry opposite the trolley wire except that shelter holes may be on the trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by the director. The MSHA-approved plan shall serve as the state-

WV Legislature

approved plan governing the use of shelters: Provided, That the MSHA-approved plan shall comply with all other provisions of state mining law as set forth in state code or code of state rules.

(j) Shelter holes shall be at least five feet in depth, not more than four feet in width and as high as the traveling space, unless the director with unanimous agreement of the Mine Safety and Technical Review Committee grants a waiver. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.

(k) Shelter holes shall be kept clear of refuse and other obstructions.

(l) Shelter holes shall be provided at switch throws and manually operated permanent doors.

(m) No steam locomotive shall be used in mines where miners are actually employed in the extraction of coal, but this shall not prevent operation of a steam locomotive through any tunnel haulway or part of a mine that is not in actual operation and producing coal.

(n) Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any other compound shall not be used in a coal mine, unless the equipment is diesel-powered equipment approved, operated and maintained as provided in §22A-2-1 et seq. of this code.

(o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage equipment shall be maintained in a safe operating condition. Each locomotive, personnel carrier, barrier tractor, and other related equipment shall be equipped with a suitable lifting jack and handle. An audible warning device and headlights shall be provided on each locomotive and each shuttle car. All other mobile equipment, using the face areas of the mine, shall be provided with a conspicuous light or other approved device so as to reduce the possibility of collision.

(p) No persons other than those necessary to operate a trip or car shall ride on any loaded car or on the outside of any car. Where pusher locomotives are not used, the locomotive operator shall have an assistant to assist him or her in his or her duties.

(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: Provided, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars when in motion: Provided, however, That trip lights need not be used on cars being shifted to and from loading machines, or on cars being handled at loading heads during gathering operations at working faces. No person, other than the motorman and brakeman, should ride on a locomotive unless authorized by the mine foreman, and then only when safe riding facilities are provided. An empty car or cars shall be used to provide a safe distance between the locomotive and the material car when rail, pipe, or long timbers are being hauled. A safe clearance shall be maintained between the end car or trips placed

WV Legislature

on side tracks and moving traffic. On haulage roads the clearance point shall be marked with an approved device.

(r) No motorman, trip rider, or brakeman shall get on or off cars, trips, or locomotives while they are in motion, except that a trip rider or brakeman may get on or off the rear end of a slowly moving trip or the stirrup of a slowly moving locomotive to throw a switch, align a derail, or open or close a door.

(s) Flying or running switches and riding on the front bumper of a car or locomotive are prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not over 80 feet), or when going up extremely steep grades and then only at slow speed. The operator of a shuttle car shall face in the direction of travel except during the loading operation when he or she shall face the loading machine.

(t) (1) A system of signals, methods, or devices shall be used to provide protection for trips, locomotives, and other equipment coming out onto tracks used by other equipment.

(2) In any coal mine where more than 350 tons of coal are produced on any shift in each 24-hour period, a dispatcher shall be on duty when there are movements of track equipment underground, including time when there is no production of coal. Such traffic shall move only at the direction of the dispatcher.

(3) The dispatcher's only duty shall be to direct traffic: Provided, That the dispatcher's duties may also include those of the responsible person required by §22A-2-42 of this code: Provided, however, That the dispatcher may perform other duties which do not interfere with his or her dispatching responsibilities and do not require him or her to leave the dispatcher's station except as approved by the Mine Safety and Technical Review Committee.

(4) Any dispatcher's station shall be on the surface.

(5) All self-propelled track equipment shall be equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain a distance of at least 300 feet from the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.

(w) Positive stop blocks or derails shall be installed on all tracks near the top and at landings of shafts, slopes, and surface inclines. Positive-acting stop blocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.

(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator: Provided, That the addition of or use of sideboards on shuttle cars shall be permitted if the shuttle car is equipped with cameras: Provided, however, That shuttle cars

WV Legislature

with sideboards as manufactured by an equipment manufacturer shall be permitted to be used without the use of cameras if permitted by the director.

(y) Mining equipment shall not be parked within 15 feet of a check curtain or fly curtain.

(z) All self-propelled track haulage equipment shall be equipped with an emergency stop switch, self-centering valves, or other devices designed to de-energize the traction motor circuit in the event of an emergency. All track-mounted trolley equipment shall be equipped with trolley pole swing limiters or other means approved by the Mine Safety and Technical Review Committee to restrict movement of the trolley pole when it is disengaged from the trolley wire. Battery powered mobile equipment shall have the operating controls clearly marked to distinguish the forward and reverse positions.

WV Legislature

§22A-2-38. Transportation of miners by cars; self-propelled equipment; belts.

(a) Man trips shall be pulled, unless self-propelled, at safe speeds consistent with the condition of roads and type of equipment used, but not to exceed twelve miles an hour. Each man trip shall be under the charge of a certified person or other competent person designated by a mine foreman or assistant mine foreman. It shall be operated independently of any loaded trip of coal or other heavy material, but may transport tools, small machine parts and supplies. When mine cars are used for man trips, a locomotive shall be used on each end of the trip.

(b) Cars on the man trip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided. Sufficient space shall be afforded so that no miner shall have to be transported in a hazardous position.

(c) No person shall ride under the trolley wire unless the man cars used are suitably covered and insulated. No person shall ride on loaded timber cars, loaded supply trucks, empty timber cars or empty supply trucks which are not equipped with side guards, on top of locomotives, on chain conveyors, inside shuttle cars, on the tops of machinery or equipment, or on the sides of machinery or equipment, except for operators of such machinery or equipment.

(d) Miners shall not load or unload before the cars in which they are to ride, or are riding, come to a full stop. Miners shall proceed in an orderly manner to and from man trips.

(e) When belts are used for transporting miners, a minimum clearance of eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring and other objects. Visible reflectors shall be placed where projected equipment, cap pieces, overhead cables, wiring or other pieces cross the belt line. Where the height of the coal seam permits, the clearance shall not be less than twenty- four inches.

(f) The belt speed shall not exceed two hundred fifty feet per minute where the minimum overhead clearance is eighteen inches, or three hundred feet per minute where the minimum overhead clearance is twenty-four inches, while miners are loading, unloading, or being transported. A signaling system or method shall be provided for stopping the belt and miners shall ride not less than six feet apart.

(g) An assistant mine foreman or some other person designated by the mine foreman shall supervise the loading and unloading of belts and man trips. Where miners are required to cross over belts, adequate and safe facilities shall be provided.

(h) Positive-acting stop controls shall be installed along all belt conveyors used to transport miners, and such controls shall be readily accessible, and maintained so that the belt can be stopped or started at any location.

WV Legislature

(i) Belt conveyors used for man trips shall be stopped while men are loading or unloading.

(j) There shall be at least thirty-six inches of side clearance where miners board or leave such belt conveyors.

(k) Adequate illumination including colored lights or reflective signs shall be installed at all loading and unloading stations. Such colored lights and reflective signs shall be so located as to be observable to all persons riding the belt conveyor.

(l) Telephone or other suitable communications shall be provided at points where miners are regularly loaded on or unloaded from belt conveyors.

(m) After supplies have been transported on man trip cars, such cars shall be examined for unsafe conditions prior to the transportation of miners.

(n) While trackmen are working on haulageways, the dispatcher, or if there is no dispatcher, such other person responsible for communications with haulage crews shall give notice to haulage crews to maintain traffic under a slow and safe operating speed at the point of construction or repair.

WV Legislature

§22A-2-39. Belt conveyor; installation; maintenance; examination of belt conveyors and belt entries.

(a) On or after July 1, 1971, all conveyor belts acquired for use underground shall be flame-resistant conveyor belts.

(b) A clear travelway at least twenty-four inches wide shall be provided on both sides of all belt conveyors installed after July 1, 1971. Where roof supports are installed within twenty-four inches of a belt conveyor, a clear travelway at least twenty-four inches wide shall be provided on the side of such support farthest from the conveyor.

(c) On belt conveyors that do not transport men, stop and start controls shall be installed at intervals not to exceed one thousand feet. Such controls shall be properly installed and positioned so as to be readily accessible.

(d) Persons shall not cross moving belt conveyors, except where suitable crossing facilities are provided.

(e) All belt conveyors shall be inspected by a certified belt examiner, mine foreman-fireboss or assistant mine foreman-fireboss for frozen rollers and fire hazards following the last production shift each week, also before holidays, vacation periods, as hereinafter provided, with records kept of daily inspection.

(f) (1) Belt conveyors on which coal is transported on any shift shall be examined during each coal-producing shift. Such examination shall be made of belt conveyors and belt conveyor entries for unsafe conditions including, but not limited to, mine gases, frozen rollers, hazardous roof or rib conditions and fires.

(2) Whenever an on-shift examination of a belt conveyor and belt conveyor entry has not been made during the preceding shift, an examination shall be made of the belt conveyor and belt conveyor entry prior to the conveyor being started; or if any miner is going to enter the belt conveyor entry, then the area where such miner will be working shall be examined. Such examination shall be made by a certified mine foreman-fire boss, assistant mine foreman-fire boss, or a certified belt examiner. Thereafter, on-shift examinations by a certified belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss shall be made as herein required.

(g) In the conduct of the examination, the belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss shall travel the full extent of the belt conveyor or belt conveyor entry assigned and shall place his initials and the date and time of his examination at or near each belt head and along each belt conveyor he examines. Should the belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss find a condition which he considers dangerous to persons entering such area, he shall erect a danger sign to prevent other persons from entering the area and notify his immediate supervisor of the condition. Only state or federal inspectors or authorized representatives of the miners, and persons

WV Legislature

authorized by mine management to correct the condition, may enter such area while the danger sign is posted. At the conclusion of each shift, belt examiners, mine foreman-fire bosses or assistant mine foreman-fire bosses shall record in a book provided for that purpose the results of their examination, including comments concerning the physical condition of the belt conveyor and the area where the belt conveyor is located. Such book shall be examined and countersigned by the mine foreman or his assistant and by the person conducting such examination on the next oncoming shift.

(h) The examinations set forth in this section shall be the only examinations required of belt conveyors and belt conveyor entries, notwithstanding any provision of sections fourteen, twenty or any other section of this chapter relating to the examination of belt conveyors and belt conveyor entries.

(i) The board of miner training, education and certification shall establish criteria and standards for the training, examination and certification of "belt examiners". Persons seeking to be certified as a "belt examiner" must hold a miner's certificate and have at least two years practical underground mining experience. Such training, examination and certification program shall, as a minimum, require a demonstration of knowledge of belt conveyors roof control, ventilation and gases.

(j) Deluge-type water sprays, water sprinklers, dry chemical sprinkler system or foam generators (designed to be automatically activated in the event of a fire or rise in the temperature at or near the belt drive) shall be installed at each main and secondary conveyor drive that are located underground.

(k) All underground belt conveyors shall be equipped with slippage and sequence switches.

(l) Telephones or other suitable communications shall be provided at points where supplies are regularly loaded or unloaded from the belt conveyors.

(m) After supplies have been transported on belt conveyors, such belts shall be examined by a belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss for unsafe conditions prior to the transportation of men.

(n) No person shall be permitted to perform any work within the confines of the cargo space of a crusher or feeder, unless the crusher or feeder has been de-energized and locked out.

WV Legislature

§22A-2-40. General provisions.

Operators of coal mines in which electricity is used as a means of power shall comply with the following provisions:

(1) All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. 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.

(2) Underground transformers shall be air cooled or cooled with noninflammable liquid or inert gas.

(3) Underground stations containing circuit breakers filled with inflammable liquids shall be put on a separate split of air or ventilated to the return air, and shall be of fireproof construction.

(4) Transformers shall be provided with adequate overload protection.

(5) "Danger — High Voltage" signs with the voltage indicated shall be posted conspicuously on all transformer enclosures, high-potential switchboards, and other high-potential installations.

(6) Dry insulating platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

(7) Capacitors used for power factor correction shall be nonflammable liquid filled. Suitable drain-off resistors or other means to protect miners against electric shock following removal of power shall be provided.

(8) All unattended underground loading points where electric driven hydraulic systems are used shall utilize a fireproof oil or emulsion.

(9) Before electrical changes are made to permissible equipment for use in a mine, they shall be approved by the director.

(10) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.

(11) In all mines all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible.

(12) All hand-held electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment which are taken into or used inby the last open

WV Legislature

crosscut of any coal mine shall be permissible.

(13) All electric face equipment which is taken into or used inby the last open crosscut of any coal mine shall be permissible.

(14) In mines operated in coal seams which are located at elevations above the water table, the phrase “coal seams above the water table” means coal seams in a mine which are located at an elevation above a river or the tributary of a river into which a local surface water system naturally drains.

(15) The operator of each coal mine shall maintain in permissible condition all electric face equipment, which is taken into or used inby the last open crosscut of any mine.

(16) Except where permissible power connection units are used, all power-connection points outby the last open crosscut shall be in intake air.

(17) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing.

(18) Energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of a mine shall require that such persons wear approved and tested insulated shoes and wireman’s gloves.

(19) 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. Disconnecting devices shall be locked out and suitably tagged by 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 persons who installed them, or, if such persons are unavailable, by qualified persons authorized by the operator or his or her agent.

(20) All electric equipment shall be examined weekly, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the director and to the miners in such mine.

(21) 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 material.

(22) All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

WV Legislature

(23) Cables shall enter metal frames of motors, splice boxes, and electric compartment only through proper fittings. When insulated wire, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

(24) All power wire (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-installed insulators and shall not contact combustible material, roof, or ribs.

(25) Power wires and cables, including, but not limited to, phone communication and control wires, except trolley wires, trolley feeder wires, and bare signal wires, shall be insulated adequately and fully protected. The provisions of this subdivision became effective on January 1, 1978.

(26) Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(27) Incandescent lamps installed along haulageways and at other locations shall not contact combustible material, and if powered from trolley or direct current feeder circuits, need not be provided with separate short circuits or overload protection, if the lamp is not more than eight feet in distance from such circuits.

(28) In all main power circuits, disconnecting switches shall be installed underground within 500 feet of the bottoms of shafts and boreholes through which main power circuits enter the underground area of the mine and within 500 feet of all other places where main power circuits enter the underground area of the mine.

(29) All electric equipment shall be provided with switches or other controls that are safely designed, constructed, and installed.

(30) Each underground, exposed power conductor that leads underground shall be equipped with suitable lightning arrestors of approved type within 100 feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low-resistance grounding medium on the surface which shall be separated from neutral ground by a distance of not less than 25 feet.

(31) Except for areas of a coal mine inby the last open crosscut, incandescent lamps may be used to illuminate underground areas. When incandescent lamps are used in a track entry or belt entry or near track entries to illuminate special areas other than structures, the lamps shall be installed in weatherproof sockets located in positions such that the lamps will not come in contact with any combustible material. Lamps used in all other places must be of substantial construction and be fitted with a glass enclosure.

WV Legislature

(32) An authorized representative of the director may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

(33) An authorized representative of the director shall require manually operated emergency stop switches, designed to deenergize the traction motor circuit when the contractors or controller fail to open, to be installed on all battery powered tractors, taken into or used inby the last open crosscut of any entry or room.

(34) Trailing cables used in coal mines shall meet the requirements for flame-resistant cables.

(35) 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. 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.

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

(37) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next 24-hour period. No temporary splice shall be made in a trailing cable within 25 feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term “splice” means a mechanical joining of one or more conductors that have been severed.

(38) When permanent splices in trailing cables are made, they shall be:

(A) Mechanically strong with adequate electrical conductivity and flexibility;

(B) Effectively insulated and sealed so as to exclude moisture; and

(C) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(39) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cables will be hung in a manner which will damage the insulation or conductors.

(40) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(41) Trailing cable and power cable connections to junction boxes and to electrical

WV Legislature

equipment shall not be made or broken under load.

(42) All metallic sheaths, armors and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the director.

(43) Except where waived by the director, metallic frames, casings and other enclosures of electric 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.

(44) In instance where single-phase 110-220 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, and other enclosure of such equipment to a separate grounding conductor which establishes a continuous connection to a grounded center tap of the transformer.

(45) The attachment of grounding wires to a mine track or other grounded power conductor will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection.

(46) The frames of all offtrack direct-current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at no less safe voltages.

(47) Installation of silicon diodes shall be restricted to electric equipment receiving power from a direct-current system with one polarity grounded. Where such diodes are used on circuits having a nominal voltage rating of 250, they must have a forward current rating of 400 amperes or more, and have a peak inverse voltage rating of 400 or more. Where such diodes are used on circuits having nominal voltage rating of 550, they must have a forward current rating of 250 amperes or more, and have a peak inverse voltage rating of 800 or more.

(48) In addition to the grounding diode, a polarizing diode must be installed in the machine control circuit to prevent operation of the machine when the polarity of a trailing cable is reversed.

(49) When installed on permissible equipment, all grounding diodes, over-current devices, and polarizing diodes must be placed in explosion-proof compartments.

(50) High-voltage lines, both on the surface and underground, shall be deenergized 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 procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test and maintain protective devices in making such repairs.

WV Legislature

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

(52) All persons performing work on energized high-voltage surface lines shall wear protective rubber gloves, sleeves, and climber guards if climbers are worn. Protective rubber gloves shall not be worn wrong side out or without protective leather gloves. Protective devices worn by a person assigned to perform repairs on high-voltage surface lines shall be worn continuously from the time he or she leaves the ground until he or she returns to the ground, and, if such devices are employed for extended periods, such person shall visually inspect the equipment assigned him or her for defects before each use, and, in no case, less than twice each day.

(53) 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 he or she is exposed. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.

(54) Solely for purposes of grounding ungrounded high-voltage power systems, grounded messenger wires used to suspend the cables of such systems may be used as a grounding medium.

(55) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

(56) High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

(57) Circuit breakers protecting high-voltage circuits entering an underground area of any coal mine shall be located on the surface and in no case installed either underground or within a drift.

(58) One circuit breaker may be used to protect two or more branch circuits, if the circuit breaker is adjusted to afford overcurrent protection for the smallest conductor.

(59) The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. 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.

(60) High-voltage circuits extending underground and supplying portable mobile or

stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, 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 high-voltage equipment supplied power from the circuit, except that the director or his or her authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his or her finding that such exception does not pose a hazard to the miners. Within 100 feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the director or his or her authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he or she determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(61) High-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, 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 his or her authorized representative to assure such continuity.

(62) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor with one or more ground conductors having a total cross-sectional area of not less than one half the power conductor, and with an insulated internal or external conductor not smaller than No. 10 (A.W.G.) for the ground continuity check circuit.

(63) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(64) Single-phase loads, such as transformer primaries, shall be connected phase-to-phase.

(65) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(66) Disconnecting devices shall be installed at the beginning of branch lines in underground high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

WV Legislature

(67) Circuit breakers and disconnecting switches underground shall be marked for identification.

(68) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with the manufacturers' specifications.

(69) Frames, supporting structures and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(70) Low- and medium-voltage power circuits serving three-phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the director. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

(71) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the director may permit such centers and transformers to be moved while energized, if he or she determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and 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 hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that when such centers and transformers are moved while energized as permitted under this section, energized high-voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman's gloves.

(72) Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, 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, except that the director or his or her authorized representative may permit underground low- and medium-voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to 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.

WV Legislature

(73) 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 which 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 his or her authorized representative to assure such continuity, except that an extension of time, not in excess of 12 months, may be permitted by the director on a mine-to-mine basis if he or she determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(74) Disconnecting devices shall be installed in conjunction with circuit breakers serving portable or mobile equipment to provide visual evidence that the power is connected.

(75) Circuit breakers shall be marked for identification.

(76) Single-phase loads shall be connected phase-to-phase.

(77) Trailing cables for medium-voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a ground metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2,000 volts or more.

(78) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

(79) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(80) Trolley wires and trolley feeder wires, high-voltage cables, and transformers shall not be located within 15 feet of the last open crosscut and shall be kept at least 150 feet from pillar workings.

(81) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately:

(A) At all points where men are required to work or pass regularly under the wires.

(B) On both sides of all doors and stoppings.

(C) At man-trip stations.

(82) Temporary guards shall be provided where trackmen and other persons work in close proximity to trolley wires and trolley feeder wires.

(83) Adequate precaution shall be taken to ensure that equipment being moved along

WV Legislature

haulageways will not come in contact with trolley wires or trolley feeder wires.

(84) Trolley and feeder wires shall be installed as follows: Where installed on permanent haulage, they shall be:

(A) At least six inches outside the track gauge line.

(B) Kept taut and not permitted to touch the roof, rib, or crossbars. Particular care shall be taken where they pass through door openings to preclude bare wires from coming in contact with combustible material.

(C) Installations of trolley wire hangers shall be provided within three feet of each splice in a trolley wire.

WV Legislature

§22A-2-41. Bonding track used as power conductor.

Where track is used as a power conductor, rails and switches on main entries shall be bonded and cross-bonded in such manner as to assure adequate return. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than two hundred feet: Provided, however, That rail joints in such secondary haulage roads need not be bonded where a copper feeder adequate in size parallels the track and is electrically connected thereto at intervals of not more than two hundred feet by cross bonds.

WV Legislature

§22A-2-42. Telephone service or communication facilities.

Telephone service or equivalent two-way communication facilities shall be provided in all mines at least one of which shall be in service at all times as follows:

(a) A telephone or equivalent two-way communication facility shall be located on the surface within five hundred feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when miners are underground can hear the facility and respond immediately in the event of an emergency. "Two-way communication facility" shall mean a system maintained to allow voice contact to come in and out of the working section at all times.

(b) (1) Telephones or equivalent two-way communication facilities provided at each working section shall be located not more than five hundred feet outby the last open crosscut and not more than eight hundred feet from the farthest point of penetration of the working places on such section.

(2) The incoming communication signal shall activate an audible alarm, distinguishable from the surrounding noise level, or a visual alarm that can be seen by a miner regularly employed on the working section.

(3) If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in the event the mine electric power fails or is cut off: Provided, That where trolley phones and telephones are both used, an alternate source of power for the trolley phone system is not required.

(4) Telephones or equivalent two-way communication facilities shall be maintained in good operating condition at all times. In the event of any failure in the system that results in loss of communication, repairs shall be started immediately, and the system restored to operating condition as soon as possible.

(5) Where required by the director, trucks used for haulage of coal, miners, or supplies by an operator shall be equipped with two-way communication instruments.

(c) On or after January 1, 1978, unless the director for good cause grants a waiver, all such telephones or equivalent two-way communications shall be connected to regular telephonic and other means of communication available in the community so that in the event of an emergency, emergency medical attendants or other personnel can communicate to and from the mine directly to health care facilities.

(d) Telephone lines and cables shall be carried on insulators installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be

WV Legislature

insulated adequately. Lightning arrestors shall be provided at the points where telephone circuits enter the mine.

WV Legislature

§22A-2-43. Actions to detect and respond to excess methane.

The following actions are required to detect and respond to excess methane. Subsections (a) through (f) of this section pertain to methane testing with hand-held devices:

(a) Hand-held testing required. -- In any mine, no electrical equipment or permissible diesel-powered equipment may be brought in by the last open crosscut until a qualified person tests for methane. If one percent or more methane is present, the equipment may not be taken into the area until the methane concentration is reduced to less than one percent. Thereafter, subsequent methane examinations shall be made at least every twenty minutes while any electrical or diesel-powered equipment is present and energized.

(b) Location of tests. –- Tests for methane concentrations under this section shall be made at least twelve inches from the roof, face, ribs and floor.

(c) Working places and intake air courses. --

(1) When one percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located or in an area where mechanized mining equipment is being installed or removed:

(A) Except intrinsically safe atmospheric monitoring systems (AMS), electrically powered equipment in the affected area shall be de-energized and other mechanized equipment shall be shut off.

(B) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane to less than one percent.

(C) No other work shall be permitted in the affected area until the methane concentration is less than one percent.

(2) When one and five-tenths percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located or in an area where mechanized mining equipment is being installed or removed: (A) Except for the mine foreman, assistant mine foreman or individuals authorized by the mine foreman or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners' representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(B) Except for intrinsically safe AMS, electrically powered equipment in the affected area shall be disconnected at the power source.

(d) Return air split.--

WV Legislature

(1) When one percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location at which the split is used to ventilate seals or worked-out areas, changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air to less than one percent.

(2) When one and five-tenths percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location where the split is used to ventilate seals or worked-out areas, except for the mine foreman, assistant mine foreman or individuals authorized by the mine or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners' representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(3) Other than intrinsically safe AMS, equipment in the affected area shall be de-energized, electric power shall be disconnected at the power source and other mechanized equipment shall be shut off.

(4) No other work shall be permitted in the affected area until the methane concentration in the return air is less than one percent.

(e) Return air split alternative. --

(1) The provisions of this paragraph may apply if:

(A) The quantity of air in the split ventilating the active workings is at least twenty-seven thousand cubic feet per minute in the last open crosscut or the quantity specified in the approved ventilation plan, whichever is greater.

(B) The methane content of the air in the split is continuously monitored during mining operations by an AMS that gives a visual and audible signal on the working section when the methane in the return air reaches one and five-tenths percent and the methane content is monitored as specified in the approved ventilation plan.

(C) Rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point.

(2) When one and five-tenths percent or more methane is present in a return air split between a point in the return opposite the section loading point and where that split of air meets another split of air or where the split of air is used to ventilate seals or worked-out areas:

(A) Changes or adjustments shall be made at once to the ventilation system to reduce the

WV Legislature

concentration of methane in the return air below one and five-tenths percent.

(B) Except for the mine foreman, assistant mine foreman or individuals authorized by the mine foreman or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners' representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(C) Except for intrinsically safe AMS, equipment in the affected area shall be de-energized, electric power shall be disconnected at the power source and other mechanized equipment shall be shut off.

(D) No other work shall be permitted in the affected area until the methane concentration in the return air is less than one and five-tenths percent.

(f) Bleeders and other return air courses.--

The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of air, or in a return air course other than as described in subsections (d) and (e) of this section, shall not exceed two percent.

(g) Machine-mounted methane monitors. --

(1) Approved methane monitors shall be installed and maintained on all face cutting machines, continuous miners, longwall face equipment and other mechanized equipment used to extract coal or load coal within the working place.

(2) The sensing device for methane monitors on longwall shearing machines shall be installed at the return air end of the longwall face. An additional sensing device also shall be installed on the longwall shearing machine, downwind and as close to the cutting head as practicable. An alternative location or locations for the sensing device required on the longwall shearing machine may be approved in the ventilation plan.

(3) The sensing devices of methane monitors shall be installed as close to the working face as practicable.

(4) Methane monitors shall be maintained in permissible and proper operating condition and shall be calibrated with a known air-methane mixture at least once every fifteen days and a record of the calibration shall be recorded with ink or indelible pencil by the person performing the calibration in a book prescribed by the director and maintained on the surface. Calibration records shall be retained for inspection for at least one year from the date of the test. To assure that methane monitors are properly maintained and calibrated, the operator shall use persons properly trained in the maintenance, calibration and permissibility of methane monitors to calibrate and maintain the devices.

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(h) Automatic deenergization of electrical equipment or shut down of diesel equipment. --

When the methane concentration at any machine-mounted methane monitor reaches one percent, the monitor shall give a warning signal. The warning signal device of the methane monitor shall be visible to a person operating the equipment on which the monitor is mounted. The methane monitor shall automatically deenergize electric equipment or shut down diesel-powered equipment on which it is mounted when:

(1) The methane concentration at any machine-mounted methane monitor reaches one and five-tenths percent; or

(2) The monitor is not operating properly.

The machine may not again be started in that place until the methane concentration measured by the methane monitor is less than one percent.

WV Legislature

§22A-2-43a. Operation of cutting and mining machines; repair and maintenance of same.

(a) Qualified person to operate cutting machine. -- No person shall be placed in charge of a coal-cutting machine in any mine who is not a qualified person, capable of determining the safety of the roof and sides of the working places and of detecting the presence of explosive gas, unless they are accompanied by a certified or qualified person who has passed such an examination.

(b) Operation of mining machines. -- Machine operators and helpers shall use care while operating mining machines. They shall examine the roof of the working place to see that it is safe before starting to operate the machine. They shall not move the machine while the cutter chain is in motion. Additionally, no person shall operate the cutterhead on any continuous miner while the machine is moving from place to place underground: Provided, That a cutterhead may be operated during clean up or when the machine is extracting coal.

(c) Repair and maintenance of mining machines. -- (1) Repairs or maintenance shall not be performed on mining machines until the power is off and locked and tagged, if required by law, and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. For purposes of this subsection, the following terms shall have the following meanings:

(A) "Maintenance" means the labor of keeping machinery in good working order and includes cleaning, clearing jammed material or conducting examinations on or in close proximity to machinery; and

(B) "Repair" means to fix, mend, or restore to good working order.

(d) Methods to comply with the standard to prevent inadvertent or unexpected motion include:

(A) Opening the circuit breaker for the affected machinery, provided no energized parts or conductors are exposed, and placing the run selector switch for startup of the machinery in the "off" position. On longwall machinery, this would include placing the lockout switch in the lockout position in the area were the repair or maintenance is being performed. A qualified electrician is required to de-energize a circuit breaker if there are exposed energized parts or conductors; or

(B) Opening the circuit breaker at the power center that supplies power for the affected machinery and disengaging the power cable coupler that supplies power to the machinery; or

(C) Opening a manual visible disconnect switch, either within the circuit or onboard the machinery, and securing the switch against reenergization, as required by law. A control circuit start-stop switch does not constitute a manual disconnect; or

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(D) In cases such as steeply inclined belt conveyors and suspended loads, when removing the power alone will not ensure against unintentional or inadvertent movement, the machinery shall be physically blocked, in addition to removing the power by one of the three methods described above. Physical blocking may be achieved by the use of such devices as bars, chocks or clamps.

WV Legislature

§22A-2-44. Hand-held electric drills and rotating tools; trailing cables.

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 and shall be equipped with friction or safety clutches.

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§22A-2-45. Installation of lighting.

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.

WV Legislature

§22A-2-46. Welding and cutting.

(a) A record shall be kept of oxygen and gas tanks or cylinders taken into a mine and the date shall be recorded when they are removed from the mine. No more tanks or cylinders than necessary to perform the work efficiently shall be permitted underground at one time.

(b) Propane torches may be used in lieu of blowtorches. Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, check valves, and gas cylinders shall be used.

(c) Welding and cutting may be done in mines: *Provided*, That all equipment and gauges are maintained in safe condition and not abused, that suitable precautions are taken against ignition of methane, coal dust, or combustible materials, that means are provided for prompt extinguishment of fires accidentally started, and that only persons who have demonstrated competency in welding and cutting are entrusted to do this work. Adequate eye protection shall be used by all persons doing welding or cutting, and precautions shall be taken to prevent other persons from exposure that might be harmful to their eyes. A suitable wrench designed for compressed tanks shall be provided to the person authorized to use the equipment.

(d) Transportation of oxygen and gas tanks or cylinders shall be permitted on self-propelled machinery or belt conveyors specially equipped for safe holding of the containers in transportation. In no instance shall such transportation be permitted in conjunction with any mantrip, unless such mantrip is especially equipped with a compartment, lined with at least four inches of foam rubber or the equivalent, and capable of tightly securing the tank inside the manufactured frame of the vehicle.

(e) Empty oxygen and gas tanks or cylinders shall be marked “empty” and shall be removed from the mine promptly in safe containers provided for transportation of the same.

(f) When tanks and cylinders are not in use and when they are being transported, valve protection caps and plugs shall be placed on all tanks or cylinders for which caps and plugs are available. No oxygen tanks, gas tanks, or cylinders shall be transported with the hoses and gauges attached thereto.

(g) In all mines a certified person, pursuant to §22A-2-12 of this code, shall examine for gas with an approved gas detector before and during welding or cutting. The safety of the equipment and methods used in such cases shall be subject to approval of the director. If equipment is mobile, it shall be removed outby the last open breakthrough before cutting and welding may be performed on such equipment.

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§22A-2-47. Responsibility for care and maintenance of face equipment.

Mine operators shall maintain face equipment in safe operating condition. Equipment operators shall exercise reasonable care in the operation of the equipment entrusted to them and shall promptly report defects known to them.

WV Legislature

§22A-2-48. When respiratory equipment to be worn; control of dust.

Miners exposed for short periods to gas-, dust-, fume- and mist-inhalation hazards shall wear permissible respiratory equipment. Dust shall be controlled by the use of permissible dust collectors or other approved methods.

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SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22A-2-49. Safeguards for mechanical equipment.

(a) The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks while such machines are parked or being trammed. Loading machines shall not be trammed with loading arms in motion, except when loading materials.

(b) Belt, chain or rope drives and the moving parts of machinery which are within seven feet of the floor, ground or platform level, unless isolated, shall be guarded adequately. Repair pits shall be kept covered or guarded at all times when not in use. Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Guards which have been removed shall be replaced before the machinery is again put into use. Provision shall be made to prevent accumulations of spilled lubricants.

(c) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods, and, unless goggles are used, eye shields.

(d) No person shall stand along the side of the boom, or pass or stand along the loading head or cutting head, on a continuous miner or loading machine in operation.

(e) Braking devices shall be guarded to prevent accidental release. When required by the director, track-mounted mobile equipment shall be equipped with workable standing devices.

(f) All battery powered equipment shall be equipped with under-voltage indicator which will indicate when the voltage is less than three-fourths of its rated capacity, at which time such equipment shall be withdrawn from use except for the purpose of returning the vehicle to the recharging station.

(g) On and after January 1, 1988, all manually operated valves and levers of equipment of the same manufacturer and model shall have the same direction of activation and direction of operations.

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SURFACE STRUCTURES AND PRACTICES

§22A-2-50. Procurement of dust-tight electrical equipment; fireproof construction; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.

(a) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction or enclosed with reasonably dust-tight housings or enclosures.

(b) After July 1, 1971, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction.

(c) 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.

(d) Where coal is dumped at or near air intake openings, reasonable provisions shall be made to prevent dust from entering the mine.

(e) Where repairs are being made to the plant, proper scaffolding and proper overhead protection shall be provided for workmen wherever necessary.

(f) Welding shall not be done in dusty atmospheres and dusty locations shall be well cleaned, and firefighting apparatus shall be readily available during welding.

(g) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are excepted from such requirement.

(h) Elevated platforms and stairways shall be provided with toeboards where necessary, and they shall be kept clear of refuse and ice and maintained in good repair.

(i) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten feet shall be provided with back guards. Walkways around thickeners that are less than four feet above the walkway shall be adequately guarded. Employees required to work over thickeners shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.

WV Legislature

§22A-2-51. Housekeeping.

Good housekeeping shall be practiced in and around mine buildings and yards. 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.

WV Legislature

§22A-2-52. Storage of flammable liquids in lamphouse.

Naphtha or other flammable liquids in lamphouses shall be kept in approved containers or other safe dispensers.

WV Legislature

§22A-2-53. Smoking in and around surface structures.

Smoking in or about surface structures shall be restricted to places where it will not cause fire or an explosion.

WV Legislature

MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

§22A-2-53a. Railroad cars; dumping areas; other surface areas.

(1) Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. Safety belts shall be worn and properly attached by all car droppers handling railroad cars. Railroad cars shall be maintained under control at all times. Cars shall be dropped at a safe rate of speed and in such a manner that will ensure the car dropper maintains a safe position while working and traveling around the car. 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 from inside of curves.

(2) All dumping ramps shall be of a sufficient width to ensure safe operation of vehicles used thereon.

(3) All access roads leading to and from bath houses, portals, and other areas on which persons are expected to travel to and from work, shall be of sufficient width and be maintained in good condition. On haulage roads, guardrails or berms shall be provided on the outerbank of all elevated roads.

(4) Mobile surface loading and haulage equipment shall be inspected by a competent person before such equipment is placed into operation. Equipment defects affecting safety shall be corrected before the equipment is used.

(5) Safety protection, such as safety belts, lifelines, or lanyards to prevent a person from falling shall be provided at all times that miners are working in an area where the potential fall distance exceeds fifteen feet, except that safety belts shall not be used where they are impractical or would pose a greater hazard. Safety nets shall be provided when work places are more than twenty-five feet above the ground where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts are impractical.

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§22A-2-53b. Haulage or surface areas.

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

(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 an extreme grade.

(3) Traffic rules, signals and warning signs shall be standardized at each mine.

(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 ensure the safety of the workers.

(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.

(6) Regulatory signs shall be used to indicate the required method of traffic movement.

(7) Posted warning signs shall be used where necessary to indicate potential hazardous conditions.

(8) Object marking shall be used to mark physical obstructions in or near the haulageway that presents possible hazards.

(9) All signs and markings shall be displayed and utilized so as to be as effective as possible.

(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.

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

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

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

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

(15) 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

WV Legislature

visibility for safe haulage.

(16) Haulage roads shall be constructed of sufficient width to permit the driver to maneuver his vehicle to avoid striking unexpected obstacles on the roadway where reclamation regulations permit.

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

(18) Haulage roads shall be constructed, installed and maintained in a manner consistent with the speed and type of haulage operations being conducted to ensure safe operation. 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.

(19) 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.

(20) All haulage vehicles placed into service after the effective date of this section shall be equipped with an approved supplementary emergency braking system.

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

WV Legislature

§22A-2-53c. Ramps; tipples; cleaning plants; other surface areas.

(1) Surface installations generally. -- Surface installations, all general mine structures, enclosures and other facilities, including custom coal preparation facilities shall be maintained in good condition. In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures. Openings in surface installations through which men or material may fall shall be protected by railings, barriers, covers or other protective devices. 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. Materials shall be stored and/or stacked in a manner to prevent stumbling or falling. Compressed and liquid gas cylinders shall be secured in a safe manner. Adequate ventilation shall be provided in tipples and preparation plants. Coal dust in or around tipples or cleaning plants shall not be permitted to exist or accumulate in dangerous amounts.

(2) Machinery guards. -- Gears, sprockets, chains, drive head, tail and takeup pulleys, flywheels, couplings, shafts, sawblades, fan inlets and similar exposed moving machine parts with which persons may come in contact shall be guarded adequately. Except when testing is necessary, machinery guards shall be secured in place while being operated. Belt rollers shall not be cleaned while belts are in motion.

(3) Fire protection. -- Where cutting or welding is performed at any location, a means of prompt extinguishment of any fire accidentally started shall be provided. Adequate firefighting facilities, required by the office of miners' health, safety and training, shall be provided on all floors. At least two exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of this section. Signs warning against smoking and open flames shall be posted so they can be readily seen in areas or places where fire or explosion hazards exist. Smoking or an open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(4) Repairs of machinery. -- Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. 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. Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary. Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

(5) Stairs, platforms, etc. -- Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements. 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.

(6) Belts, etc. -- Drive belts shall not be shifted while in motion unless such machines are

WV Legislature

provided with mechanical shifters. Belt dressing shall not be applied while in motion. Belts, chains and ropes shall not be guided into power-driven moving pulleys, sprockets or drums with the hand except with equipment especially designed for hand feeding.

(7) Conveyors and crossovers. -- 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. 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. Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction, with rails, and maintained in good condition. Moving conveyors shall be crossed only at designated crossover points. 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. Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation. Guards, nets or other suitable protection shall be provided where tramways pass over roadways, walkways or buildings. 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.

(8) Ladders. -- All ladders shall be securely fastened. Permanent ladders more than ten feet in height shall be provided with backguards. Ladders shall be of substantial construction and maintained in good condition. Wooden ladders shall not be painted. Fixed ladders shall not incline backward at any point unless equipped with backguards. Fixed ladders shall be anchored securely and installed with at least three inches of toe clearance. Side rails of fixed ladders shall project at least three feet above landings, or substantial handholds shall be provided above the landing. No person shall be permitted to work off of the top step of any ladder. 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. The maximum length of a step ladder shall be twenty feet and an extension ladder sixty feet.

(9) Hoisting. -- Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted. Persons shall stay clear of hoisted loads. Tag lines shall be attached to hoisted materials that require steadying or guidance. A hoist shall not lift loads greater than the rated capacity of the hoist being used.

(10) Railroad track construction and maintenance. --

(a) All parts of the track haulage road under the ownership or control of the operator shall be strictly constructed and maintained. Rails shall be secured at all points by means of plates or welds. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately. Appropriate bolts shall be inserted and maintained in all bolt holes. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.

(b) All points shall be installed and maintained so as to prevent bad connections. Varying

weights of rail shall not be joined without proper adapters. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.

(c) Tracks shall be gauged so as to conform with the track mounted equipment. Curves shall not be constructed so sharp as to put significant pressure on the tracks of the track-mounted equipment.

(d) Severely worn or damaged rails and ties shall be replaced immediately.

(e) When mining operations are performed within any twenty-four hour period, operations shall be inspected at least every twenty-four hours to assure safe operation and compliance with the law and rules. The results of which inspection shall be recorded.

(f) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten feet shall be provided with back guards. Walkways around thickeners that are less than four feet above the walkway shall be adequately guarded. Employees required to work over thickener shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.

WV Legislature

§22A-2-54. Duties of persons subject to article; rules and regulations of operators.

(a) It shall be the duty of the operator, mine foreman, supervisors, mine examiners and other officials to comply with and to see that others comply with the provisions of this article.

(b) It shall be the duty of all employees and checkweighmen to comply with this article and to cooperate with management and the Office of Miners' Health, Safety and Training in carrying out the provisions hereof.

(c) Reasonable rules of an operator for the protection of employees and preservation of property that are in harmony with the provisions of this article and other applicable laws shall be complied with. They shall be printed on cardboard or in book form in the English language and posted at some conspicuous place about the mine or mines, and given to each employee upon request.

WV Legislature

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.

(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: Provided, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than 48 inches in height as measured from the floor to the roof of the underground mine workings.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f) (1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.

(2) In addition to the requirements of §22A-2-55(f)(1) of this code, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to §22A-2-55(i) of this code. A luminescent sign with the words “SELF-CONTAINED SELF-RESCUER” or “SELF-CONTAINED SELF-RESCUERS” shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at 25-foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.

(3) Any person who, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord or knowingly tampers with or attempts to tamper with the device or lifeline cord

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is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years, or fined not less than $10,000 nor more than $100,000, or both imprisoned and fined.

(g) The MSHA-approved emergency response plan (ERP) shall serve as the state-approved plan governing the storage of self-contained self-rescuers (SCSR). At a minimum, three one-hour SCSRs shall be available for everyone reasonably likely to be on the working section at any given time. The director may issue a special assessment pursuant to §22A-1-21 of this code for failure to comply with this subsection.

(h)(1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground: Provided, That if a miner's wireless emergency communications device shall malfunction or cease to operate then such miner shall be assigned to be in sight or sound of a certified miner until such time an operating device shall be delivered. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine.

(2) Any person who, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years, or fined not less than $10,000 nor more than $100,000, or both imprisoned and fined.

(i)(1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: Provided, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) The MSHA-approved ERP shall serve as the state-approved plan: Provided, That the MSHA-approved plan shall comply with all other provisions of state mining law as set forth in state code or the code of state rules.

WVLegislature

(3) Any person who, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years, or fined not less than $10,000 nor more than $100,000, or both imprisoned and fined.

(j) The director shall promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of §29A-3-1 et seq. of this code.

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§22A-2-55a. Safety helmets.

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, That such employees shall not be required to wear such 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, That such employees shall be required to wear safety helmets while not operating such equipment including period of travel to and from such equipment.

The safety helmets required hereunder shall meet the specifications for such helmets as prescribed by the mine health and safety administration.

WV Legislature

§22A-2-56. Checking systems.

Each mine shall have a check-in and check-out system which will provide positive identification of every person underground and will provide an accurate record of the persons in the mine kept on the surface in a place that will not be affected in the event of an explosion. Said record shall bear a number or name identical to the identification check that is securely fastened to the lamp belt of all persons underground. The identification check shall be made of a rust-resistant metal of no less than sixteen gauge.

WV Legislature

§22A-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.

(a) No miner, worker or other person shall knowingly injure any shaft, lamp, instrument, air course, or brattice, or obstruct or throw open airways, or carry matches or open lights in the places worked by safety lights, or disturb any part of the machinery or appliances, open a door closed for directing ventilation and not close it again, 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.

(b) 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 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.

(c) No person shall at any time carry into any mine any intoxicants or enter any mine while under the influence of intoxicants.

WV Legislature

§22A-2-58. Fire protection.

(a) Suitable fire protection shall be provided at surface installations of fans, shops, tipples and preparation plants, substations, hoist rooms and compressor stations.

(b) Fire drills and demonstration of various types of available firefighting equipment shall be held for employees at least every six months.

(c) The location of pipelines, location of valves and fire taps shall be shown on a map of the mine and kept available at the mine office at all times.

(d) Each coal mine shall be provided with suitable firefighting equipment adapted for the size and condition of the mine. Firefighting equipment required under this article shall meet the following requirements:

(1) Waterlines shall be capable of delivering fifty gallons of water at a nozzle pressure of fifty pounds per square inch.

(2) A portable water car shall be of at least one thousand gallons capacity, and shall have at least three hundred feet of fire hose with nozzles. A portable water car shall be capable of providing a flow through the hose of fifty gallons of water per minute at a nozzle pressure of fifty pounds per square inch.

(3) A portable chemical car shall carry enough chemicals to provide a fire extinguishing capacity equivalent to that of a portable water car.

(4) A portable foam-generating machine shall have facilities and equipment for supplying the machine with thirty gallons of water per minute at thirty pounds per square inch for a period of thirty-five minutes.

(5) A portable fire extinguisher shall be either a multipurpose dry chemical type, containing a nominal weight of five pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two and one- half gallons of foam-producing liquid and enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters Laboratories, Inc. or Factor Mutual Laboratories, carrying appropriate labels as to type and purpose shall be used after July 1, 1971, and all new portable fire extinguishers acquired for use in a coal mine shall be of the multipurpose dry chemical type, having a 2A 10BC or higher rating.

(6) The fire hose shall be rubber-lined, mildew-proof and the cover shall be of flame-resistant qualities, meeting requirements for hose in Bureau of Mines Schedule 2G, except that the test flame shall be applied to the outer surface rather than to an open end. The bursting pressure shall be at least four times higher than the static water at the mine location; the maximum water pressure in the hose nozzle shall not exceed 100 p.s.i.g.

(e) Each working section of coal mines producing three hundred tons or more per shift shall

WV Legislature

be provided with two portable fire extinguishers and two hundred forty pounds of bagged rock dust or equivalent; waterlines shall extend to each section loading point and be equipped with enough fire hose to reach each working face unless the section loading point is provided with one of the following: (1) Two portable water cars; or (2) two portable chemical cars; or (3) one portable water car or one portable chemical car and either a portable foam-generating machine or a portable high-pressure rock-dusting machine, fitted with at least two hundred fifty feet of hose and supplied with at least sixty sacks of rock dust.

(f) In all coal mines, waterlines shall be installed parallel to the entire length of belt conveyors and shall be equipped with fire hose outlets with valves at three-hundred-foot intervals along each belt conveyor and at tailpieces. At least five hundred feet of fire hose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry. Each working section of coal mines producing less than three hundred tons of coal per shift shall be provided with two portable fire extinguishers, two hundred forty pounds of bagged rock dust and at least five hundred gallons of water and at least three pails of ten-quart capacity. In lieu of the five hundred gallon water supply, a waterline with sufficient hose to reach the working places, a portable water car of five hundred fifty gallons capacity, or a portable all-purpose dry powder chemical car of at least one hundred twenty-five pounds capacity may be provided.

(g) In mines producing three hundred tons of coal or more per shift, waterlines shall be installed parallel to all haulage tracks using mechanized equipment in the track or adjacent entry and shall extend to the loading point of each working section. Waterlines shall be equipped with outlet valves at intervals of not more than five hundred feet, and five hundred feet of fire hose with fittings suitable for connection with such waterlines shall be provided at strategic locations. Two portable water cars, readily available, may be used in lieu of waterlines prescribed under this subsection.

(h) In mines producing less than three hundred tons of coal per shift, there shall be provided at five-hundred-foot intervals in all main and secondary haulage roads: (1) A tank of water of at least fifty-five gallon capacity with at least three pails of not less than ten-quart capacity; or (2) not less than two hundred forty pounds of bagged rock dust.

(i) Each track or off-track locomotive, self-propelled man-trip car, or personnel carrier shall be equipped with one portable fire extinguisher.

(j) Two portable fire extinguishers shall be provided at each permanent electrical installation. One portable fire extinguisher and two hundred forty pounds of rock dust or equivalent shall be provided at each temporary electrical installation.

(k) Two portable fire extinguishers and two hundred forty pounds of rock dust or equivalent shall be provided at each permanent underground oil storage station. One portable fire

WV Legislature

extinguisher shall be provided at each working section where twenty-five gallons or more of oil are stored in addition to extinguishers required under subsection (e) of this section.

(l) One portable fire extinguisher or two hundred forty pounds of rock dust or equivalent and water shall be provided at locations where welding, cutting, or soldering with arc or flame is being done.

(m) At each wooden door through which power lines pass there shall be one portable fire extinguisher or two hundred forty pounds of rock dust or equivalent within twenty-five feet of the door on the intake air side.

(n) At each mine producing three hundred tons of coal or more per shift, there shall be readily available the following materials at locations not exceeding two miles from each working section:

(1) One thousand board feet of brattice boards.

(2) Two rolls of brattice cloth.

(3) Two handsaws.

(4) Twenty-five pounds of 8 dwt nails.

(5) Twenty-five pounds of 10 dwt nails.

(6) Twenty-five pounds of 16 dwt nails.

(7) Three claw hammers.

(8) Twenty-five bags of wood fiber plaster or ten bags of cement (or equivalent material for stoppings).

(9) Five tons of rock dust.

(o) At each mine producing less than three hundred tons of coal per shift, the above materials shall be available at the mine: Provided, That the emergency materials for one or more mines may be stored at a central warehouse or building supply company and such supply must be the equivalent of that required for all mines involved and within one hour's delivery time from each mine. This exception shall not apply where the active working sections are more than two miles from the surface.

WV Legislature

§22A-2-59. First-aid equipment.

(a) Each operator of an underground coal mine shall maintain a supply of first-aid equipment at each of the following locations:

(1) At the mine dispatcher's office and on the surface in close proximity to the mine entry.

(2) At the bottom of each regularly traveled slope or shaft; however, where the bottom of such slope or shaft is not more than one thousand feet from the surface, such first-aid supplies may be maintained on the surface at the entrance of the mine.

(3) At a point in each working section not more than five hundred feet outby the active working face or faces.

(b) The first-aid equipment required to be maintained shall include at least the following:

(1) One stretcher.

(2) One broken-back board.

(3) Twenty-four triangular bandages.

(4) Eight four-inch bandage compresses.

(5) Sixteen two-inch bandage compresses.

(6) Twelve one-inch adhesive compresses.

(7) One foille.

(8) Two cloth blankets.

(9) One rubber blanket.

(10) Two tourniquets.

(11) One one-ounce bottle of aromatic spirits of ammonia.

(12) Two inflatable plastic arm splints.

(13) Two inflatable plastic leg splints.

(14) Six small splints, metal or wooden.

(15) Two cold packs.

(16) One automated external defibrillator (AED) unit.

WV Legislature

(c) All first-aid supplies required to be maintained under the section shall be stored in suitable sanitary, dust-tight, moisture-proof containers and such supplies shall be accessible to the miners.

(d) No first-aid material shall be removed or diverted without authorization, except in case of accident in or about the mine.

(e) On all occasions when a person becomes sick or injured underground to the extent that he or she must go to the surface, he or she shall be accompanied by one or more persons.

WV Legislature

§22A-2-60. Accessible outlets; safe roadways for emergencies; accessibility of first aid equipment; use of special capsule for removal of personnel.

(a) No operator or mine foreman of any coal mine shall employ any person to work in such mine, or permit any persons to be in the mine for the purpose of working therein unless they are provided with two openings or outlets to each seam, separated by natural strata, such openings to be not less than three hundred feet apart, if the mine be worked by shaft; if the mine be worked by shaft and slope, such openings shall be separated by one hundred feet of natural strata; and not less than fifty feet apart at the outlets, if worked by slope or drift; but this requirement of a distance of three hundred feet between openings or outlets to shaft mines shall not apply where such openings or outlets have been made prior to July 1, 1971.

(b) At least two separate and distinct travelable passageways designated as escapeways shall be maintained to ensure passage at all times to any person, including disabled persons. The escapeway openings to the surface shall be separated in such manner as shall be prescribed by the director. If at least two escapeways are not available for any reason, all miners in the affected area other than those requisite to remedy the situation shall be withdrawn from the affected area until such time as the escapeway is made passable. Where the height of the coal bed is more than five feet, the escapeways shall be maintained at a height of at least five feet excluding necessary roof support, and the travelway in such escapeway shall be maintained at a width of at least six feet, excluding necessary roof support and in those situations where the height of the coal bed is less than five feet the escapeway should be maintained to the height of the coal bed excluding any necessary roof support, and the travelway in such escapeway shall be maintained at a width of at least six feet. At least one escapeway ventilated with intake air, maintained to the last open crosscut, shall be provided from each working section continuously to the nearest available opening on the surface, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of floodwater. Escape facilities approved by the director, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in event of an emergency. Return airways entries designated as escapeways shall be provided with permissible two-way communication systems to the surface, and such systems shall be located at points not to exceed every four thousand feet. On or after April 1, 1978, each operator shall provide lifeline cords, with reflective material at twenty-five foot intervals, from the last open crosscut to the surface along a designated escapeway ventilated by return air: Provided, That in case of a shaft mine such lifeline cords shall extend from the last open crosscut to the bottom of the designated escape shaft. Such lifeline cord shall be of durable construction sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency.

(c) Escapeways shall be inspected and traveled at least once each week by a certified mine examiner who shall place his initials and the date in a conspicuous place or places and who shall file a written report thereon which shall be kept on the surface.

WVLegislature

(d) When new coal mines are opened, not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such connections shall be made as soon as possible.

(e) When only one opening is available because of final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

(f) First-aid materials and such other equipment as the director may require shall be maintained within five hundred feet of each area in which miners are regularly working to which they may have access in case of an emergency and for protection against hazards.

(g) Each working area of the mine not serviced by track-mounted or rubber-tired vehicles which uses conveyor belts for removal of coal shall be equipped with a special capsule in which an injured person can be placed and transported on the belt to the surface or to other transportation facilities. The director shall within nine months of July 8, 1977, promulgate standards and guidelines, or allow to continue in effect any present standards and guidelines, as to what such "special capsule" as used in this subsection shall include. Each section of the mine using or serviced by track-mounted or rubber-tired equipment shall have readily available a vehicle which can be used to promptly remove a person in case of injury.

WV Legislature

§22A-2-61. Coal storage bins; recovery tunnels; coal storage piles.

(a) Coal storage bins hereafter constructed with vertical sides fifty feet or over in height shall be provided with ventilators or louvers or both to provide adequate ventilation. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

(b) 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.

(c) A qualified person shall test for methane with a methane detector prior to and during cutting and welding operations inside or underneath a coal storage bin.

(d) Electric motors, switches and controls for coal storage bins hereafter acquired shall be of dust-tight construction.

(e) Repairs to electric equipment shall not be made when the surrounding atmosphere contains dangerous amounts of gas or dust.

(f) Where electric lights are used in recovery tunnels of over one hundred feet in length, the wiring shall be in rigid conduit and shall be enclosed in waterproof receptacles.

(g) An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty inches in diameter and where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

(h) 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.

WV Legislature

§22A-2-62. Thermal coal dryers and plants.

Thermal coal dryer plants shall be hereafter constructed, maintained and operated in compliance with the following provisions:

(1) Good housekeeping shall be practiced in and around thermal dryer plants.

(2) Adequate firefighting facilities shall be provided on all floors.

(3) When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate firefighting apparatus shall be readily available during the operation.

(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.

(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.

(6) A bypass or relief stack equipped with an automatically operated damper shall be provided for bypassing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.

(7) Thermal coal dryers hereafter installed shall not be enclosed except that roofs may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fireproof structure.

(8) Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.

(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.

(10) Dryers shall be equipped with quick-response heat control devices which, in the event of superelevated 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.

(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.

(12) Dryers shall be examined thoroughly after normal and emergency shutdown for fires

WV Legislature

and coal dust accumulations.

(13) Dryer controls, valves and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.

(14) The gauges of temperature control instruments shall be of the recording type.

(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.

(16) Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

(17) Adequate illumination shall be provided.

(18) Dryers shall not be operated beyond their rated evaporation capacity.

(19) Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

(20) After shutdowns, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding startups.

(21) Thermal coal dryers previously installed in a tipple or 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.

(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 system bins or any other dusty areas, permissible cap lamps shall be used for illumination.

WV Legislature

§22A-2-63. No mine to be opened or reopened without prior approval of the Director of the Office of Miners' Health, Safety and Training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.

(a) No mine may be opened or reopened unless prior approval has been obtained from the Director of the Office of Miners' Health, Safety and Training. The director may not unreasonably withhold approval. The operator shall pay a fee of $100 for the approval, which shall be tendered with the application for approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

Within thirty days after January 1, of each year, the holder of a permit to open a mine shall apply for the extension of the permit for an additional year. The permit, evidenced by a document issued by the director, shall be granted as a matter of right for a fee of $100 if, at the time application is made, the permit holder is in compliance with the provisions of section seventy-seven of this article and has paid or otherwise appealed all coal mine assessments issued to the mine if operated by the permit holder and imposed under article one of this chapter. Applications for extension of permits not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of $100.

(b) Permits issued pursuant to this section are not transferable.

(c) If the operator of a mine is not the permit holder as defined in subsection (a) of this section, then the operator shall apply for and obtain a certificate of approval to operate the mine on which the permit is held prior to commencing operations. The operator shall pay a fee of $100, which payment shall be tendered with the application for approval. The approval, evidenced by a certificate issued by the director, shall be granted if, at the time application is made, the applicant is in compliance with the provisions of section seventy-seven of this article and has paid or otherwise appealed all coal mine assessments imposed on the applicant for the certificate of approval under article one of this chapter.

(d) In addition to the director's authority to file a petition for enforcement under subdivision (4), subsection (a), section twenty-one, article one of this chapter, if an operator holding a certificate of approval issued pursuant to subsection (c) of this section, has been assessed a civil penalty in accordance with section twenty-one, article one of this chapter, and its implementing rules, and the penalty has become final, fails to pay the penalty within the time prescribed in the order, the director or the authorized representative of the director, by certified mail, return receipt requested, shall send a notice to the operator advising the operator of the unpaid penalty. If the penalty is not paid in full within sixty days from the issuance of the notice of delinquency by the director, then the director may revoke the operator's certificate of approval: Provided, That the operator to whom the delinquency notice is issued has thirty days from receipt of the delinquency notice to request, by certified mail, return receipt requested, a public hearing held in accordance with the procedures of

WV Legislature

section seventeen, article one of this chapter, and its implementing rules, including application for temporary relief. Once the operator's certificate of approval is revoked pursuant to this subsection, the operator may not obtain any certificate of approval under the provisions of this section to operate any other mine until that operator pays the delinquent penalties that have become final.

(e) Every firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine is considered to be an operator and shall apply for and obtain a certificate of approval prior to commencing operations: Provided, That these persons shall only be required to obtain one certificate annually: Provided, however, That persons such as, but not limited to, consultants, mine vendors, office equipment suppliers and maintenance and delivery personnel are excluded from this requirement to obtain a certificate of approval. Operators who are required to obtain a certificate of approval pursuant to the provisions of this subsection shall pay a fee of $100 which shall be tendered with the application for approval. Approval evidenced by a certificate issued by the director, shall be granted if, at the time the application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant under article one of this chapter.

Within thirty days after January 1, of each year, the holder of a certificate of approval shall apply for the extension of that approval for an additional year. Applications for extension shall be accompanied by a fee of $100. An extension shall be granted if, at the time application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant under article one of this chapter. All delinquent assessments which have been imposed upon a certificate of approval holder or applicants under this section may not be imposed upon any permit holder or certificate of approval holder or any applicant pursuant to subsection (a) or (c) of this section.

(f) The provisions of this section shall be printed on the reverse side of every permit issued under subsection (a) of this section and certificate of approval issued under subsection (e) of this section.

(g) The district mine inspector shall conduct a preinspection of the area proposed for underground mining prior to issuance of any new opening permit approval.

(h) All moneys collected by the office of miners' health, safety and training for the approval fees set forth in subsections (a), (c) and (e) of this section shall be deposited with the treasurer of the State of West Virginia to the credit of the general administration--operating permit fees fund. The operating permit fees fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

WV Legislature

§22A-2-64. Sealing permanently closed or abandoned mines.

(a) After July 1, 1971, when any coal mine is worked out or indefinitely closed, such mine openings shall be properly sealed within ninety days after the mine is abandoned.

(b) Mines temporarily inactive for less than ninety days shall be adequately fenced with conspicuous signs prohibiting the possible entrance of unauthorized persons.

(c) Shaft openings shall be effectively capped or filled. Filling shall be for the entire depth of the shaft. Caps shall consist of a six inch thick concrete cap or other equivalent means approved by the director.

(d) Caps shall be equipped with a vent pipe at least two inches in diameter extending for a distance of at least fifteen feet above the surface shaft.

WV Legislature

§22A-2-65. Mining close to abandoned workings.

Any operator working up to an abandoned coal mine may be permitted to work to his property line, if approved by the director, but in such cases precaution must be taken as provided in this article.

WV Legislature

§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.

(a) For the purposes of this section, the term accident means:

(1) The death of an individual at a mine;

(2) An injury to an individual at a mine which has a reasonable potential to cause death;

(3) The entrapment of an individual;

(4) The unplanned inundation of a mine by a liquid or gas;

(5) The unplanned ignition or explosion of gas or dust;

(6) The unplanned ignition or explosion of a blasting agent or an explosive;

(7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;

(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;

(9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;

(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;

(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 minutes; and

(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.

(b) 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 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

WV Legislature

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 section eight, article five, chapter fifteen of this code, 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 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.

(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of up to $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 or 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.

(d) If anyone is fatally injured, the inspector shall immediately go to the scene of the accident and make recommendations and render assistance as he or she may deem necessary for the future safety of the men and investigate the cause of the explosion or accident and make a record. He or she shall preserve the record with the other records in his or her office. The cost of the investigation records shall be paid by the Office of Miners' Health, Safety and Training. A copy shall be furnished to the operator and other interested parties. To enable him or her to make an investigation, he or 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.

www.legislature

§22A-2-67. Written report of accident.

Whenever any accident occurs in or about any coal mine to any employee or person connected with the mining operation, resulting in personal injury or death, the operator shall, within twenty-four hours, report the same in writing to the director and to the district mine inspector of the district in which the accident occurs, giving full details thereof upon forms furnished by the director.

WV Legislature

§22A-2-68. Preservation of evidence following accident or disaster.

Following a mine accident resulting in the death of one 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 the Office of Miners' Health, Safety and Training has been completed.

WV Legislature

§22A-2-69.

Repealed.

Acts, 2006 Reg. Sess., Ch. 154.

WV Legislature

§22A-2-70. Shafts and slopes.

(a) When mine examiner to be employed; qualifications. — During the sinking of a shaft or the driving of a slope to a coal bed or while engaged in underground construction work, or relating thereto, the operator shall assign a mine examiner to such project areas. Such mine examiner shall have a certificate of competency valid only for the type of work stipulated thereon and issued to him or her by the Office of Miners' Health, Safety, and Training after he or she has passed an examination given by the Office of Miners' Health, Safety, and Training. He or she or she shall, at the time he or she takes the examination, have a minimum of five years' experience in shaft sinking, slope driving and underground construction; moreover, he or she shall be able to detect methane with an approved gas detector and have a thorough knowledge of the ventilation of shafts, slopes, and mines, and the machinery connected therewith, and finally, he or she shall be a person of good moral character with temperate habits.

(b) Mine examiner or certified person acting as such; duties generally; records open for inspection. — In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified foreman or mine examiner, designated by the operator of such shaft or slope to do so, shall make an examination of such areas. Each person designated to make such examinations shall make tests with an approved gas detector for accumulations of methane and oxygen deficiency, and examine sides of shafts and ribs and roof of all slopes. Should he or she find a condition which he or she considers dangerous to persons, he or she shall place a conspicuous danger sign at all entrances to such places. He or she shall record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept at a place on the surface designated by mine management. All records as prescribed herein shall be open for inspection by interested persons.

(c) Approvals and permits. — An approval shall be obtained from the office before work is started. A permit shall be obtained from the office: (1) To stop fan when miners are in shafts or slopes; (2) to use electrical machinery in shafts or slopes; (3) to use electric lights in shafts or slopes; (4) to use welders, torches, and like equipment in shafts or slopes; (5) to hoist more than four miners at one time in buckets or cars; (6) to shoot more than 15 shots in one series.

(d) Records. — The foreman in charge on each shift shall keep a daily report of conditions and practices. The foreman in charge on each shift shall read and countersign the reports of the previous shift. Unsatisfactory conditions and practices reported shall be repeated on daily reports until corrected. Hoists, buckets, cars, ropes, and appliances thereto shall be examined by a qualified person before the start of each shift and a written record kept. Deaths from accidents or previous injuries shall be reported immediately by wire to the office of the director and to the district mine inspector or the inspector-at-large. A written report of all injuries and deaths shall be mailed to the Office of Miners' Health, Safety, and Training and district mine inspector promptly. Immediate notice shall be given the office of

www.legislature

the director, the district mine inspector and the inspector-at-large in the event of an ignition of gas, or serious accident to miners or equipment. All permits and approvals must be available for inspection by all interested persons.

(e) General. — The foreman on shift shall have at least five years' experience in shafts or slopes. New employees shall be instructed in the dangers and rules incident to their work. Conspicuous bulletin boards and warning signs shall be maintained. Unauthorized persons shall not be permitted around shafts or slopes. First-aid material shall be maintained at the operation as required by §22A-2-59 of this code. The scene of a fatal accident shall be left unchanged until an investigation is made by all interested persons. All employees and others around the operation shall wear hard-toe shoes and hard-top hats. Goggles or other eye protection shall be worn when cutting, welding, or striking where particles may fly. Gears, belts, and revolving parts of machinery shall be properly guarded. Hand tools shall be in good condition. Sides of shafts, ribs, and roof of all slopes shall be closely observed for loose and dangerous conditions. Loose brows, ribs, and top in slopes shall be taken down or supported; loose ribs in shafts shall be scaled. Miners shall be hoisted and lowered under power in shafts and slopes. All hoists must have two positive breaking devices. At least three wraps of rope shall remain on the hoist drum at all times. Wire ropes shall not be less than three-fourths inches in diameter, and of a design to prevent excessive spinning or turning when hoisting.

When heavy materials are hoisted, a large rope shall be used if necessary. A hoisting engineer shall be in constant attendance while men are in shaft. Head frames shall be constructed substantially. Noise from machinery shall not interfere with signals. The standard signal code, whistle or bell shall be used for hoisting:

One signal ..... Hoist

One signal ..... Stop

Two signals ..... Lower

Three signals ..... Man cage

One signal from hoisting engineer ..... Miners board cage

Hoist signals shall be posted in front of the hoisting engineer. The shaft opening shall be enclosed by a fence five feet high. Buckets shall not be loaded within six inches of the top rim. Buckets shall have a positive lock on the handle or bale to prevent bucket from crumpling while being hoisted. Positive coupling devices shall be used on buckets or cars (hooks with safety catches or threaded clevis). Emergency devices for escape shall be provided while shafts are under construction. Miners shall not ride on or work from rims of buckets. Buckets or cars shall not be lowered without a signal from working area. Only sober and competent engineers shall be permitted to operate hoists. No intoxicating liquors or intoxicated persons shall be permitted in or around any shaft, slope, or machinery. Lattice

WV Legislature

type platforms shall be used.

(f) Explosives. — Explosives and blasting caps being taken into or removed from the operation shall be transported and kept in approved nonconducting receptacles (unopened cartons or cases are permissible). Explosives shall not be primed until ready to be inserted into holes. Handling of explosives and loading of holes shall be under the strict supervision of a qualified person or shotfirer. No more explosives or caps than are required to shoot one round shall be taken into shafts. Adobe, mudcapped, or unconfined shots shall not be fired. Holes shall be stemmed tightly and full into the mouth. Blasting caps shall be inserted in line with the explosive. Leg wires of blasting caps and buss wires shall be kept shunted until connected. Shooting cables shall be shunted at firing devices and before connecting to leg wires. Only approved shooting devices shall be used. Shots shall be fired promptly after the round of holes are charged. Warnings shall be given before shots are fired by shouting "Fire" three times slowly after those notified have withdrawn. The blasting circuit shall be wired in series or parallel series. All shooting circuits shall be tested with a galvanometer by a qualified person before shooting. A careful examination for misfires shall be made after each shot. Persons shall not return to the face until smoke and dust have cleared away. The shooting cable shall be adequately insulated and have a substantial covering; be connected by the person firing the shot; and be kept away from power circuits. Misfires shall be removed by firing separate holes or by washing; shall not be drilled out; and shall be removed under supervision of a foreman or qualified person. Separate magazines for the storage of explosives and detonators shall be located not less than 300 feet from openings or other structures. Magazines for the storage of explosives and detonators shall be separated at least 50 feet. Magazines shall be located behind barricades. The outside of magazines shall be constructed of incombustible material. Rubbish and combustible material shall not be permitted to accumulate around or in magazine. Warning signs, to be seen in all directions, shall be posted near magazines.

(g) Electrical. — Power cables installed in slopes shall be placed in conduit away from the belt as far as possible. Surface transformers shall be elevated at least eight feet from the ground or enclosed by a fence six feet high, grounded if metal; shall be properly grounded; shall be installed so that they will not present a fire hazard; and shall be guarded by sufficient danger signs.

Electric equipment shall be in good condition, clean and orderly; shall be equipped with guards around moving parts; and shall be grounded with effective frame grounds on motors and control boxes.

All electric wires shall be installed and supported on insulators. All electric equipment shall be protected by dual element fuse or circuit breakers.

(h) Ventilation. — Ventilating fans shall be offset from portal at least 15 feet; shall be installed so that the ventilating current is not contaminated by dust, smoke or gases; shall be effectively frame grounded; and shall be provided with fire extinguishers.

WV Legislature

All shafts and slopes shall be ventilated adequately and continuously with fresh air. Air tubing shall deliver not less than 9,000 feet per minute at the working area or as much more as the inspector may require.

(i) Gases. — A foreman shall be in attendance at all times in shafts and slopes who has passed an examination given by the office as to his or her competency in the use of an approved gas detector.

An examination shall be made before and after shooting by the foreman on shift. The foreman shall have no superior in the performance of his or her duties. An approved gas detector shall be carried at all times by the foreman when in the working area and weekly gas analysis made. In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified mine foreman or mine examiner designated by the operator of such shaft or slope to do so, shall make an examination of such area. Evidence of official examination shall be left at the face by marking date and initials.

Gases should be removed under the supervision of the foreman in charge. Smoking shall not be permitted inside of shafts or slopes.

(j) Drilling. — Dust allaying or dust collecting devices shall be used while drilling.

(k) Lights to be used in shafts. — Only approved electric cap lights shall be used in shafts. Other lights shall be of explosive-proof type. Lights shall be suspended in shafts by cable or chain other than the power conductor. In slopes, lights must be substantially installed. Power cables shall be of an approved type. Power cables shall not be taut from shaft collar to light. Power cables shall be in good condition and free of improper splices. Lights shall be suspended not less than 20 feet above where miners are working. Lights shall be removed from shaft and power cut off when shooting. In slopes, lights must be removed a safe distance when shots are fired. Lights shall not be replaced in shafts or slopes until examination has been made for gas by the mine examiner and found clear. Front of light shall be protected by a substantial metal type guard. Lights shall be protected from falling objects from above by a metal hood. The lighting circuit shall be properly fused. Electric lights shall not be used in gaseous atmospheres. An approved gas detector shall be kept for use at the face while miners are at work.

WV Legislature

§22A-2-71. Right of miner to refuse to operate unsafe equipment; procedure; discrimination.

No miner shall be required to operate unsafe equipment. On or before January 1, 1981, the Board of Coal Mine Health and Safety shall by rule or regulation establish a procedure for resolving disputes arising out of the refusal by a miner to operate such alleged unsafe equipment. No action shall be taken against a miner by an operator unless such miner is found to have acted in bad faith and without good cause by the director or his authorized representative.

WV Legislature

§22A-2-71a. Right of miner to refuse to work in an unsafe area or unsafe manner.

Any miner has the right to refuse to work in an area or under conditions which he believes to be unsafe.

WV Legislature

§22A-2-72. Long wall and short wall mining.

(a) The Legislature finds that new methods of extracting coal known as long wall or short wall mining are being used in this state. The board of coal mine health and safety shall investigate or cause to be investigated the technology, procedures and techniques used in such mining methods and shall promulgate by January 1, 1981, and continuously update the same, rules governing long wall and short wall mining, which rules shall have as their paramount objective, the health and safety of the persons involved in such operations, and which said rules shall include, but not be limited to, the certification of personnel involved in such operation.

(b) The director may modify the application of any provision of this section to a mine if the director determines that an alternative method of achieving the result of such provision exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such provision, or that the application of such provision to such mine will result in a diminution of the health of, or safety to, the miners in such mine. The director shall give notice to the operator and the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he or she deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of such operator or representative or other interested party, to enable the operator and the representative of miners in such mine or other interested party to present information relating to the modification of such provision. The director shall issue a decision incorporating his or her findings of fact therein, and send a copy thereof to the operator and the representative of the miners, as appropriate. Any such hearing shall be of record.

WV Legislature

§22A-2-73. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of Board of Coal Mine Health and Safety to promulgate rules; time limits therefor.

The Board of Coal Mine Health and Safety shall investigate or cause to be investigated the technology, procedures and techniques used in the construction of shafts, slopes, surface facilities, and the safety hazards, attendant therewith, and shall promulgate rules governing the construction of shafts and slopes; and shall promulgate by January 1, 1981, rules governing the construction of surface facilities.

The Board of Coal Mine Health and Safety shall continuously update such rules governing the construction of shafts, slopes and surface facilities, which rules shall have as their paramount concern, the health and safety of the persons involved in such operations, and such rules shall include, but not be limited to, the certification of all supervisors, the certification and training of hoist operators and shaft workers, the certification of blasters and approval of plans. The provisions of such rules may be enforced against operators and construction companies in accord with the provisions of article one of this chapter. For purposes of this chapter, a construction company is an operator.

WV Legislature

§22A-2-74. Control of respirable dust.

Each operator shall maintain the concentration of respirable dust in the mine atmosphere during each shift to which miners in active workings of such mine are exposed below such level as the board may establish. The board may promulgate rules governing respirable dust, including, but not limited to, dust standards, sampling procedures, sampling devices, equipment and sample analysis by using the data gathered by the federal Mine Safety and Health Administration and, or the federal Bureau of Mines.

Any operator found to be in violation of such standards shall bring itself into compliance with such standards and rules of the board or the director may thereafter order such operator to discontinue such operation.

WV Legislature

§22A-2-75. Coal operators -- Procedure before operating near oil and gas wells.

(a) Before a coal operator conducts underground mining operations within five hundred feet of any well, including the driving of an entry or passageway, or the removal of coal or other material, the coal operator shall file with the Office of Miners' Health, Safety and Training and forward 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 five hundred feet of the well, together with a notice, on a form furnished by the director, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section.

Once these mining maps and plans are filed with the office, the coal operator may proceed with its underground mining operations in the manner and as projected on such plans or maps, but shall not remove, without the consent of the director, any coal or other material or cut any passageway nearer than two hundred feet of any completed well or well that is being drilled. The coal operator shall, at least every six months while mining within the five hundred foot area, update its mining maps and plans and file the same with the director and the well operator.

(b) Application may be made at any time to the director by a coal operator for leave to conduct underground mining operations within two hundred feet of any well or to mine through any well, by petition, duly verified, showing the location of the well, the workings adjacent to the well and the mining operations contemplated within two hundred feet of the well or through such well, and praying the approval of the same by the director and naming the well operator as a respondent. The coal operator shall file such petition with the director and mail a true copy to the well operator by certified mail, return receipt requested.

The petition shall notify the well operator that it may answer the petition within five days after receipt, and that in default of an answer the director may approve the proposed operations as requested if it be shown by the petitioner or otherwise to the satisfaction of the director that such operations are in accordance with the law and with the provisions of this article. If the well operator files an answer which requests a hearing, one shall be held within ten days of such answer and the director shall fix a time and date and give both the coal operator and well operator five days' written notice of the same by certified mail, return receipt requested. At the hearing, the well operator and coal operator, as well as the director, shall be permitted to offer any competent and relevant evidence. Upon conclusion of the hearing, the director shall grant the request of the coal operator or refuse to grant the same, or make such other decision with respect to such proposed underground operation as in its judgment is just and reasonable under all circumstances and in accordance with law and the provisions of this article: Provided, That a grant by the director of a request to mine through a well shall require an acceptable test to be conducted by the coal operator establishing that such mining through can be done safely.

If a hearing is not requested by the well operator or if the well operator gives, in writing, its consent to the coal operator to mine within closer than two hundred feet of the specified

WV Legislature

well, the director shall grant the request of the coal operator within five days after the petition's original five day answer period if the director determines that such operations are just, reasonable and in accordance with law and the provisions of this article.

The director shall docket and keep a record of all such proceedings. From any such final decision or order of the director, either the well operator or coal operator, or both, may, within ten days, appeal to the circuit court of the county in which the well subject to said petition is located. The procedure in the circuit court shall be substantially as provided in section four, article five, chapter twenty-nine-a of this code, with the director being named as a respondent. From any final order or decree of the circuit court, an appeal may be taken to the Supreme Court of Appeals as heretofore provided.

A copy of the document or documents evidencing the action of the director with respect to such petition shall promptly be filed with the chief of the office of oil and gas of the Division of Environmental Protection.

(c) Before a coal operator conducts surface or strip mining operations as defined in this chapter, within two hundred feet of any well, including the removal of coal and other material, the operator shall file with the director 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 feet of the well, together with a notice, on a form furnished by the director, 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. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum coverage required by article three, chapter twenty-two of this code, and the rules promulgated thereto and thereunder.

Once these mining maps and plans are filed with the director, 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.

(d) The filing of petitions and notices with the director as herein provided may be complied with by mailing such petition or notice to the director by certified mail, return receipt requested.

WV Legislature

§22A-2-76. Reopening old or abandoned mines.

No person, without first giving to the director ten days' written notice thereof, shall reopen for any purposes any old or abandoned mine wherein water or mine seepage has collected or become impounded or exists in such manner or quantity that upon the opening of such mine, such water or seepage may drain into any stream or watercourse.

Such notice shall state clearly the name or names of the owner or owners of the mine proposed to be opened, its exact location, and the time of the proposed opening thereof.

Upon receipt of such notice, the director shall have his or her representative present at the mine at the time designated in the notice for such opening, who has full supervision of the work of opening such mine with full authority to direct the work in such manner as to him or her seems proper and necessary to prevent the flow of mine water or seepage from such mine in such manner or quantity as will kill or be harmful to the fish in any stream or watercourse into which such mine water seepage may flow directly or indirectly.

WV Legislature

§22A-2-77. Quarterly report by operator of mine; exception as to certain inactive mines.

On or before the end of each quarter, the operator of each mine, regulated under the provisions of this chapter or article three or four, chapter twenty-two of this code, shall file with the director a report with respect thereto covering the next preceding quarter which shall reflect the number of accidents which have occurred at each such mine, the number of persons employed, the days worked and the actual raw tonnage mined. Quarters are based on a calendar year. Such report shall be made upon forms furnished by the director. Other provisions of this section to the contrary notwithstanding, no such report shall be required with respect to any mine on approved inactive status if no employees were present at such mine at any time during the next preceding calendar month.

WV Legislature

§22A-2-78. Examinations to determine compliance with permits.

Whenever permits are issued by the Office of Miners' Health, Safety and Training, frequent examinations shall be made by the mine inspector during the tenure of the permit to determine that the requirements and limitations of the permit are complied with.

WV Legislature

§22A-2-79. Provisions of article severable.

The various provisions of this article shall be construed as separable and severable and, should any of the provisions, sentences, clauses, or parts thereof be construed or held unconstitutional or for any reason be invalid, the remaining provisions of this article shall not be thereby affected.

WV Legislature

§22A-2-80. Existing regulations to be revised.

By August 31, 2019, all existing rules or regulations under authority of this article shall be revised to reflect the changes enacted during the 2019 Regular Session of the Legislature.

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

§22A-3-1. Definition.

In this article the term "mine" includes the shafts, slopes, drifts or inclines connected with excavations penetrating clay seams or strata, which excavations are ventilated by one general air current or division thereof, and the surface structures or equipment connected therewith which contribute directly or indirectly to the underground mining of clay.

WV Legislature

§22A-3-2. Clay mine foreman; when to be employed; qualifications; assistants.

In every underground clay mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ a mine foreman who shall be a competent and practical person holding a certificate of competence for said position issued to him or her by the Office of Miners' Health, Safety and Ttraining after an examination by such office. In order to receive a certificate of competence qualifying a foreman in an underground clay mine, the applicant shall take an examination prescribed by the Director of the Office of Miners' Health, Safety and Training, be a citizen of this state, of good moral character and temperate habits, having had at least three years' experience in the underground working of clay mines.

WV Legislature

§22A-3-3. Rules for protection of health and safety of employees.

The Director of the Office of Miners' Health, Safety and Training may, from time to time, promulgate reasonable rules for the protection of the health and safety of the persons working in or about underground clay mines, to the extent the same are not more onerous or restrictive than the laws of this state intended to safeguard the life and health of persons working in underground coal mines contained in article two of this chapter.

WV Legislature

§22A-4-1. Definitions.

Unless the context in which used clearly requires a different meaning as used in this article:

(a) "Open-pit mine" means an excavation worked from the surface and open to daylight.

(b) "Underground mine" means subterranean workings for the purpose of obtaining a desired material or materials.

(c) "Sand" means waterworn sandstone fragments transported and deposited by water.

(d) "Gravel" means an occurrence of waterworn pebbles.

(e) "Sandstone" means a compacted or cemented sediment composed chiefly of quartz grains.

(f) "Limestone" means a sedimentary rock composed mostly of calcium carbonate.

(g) "Clay" means a natural material of mostly small fragments of hydrous aluminum silicates and possessing plastic properties.

(h) "Shale" means a laminated sedimentary rock composed chiefly of small particles of a clay grade.

(i) "Iron ore" means a mineral or minerals, and gangue which when treated will yield iron at a profit.

(j) "Manganese ore" means a metalliferous mineral which when treated will yield manganese at a profit.

WV Legislature

§22A-4-2. Applicability of mining laws.

All provisions of the mining laws of this state intended for the protection of the health and safety of persons employed within or at any coal mine and for the protection of any coal mining property extend to all open-pit mines and any property used in connection therewith for the mining of underground limestone and sandstone mines, insofar as such laws are applicable thereto.

WV Legislature

§22A-4-3. Rules.

The Director of the Office of Miners' Health, Safety and Training shall promulgate reasonable rules, in accordance with and confined to the provisions of chapter twenty-nine-a of this code, for the effective administration of this article.

WV Legislature

§22A-4-4. Monthly report by operator.

The operator of such mine shall, on or before the end of each calendar month, file with the Director of the Office of Miners' Health, Safety and Training a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.

WV Legislature

§22A-4-5. Inspectors.

(a) The Director of the Office of Miners' Health, Safety and Training shall divide the state into not more than two mining districts and assign one inspector to each district. Such inspector shall be a citizen of West Virginia, in good health, of good character and reputation, temperate in habits, and have a minimum of five years of practical experience in such mining operations. To qualify for appointment as such an inspector, an eligible applicant shall submit to a written and oral examination by the director and furnish such evidence of good health, character, and other facts establishing eligibility as the director may require. If the director finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed all written and oral examinations, with a grade of at least 90 percent, the director shall add such applicant's name and grade to the register of qualified eligible candidates. A candidate's name may not remain in the register for more than three years without requalifying.

(b) The director has full discretion and authority in the original appointment of all mine inspectors, including any testing and qualifications necessary for an applicant to be considered for appointment. The director shall report to the Board of Coal Mine Health and Safety:

(1) Any such appointment; and

(2) Information regarding all applications and testing. The board shall have access to all applications and may be present during applicant testing.

(c) Any inspector appointed under this article shall have the same tenure accorded a mine inspector, as provided in §22A-1-12(e) of this code, and shall be paid not less than $15,000 per year. Such inspector shall also receive reimbursement for traveling expenses at the rate of not less than 15 cents for each mile actually traveled in the discharge of their duties in a privately owned vehicle. Such inspector shall also be reimbursed for any expense incurred in maintaining an office in his or her home, which office is used in the discharge of official duties: *Provided*, That such reimbursement may not exceed $240 per annum.

WV Legislature

§22A-4-6. Penalties.

Any person who fails or refuses to discharge any provision of this article, rule promulgated or order issued pursuant to the provisions of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment not exceeding six months, or by both.

WV Legislature

§22A-5-1. Board of appeals.

There is hereby continued a board of appeals, consisting of three members. Two members of the board shall be appointed by the Governor, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third person, who is chair of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, is selected by the two members appointed by the Governor. The term of office of members of the board is five years.

The function and duties of the board is 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.

The chair of the board has 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.

The chair 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.

Each member of the board 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. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.

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

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§22A-5-2. Powers transferred to the Board of Appeals.

(a) There are hereby transferred to the Board of Appeals all functions of the Director of the Office of Miners' Health, Safety and Training relating to the review of orders and notices as set forth in section seventeen, article one of this chapter.

(b) There are hereby transferred to the Board of Appeals all functions of the Director of the Office of Miners' Health, Safety and Training relating to the review of penalty assessments as set forth in subdivision (3), subsection (a), section twenty-one, article one of this chapter .

(c) Judicial review of decisions by the Board of Appeals shall be available and conducted in the same fashion as set forth in section nineteen, article one of this chapter.

WV Legislature

§22A-6-1. Declaration of legislative findings and purpose.

(a) The Legislature hereby finds and declares that:

(1) The Legislature concurs with the congressional declaration made in the Federal Coal Mine Health and Safety Act of 1969 that "the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource -- the miner";

(2) Coal mining is highly specialized, technical and complex and it requires frequent review, refinement and improvement of standards to protect the health and safety of miners;

(3) During each session of the Legislature, coal mine health and safety standards are proposed which require knowledge and comprehension of scientific and technical data related to coal mining;

(4) The formulation of appropriate rules and practices to improve health and safety and provide increased protection of miners can be accomplished more effectively by persons who have experience and competence in coal mining and coal mine health and safety.

(b) In view of the foregoing findings, it is the purpose of this article to:

(1) Continue the board of coal mine health and safety;

(2) Require such board to continue as standard rules the coal mine health and safety provisions of this code;

(3) Compel the board to review such standard rules and, when deemed appropriate to improve or enhance coal mine health and safety, to revise the same or develop and promulgate new rules dealing with coal mine health and safety; and

(4) Authorize such board to conduct such other activities as it deems necessary to implement the provisions of this chapter.

WV Legislature

§22A-6-2. Definitions.

Unless the context in which a word or phrase appears clearly requires a different meaning, the words and phrases defined in section two, article one of this chapter have, when used in this article, the meaning therein assigned to them. For the purpose of this article, "board" means the Board of Coal Mine Health and Safety continued by section three of this article.

WV Legislature

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

(a) The Board of Coal Mine Health and Safety is continued, and commencing July 1, 2010, is a separate independent board within the Department of Commerce. The board consists of six voting members and one ex officio, nonvoting member who are residents of this state, and who are appointed as follows:

(1) The Governor shall appoint, by and with the advice and consent of the Senate, three members to represent the viewpoint of those operators in this state. When such members are to be appointed, the Governor shall request from the major trade association representing operators in this state a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the Governor shall make the appointments from the persons so nominated. For purposes of this subdivision, the major trade association representing operators in this state is that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The Governor shall appoint, by and with the advice and consent of the Senate, three members who can reasonably be expected to represent the viewpoint of the working miners of this state. When members are to be appointed, the Governor shall request from the major employee organization representing coal miners within this state a list of three nominees for each position on the board. The highest ranking official within the major employee organization representing coal miners within this state shall submit a list of three nominees for each such position on the board. The nominees shall have a background in health and safety. The Governor shall make the appointments from the requested list of nominees.

(3) All appointments made by the Governor under the provisions of subdivisions (1) and (2) of this subsection shall be with the advice and consent of the Senate; and

(4) The Director of the Office of Miners' Health, Safety and Training or his or her designee serves as an ex officio, nonvoting member.

(b) Members serving on the board on January 1, 2017, shall continue to serve for a minimum of three years until June 30, 2020. The term is three years. Members are eligible for reappointment.

(c) Commencing on July 1, 2017, the board shall assume all powers and responsibilities of the Board of Miners' Training, Education and Certification established pursuant to §22A-7-1 *et seq*. of this code and the Mine Safety Technology Task Force established pursuant to §22A-11-1 *et seq*. of this code.

WV Legislature

(d) The Governor shall appoint, subject to the approval of a majority of the members of the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and Safety Administrator in accordance with the provisions of §22A-6-6 of this code, who shall certify all official records of the board. The Health and Safety Administrator shall be a full-time officer of the Board of Coal Mine Health and Safety with the duties provided for in §22A-6-6 of this code. The Health and Safety Administrator shall have such education and experience as the Governor deems necessary to properly investigate areas of concern to the board in the development of rules governing mine health and safety. The Governor shall appoint as Health and Safety Administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The Health and Safety Administrator shall be a person who has not been during the two years immediately preceding appointment, and is not during his or her term, an officer, trustee, director, substantial shareholder, contractor, consultant, or employee of any coal operator, or an employee or officer of an employee organization or a spouse of any such person. The Health and Safety Administrator shall have the expertise to draft proposed rules and shall prepare such rules as are required by this code and on such other areas as will improve coal mine health and safety.

(e) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chair, or upon the request of any three members of the board. Under the direction of the board, the Health and Safety Administrator shall prepare an agenda for each board meeting giving priority to the promulgation of rules as may be required, from time to time, by this code, and as may be required to improve coal mine health and safety. The Health and Safety Administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. A meeting of the board may not be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the director, in which event members shall be notified of the board meeting and the agenda: *Provided*, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

When proposed rules are to be finally adopted by the board, copies of such proposed rules shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules. When a member fails to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the Health and Safety Administrator shall notify the member and the Governor of such fact. Such member shall be removed by the Governor unless good cause for absences is shown.

(f) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section. In the case of an appointment to fill a vacancy,

WV Legislature

nominations of three persons for each such vacancy shall be requested by and submitted to the Governor within 30 days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the board is vacant. The vacancy shall be filled by the Governor within 30 days of his or her receipt of the list of nominations.

(g) A quorum of the board is four members which shall include at least two members representing the viewpoint of operators and at least two members representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present, except that a vote of the board may not be taken unless all six voting members are present.

WV Legislature

§22A-6-4. Board powers and duties.

(a) The board shall adopt as standard rules the "coal mine health and safety provisions of this chapter". Such standard rules and any other rules shall be adopted by the board without regard to the provisions of chapter twenty-nine-a of this code. The Board of Coal Mine Health and Safety shall devote its time toward promulgating rules in those areas specifically directed by this chapter and those necessary to prevent fatal accidents and injuries.

(b) The board shall review such standard rules and, when deemed appropriate to improve or enhance coal mine health and safety, revise the same or develop and promulgate new rules dealing with coal mine health and safety.

(c) The board shall develop, promulgate and revise, as may be appropriate, rules as are necessary and proper to effectuate the purposes of article two of this chapter and to prevent the circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a of this code:

(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules may expand protections afforded by this chapter notwithstanding specific language therein, and such rules may deal with subject areas not covered by this chapter to the end of affording the maximum possible protection to the health and safety of miners.

(2) No rules promulgated by the board shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any coal operator has the power to petition the Circuit Court of Kanawha County for a determination as to whether any rule promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law: Provided, That any rule properly promulgated by the board pursuant to the terms and conditions of this chapter creates a rebuttable presumption that said rule does not reduce the protection afforded miners below that provided by this chapter.

(4) The director shall cause proposed rules and a notice thereof to be posted as provided in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed rules and accompanying notice to each operator affected. A copy of such proposed rules shall be provided to any individual by the director's request. The notice of proposed rules shall contain a summary in plain language explaining the effect of the proposed rules.

(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules to submit written data or comments. The board may, upon the expiration of such period and after consideration of all relevant matters presented, promulgate such rules with such modifications as it may deem appropriate.

WV Legislature

(6) On or before the last day of any period fixed for the submission of written data or comments under subdivision (5) of this section, any interested person may file with the board written objections to a proposed rule, stating the grounds therefor and requesting a public hearing on such objections. As soon as practicable after the period for filing such objections has expired, the board shall release a notice specifying the proposed rules to which objections have been filed and a hearing requested.

(7) Promptly after any such notice is released by the board under subdivision (6) of this section, the board shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the board shall make findings of fact which shall be public, and may promulgate such rules with such modifications as it deems appropriate. In the event the board determines that a proposed rule should not be promulgated or should be modified, it shall within a reasonable time publish the reasons for its determination.

(8) All rules promulgated by the board shall be published in the State Register and continue in effect until modified or superseded in accordance with the provisions of this chapter.

(d) To carry out its duties and responsibilities, the board is authorized to employ such personnel, including legal counsel, experts and consultants, as it deems necessary. In addition, the board, within the appropriations provided for by the Legislature, may conduct or contract for research and studies and is entitled to the use of the services, facilities and personnel of any agency, institution, school, college or university of this state.

(e) The director shall within sixty days of a coal mining fatality or fatalities provide the board with all available reports regarding such fatality or fatalities.

The board shall review all reports and any recommended rules submitted by the director, receive any additional information it requests, and may, on its own initiative, investigate the circumstances surrounding a coal mining fatality or fatalities and ascertain the cause or causes of such coal mining fatality or fatalities. In order to investigate a coal mining fatality or fatalities, a majority of the board must vote in favor of commencing an investigation. Within ninety days of the receipt of the Federal Mine Safety and Health Administration's fatal accident report and the director's report and recommended rules, the board shall review and consider the presentation of said report and rules and the results of its own investigation, if any, and, if a majority of all voting board members determines that additional rules can assist in the prevention of the specific type of fatality, the board shall either accept and promulgate the director's recommended rules, amend the director's recommended rules or draft new rules as are necessary to prevent the recurrence of such fatality. If the board chooses to amend the director's recommended rules or draft its own rules, a vote is required within one hundred twenty days as to whether to promulgate the amended rule or the rule drafted by the board: Provided, That the board may, by majority vote, find that exceptional circumstances exist and the deadline cannot be met: Provided, however, That under no circumstances shall such deadline be extended by more than a total of ninety days. A majority vote of the board is required to promulgate any such rule.

WV Legislature

The board shall annually, not later than July 1, review the major causes of coal mining injuries during the previous calendar year, reviewing the causes in detail, and shall promulgate such rules as may be necessary to prevent the recurrence of such injuries.

Further, the board shall, on or before January 10, of each year, submit a report to the Governor, President of the Senate and Speaker of the House, which report shall include, but is not limited to:

(1) The number of fatalities during the previous calendar year, the apparent reason for each fatality as determined by the Office of Miners' Health, Safety and Training and the action, if any, taken by the board to prevent such fatality;

(2) Any rules promulgated by the board during the last year;

(3) What rules the board intends to promulgate during the current calendar year;

(4) Any problem the board is having in its effort to promulgate rules to enhance health and safety in the mining industry;

(5) Recommendations, if any, for the enactment, repeal or amendment of any statute which would cause the enhancement of health and safety in the mining industry;

(6) Any other information the board deems appropriate;

(7) In addition to the report by the board, as herein contained, each individual member of said board has right to submit a separate report, setting forth any views contrary to the report of the board, and the separate report, if any, shall be appended to the report of the board and be considered a part thereof.

WV Legislature

§22A-6-5. Preliminary procedures for promulgation of rules.

(a) Prior to the posting of proposed rules as provided for in subsection (c), section four of this article, the board shall observe the preliminary procedure for the development of rules set forth in this section:

(1) During a board meeting or at any time when the board is not meeting, any board member may suggest to the Health and Safety Administrator, or such administrator on his or her own initiative may develop, subjects for investigation and possible regulation;

(2) Upon receipt of a suggestion for investigation, the Health and Safety Administrator shall prepare a report, to be given at the next scheduled board meeting, of the technical evidence available which relates to such suggestion, the staff time required to develop the subject matter, the legal authority of the board to act on the subject matter, including a description of findings of fact and conclusions of law which will be necessary to support any proposed rules;

(3) The board shall by majority vote of those members who are present determine whether the Health and Safety Administrator shall prepare a draft rule concerning the suggested subject matter;

(4) After reviewing the draft rule, the board shall determine whether the proposed rules should be posted and made available for comment as provided for in section four of this article;

(5) The board shall receive and consider those comments to the proposed rules as provided for in section four of this article;

(6) The board shall direct the Health and Safety Administrator to prepare for the next scheduled board meeting findings of fact and conclusions of law for the proposed rules, which may incorporate comments received and technical evidence developed, and which are consistent with section four of this article;

(7) The board shall adopt or reject or modify the proposed findings of fact and conclusions of law; and

(8) The board shall make a final adoption or rejection of the rules.

(b) By the concurrence of at least four members of the board, the board may dispense with the procedure set out in subsection (a) of this section or any other procedural rule established, except that the board shall in all instances when adopting rules prepare findings of fact and conclusions of law consistent with this section and section four of this article.

(c) Without undue delay, the board shall adopt an order of business for the conduct of meetings which will promote the orderly and efficient consideration of proposed rules in accordance with the provisions of this section.

WV Legislature

§22A-6-6. Health and Safety Administrator; qualifications; duties; employees; compensation.

(a) The Governor shall appoint the Health and Safety Administrator of the board for a term of employment of one year, and the Health and Safety Administrator employed on January 1, 2017 shall complete a three-year term until June 30, 2020, unless he or she is determined to have committed misfeasance, malfeasance or nonfeasance as referenced herein. The Health and Safety Administrator shall be entitled to have his or her contract of employment renewed on an annual basis except where such renewal is denied for cause: Provided, That the Governor has the power at any time to remove the Health and Safety Administrator for misfeasance, malfeasance or nonfeasance: Provided, however, That the board has the power to remove the Health and Safety Administrator without cause upon the concurrence of five members of the board.

(b) The Health and Safety Administrator shall work at the direction of the board, independently of the Director of the Office of Miners' Health, Safety and Training and has such authority and shall perform such duties as may be required or necessary to effectuate this article.

(c) In addition to the Health and Safety Administrator, there shall be such other employees hired by the Health and Safety Administrator as the board determines to be necessary. The Health and Safety Administrator shall provide supervision and direction to the other employees of the board in the performance of their duties.

(d) The employees of the board shall be compensated at rates determined by the board. The salary of the Health and Safety Administrator shall be fixed by the Governor: Provided, That the salary of the Health and Safety Administrator shall not be reduced during his or her annual term of employment or upon the renewal of his or her contract for an additional term. Such salary shall be fixed for any renewed term at least ninety days before the commencement thereof.

(e) (1) Appropriations for the salaries of the Health and Safety Administrator and any other employees of the board and for necessary office and operating expenses shall be made to a budget account established for those purposes in the General Revenue Fund. Such account shall be separate from any accounts or appropriations for the Office of Miners' Health, Safety and Training.

(2) Expenditures from the funds established in section three hundred ten, article two-a; section seven, article six; section four, article seven; section three, article eleven of this chapter shall be by the Health and Safety Administrator for administrative and operating expenses, such operating expenses include mine health and safety, research, education and training programs as determined by the entities.

(f) The Health and Safety Administrator shall review all coal mining fatalities and major causes of injuries as mandated by section four of this article. An analysis of such fatalities

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and major causes of injuries shall be prepared for consideration by the board within ninety days of the occurrence of the accident.

(g) At the direction of the board, the administrator shall also conduct an annual study of occupational health issues relating to employment in and around coal mines of this state and submit a report to the board with findings and proposals to address the issues raised in such study. The administrator is responsible for preparing the annual reports required by subsection (e), section four of this article and section nine of this article.

(h) The administrator shall provide administrative assistance to the The State Coal Mine Safety and Technical Review Committee, Board of Coal Mine Health and Safety, and serve as the legislative liaison for budgetary issues. The Administrator shall serve as an ex officio, nonvoting member on The State Coal Mine Safety and Technical Review Committee.

(i) The administrator shall submit to each board or commission for its approval, the proposed budget of the board or commission before submitting it to the Secretary of Revenue.

(j) The administrator shall prepare and submit to the Director of the Office of Miners' Health, Safety and Training, no less than on a quarterly basis, a report that summarizes the coal mine health and safety standard rules under consideration by the Board of Coal Mine Health and Safety, as well as the meetings and meeting agendas of the board.

WV Legislature

§22A-6-7. Coal Mine Safety and Technical Review Committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the Board of Coal Mine Health and Safety.

(a) The State Coal Mine Safety and Technical Review Committee is continued, and commencing July 1, 2010, is a separate independent committee within the Department of Commerce. The purposes of this committee are to:

(1) Assist the Board of Coal Mine Health and Safety in the development of technical data relating to mine safety issues, including related mining technology;

(2) Provide suggestions and technical data to the board and propose rules with general mining industry application;

(3) Accept and consider petitions submitted by individual mine operators or miners seeking site-specific rulemaking pertaining to individual mines and make recommendations to the board concerning such rulemaking; and

(4) Provide a forum for the resolution of technical issues encountered by the board, safety education, and coal advocacy programs.

(b) The committee shall consist of two members who shall be residents of this state and who shall be appointed as hereinafter specified in this section:

(1) The Governor shall appoint one member to represent the viewpoint of the coal operators in this state from a list containing one or more nominees submitted by the major trade association representing coal operators in this state within 30 days of submission of such nominee or nominees.

(2) The Governor shall appoint one member to represent the viewpoint of the working miners of this state from a list containing one or more nominees submitted by the highest ranking official within the major employee organization representing coal mines within this state within 30 days of submission of the nominee or the nominees.

(3) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection shall be initially appointed to serve a term of three years. The members serving on the effective date of this article may continue to serve until their terms expire.

(4) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection may be, but are not required to be, members of the Board of Coal Mine Health and Safety, and shall be compensated on a per diem basis in the same amount as provided in §22A-6-10 of this code, plus all reasonable expenses.

(c) The committee shall meet at least once during each calendar month, or more often as may be necessary.

WV Legislature

(d) A quorum of the committee shall require both members and the committee may only act officially by a quorum.

(e) The committee may review any matter relative to mine safety and mining technology and may pursue development and resolution of issues related thereto. The committee may make recommendations to the board for the promulgation of rules with general mining industry application. Upon receipt of a unanimous recommendation for rule making from the committee and only thereon, the board may adopt or reject such rule, without modification except as approved by the committee: *Provided*, That any adopted rule shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and rules. When so promulgated, such rules shall be effective, notwithstanding the provisions of applicable statutes.

(f) (1) Upon application of a coal mine operator, or on its own motion, the committee shall have the authority to accept requests for site-specific rule making on a mine-by-mine basis, and make unanimous recommendations to the board for site-specific rules thereon. The committee shall have authority to approve a request if it concludes that the request does not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by any applicable statutes or rules. Upon receipt of a request for site-specific rule making, the committee may investigate the conditions in the specific mine in question, which investigation shall include consultation with the mine operator and authorized representatives of the miners. Such authorized representatives of the miners shall include any person designated by the employees at the mine, persons employed by an employee organization representing one or more miners at the mine, or a person designated as a representative by one or more persons at the mine.

(2) If the committee determines to recommend a request made pursuant to subdivision (1) of this subsection, the committee shall provide the results of its investigation to the Board of Coal Mine Health and Safety along with recommendations for the development of the site-specific rules applicable to the individual mine, which recommendations may include a written proposal containing draft rules.

(3) Within 30 days of receipt of the committee's recommendation, the board shall adopt or reject, without modification, except as approved by the committee, the committee's recommendation to promulgate site-specific rules applicable to an individual mine adopting such site-specific rules only if it determines that the application of the requested rule to such mine will not reduce or compromise the level of safety or protection afforded miners below that level of safety or protection afforded by any applicable statutes. When so promulgated, such rules shall be effective notwithstanding the provisions of applicable statutes.

(g) The board shall consider all rules proposed by the Coal Mine Safety and Technical Review Committee and adopt or reject, without modification, except as approved by the committee, such rules, dispensing with the preliminary procedures set forth in §22A-6-5(a)(1) through §22A-6-5(a)(7) of this code; and, in addition, with respect to site-specific rules also dispensing with the procedures set forth in §22A-6-4(c)(4) through

WV Legislature

§22A-6-4(c)(8) of this code.

(h) In performing its functions, the committee shall have access to the services of the coal mine Health and Safety Administrator appointed under §22A-6-6 of this code. The director shall make clerical support and assistance available in order that the committee may carry out its duties. Upon the request of both members of the committee, the Health and Safety Administrator shall draft proposed rules and reports or make investigations.

(i) The powers and duties provided for in this section for the committee are not intended to replace or precondition the authority of the Board of Coal Mine Health and Safety to act in accordance with §22A-6-1 through §22A-6-6 and §22A-6-8 through §22A-6-10 of this code.

(j) Appropriations for the funding of the committee and to effectuate this section shall be made to a budget account hereby established for that purpose in the General Revenue Fund. Such account shall be separate from any accounts or appropriations for the Office of Miners' Health, Safety, and Training.

(k) Notwithstanding any provision of this section or code to the contrary, if an issue to be decided by the committee ends in a tie vote of the committee members, the Director of the Office of Miners' Health, Safety, and Training, or his or her designee, may vote to break the tie.

WV Legislature

§22A-6-8. Effect of rules.

The standard rules and any rules promulgated by the board have the same force and effect of law as if enacted by the Legislature as a part of article two of this chapter and any violation of any such rule is a violation of law or of a health or safety standard within the meaning of this chapter.

WV Legislature

§22A-6-9. Reports.

Prior to each regular session of the Legislature, the board shall submit to the Legislature an annual report upon the subject matter of this article, the progress concerning the achievement of its purpose and any other relevant information, including any recommendations it deems appropriate.

WV Legislature

§22A-6-10. Compensation and expenses of board members.

Each member of the board not otherwise employed by the state shall be paid the same compensation, and each member of the board shall be paid the 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. In the event the expenses are paid by a third party, the member shall not be reimbursed by the state. The reimbursement shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by the Office of Miners' Health, Safety and Training. No employer shall prohibit a member of the board from exercising leave of absence from his or her place of employment in order to attend a meeting of the board or a meeting of a subcommittee of the board, or to prepare for a meeting of the board, any contract of employment to the contrary notwithstanding.

WV Legislature

§22A-6-11. Study of methane detecting shut off devices.

[Repealed.]

WV Legislature

§22A-6-12. Study of whistleblower protections.

[Repealed.]

WV Legislature

§22A-6-13. Study of ingress and egress to bleeder and gob areas of longwall panels and pillar.

[Repealed.]

WV Legislature

§22A-6-14. Study of mandatory substance abuse program.

The Board of Coal Mine Health and Safety is directed to study the mandatory substance abuse screening policy and program requirements of article one-a of this chapter and make recommendations to the director regarding: (a) Establishment of guidelines to be employed by the Board of Appeals when administering disciplinary actions to certified persons pursuant to article one-a of this chapter; (b) requiring certification by the Office of Miners' Health, Safety and Training of persons who regularly work at mines who are not presently required to obtain certification; and (c) establishment of additional minimum requirements, parameters, methodologies and protocols to be integrated into the substance abuse screening policy and program requirements of article one-a of this chapter. By August 31, 2012, the board shall submit its report to the director. The director is authorized to propose for legislative promulgation, legislative rules pursuant to article three, chapter twenty-nine-a of this code regarding the implementation of the findings of this study. These rules shall be initially promulgated as emergency rules by the director pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of the code by December 31, 2012, and shall include the establishment of certification requirements recommended by the board for persons who regularly work at mines that are not presently required to obtain certification and establishment of guidelines to be employed by the Board of Appeals when administering disciplinary actions to certified persons pursuant to article one-a of this chapter.

WV Legislature

§22A-7-1. Short title.

This article shall be cited as the West Virginia Miner Training, Education and Certification Act.

WV Legislature

§22A-7-2. Board of Miner Training, Education and Certification abolished and duties imposed upon the Board of Coal Mine Health and Safety.

The Legislature hereby finds and declares that:

(a) The continued prosperity of the coal industry is of primary importance to the State of West Virginia;

(b) The highest priority and concern of this Legislature and all in the coal mining industry must be the health and safety of the industry's most valuable resource - the miner;

(c) A high priority must also be given to increasing the productivity and competitiveness of the mines in this State;

(d) An inordinate number of miners, working on both the surface in surface mining and in and at underground mines, are injured during the first few months of their experience in a mine;

(e) These injuries result in the loss of life and serious injury to miners and are an impediment to the future growth of West Virginia's coal industry;

(f) Injuries can be avoided through proper miner training, education and certification;

(g) Mining is a technical occupation with various specialties requiring individualized training and education; and

(h) It is the general purpose of this article to:

(1) Require adequate training, education and meaningful certification of all persons employed in coal mines;

(2) Require certain training and education of all prospective miners and miners certified by the state;

(3) Authorize a stipend for prospective miners enrolled in this State's miner training, education and certification program;

(4) Direct the Director of the Office of Miners' Health, Safety and Training to apply and implement the standards set by the Board of Coal Mine Health and Safety by establishing programs for miner and prospective miner education and training; and

(5) Provide for a program of continuing miner education for all categories of certified miners.

WV Legislature

§22A-7-3. Definitions.

Unless the context in which a word or phrase appears clearly requires a different meaning, the words defined in section two, article one of this chapter have when used in this article the meaning therein assigned to them. These words include, but are not limited to, the following: Office, director, mine inspector, operator, miner, shotfirer and certified electrician.

"Board" means the Board of Coal Mine Health and Safety established by section four of this article.

"Mine" means any mine, including a "surface mine," as that term is defined in section three, article three, chapter twenty-two of this code, and in section two, article four of said chapter; and a "mine" as that term is defined in section two, article one of this chapter.

WV Legislature

§22A-7-4. Board of Miner Training, Education and Certification continued; membership; method of appointment; terms.

(a) The Board of Miner Training, Education and Certification is continued, and commencing July 1, 2010, is a separate independent board within the Department of Commerce. The board consists of six voting members and two ex officio, nonvoting members, who are selected in the following manner:

(1) One member shall be appointed by the Governor to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the Governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The Governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state is that association, if any, which represents surface mine operators accounting for over one half of the coal produced in surface mines in this state in the year prior to that year in which the appointment is made.

(2) Two members shall be appointed by the Governor to represent the interests of the underground operators of this state. When said members are to be appointed, the Governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The Governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state is that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed by the Governor who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the Governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the Governor, submit a list of twelve nominees for membership on the board. The Governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.

(4) The Director of the Office of Miner's Health, Safety and Training or his or her designee, and the Health and Safety Administrator of the Board of Coal Mine Health and Safety shall serve as ex officio, nonvoting members.

(5) All appointments made by the Governor under this section shall be with the advice and consent of the Senate: Provided, That persons so appointed while the Senate of this state is

WV Legislature

not in session are permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board shall be appointed by the Governor. Members serving on the effective date of this article may continue on the board until their terms expire. Appointed members serve for a term of three years. The board shall meet at the call of the chair, at the call of the director, or upon the request of any two members of the board: Provided, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

(c) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy nominations shall be submitted to the Governor within thirty days after the vacancy occurs. The vacancy shall be filled by the Governor within thirty days of receipt of the list of nominations.

(d) Each appointed member of the board shall be paid the same compensation, and each member of the board shall be paid the 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. Any such amounts shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by such members of the board.

(e) A quorum of the board is four members, with two representing the viewpoint of the operators and two representing the viewpoint of the labor organization. The board may act officially by a majority of those members who are present. No vote of the board may be taken unless all six voting members are present.

(f) In performing its functions, the board shall have access to the services of the Board of Coal Mine Health and Safety. The Board of Coal Mine Health and Safety shall provide administrative support and assistance, pursuant to section six, article six of this chapter, to enable the board to carry out its duties.

(g) Appropriations to the board to effectuate the purposes of this article shall be made to a budget account established for that purpose.

WV Legislature

§22A-7-5. Additional powers and duties of the Board of Coal Mine Health and Safety.

(a) The board shall establish criteria and standards for a program of education, training and examination to be required of all prospective miners and miners prior to their certification in any of the various miner specialties requiring certification under this article or any other provision of this code. The specialties include, but are not limited to, underground miner, surface miner, apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss, shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section, the director may by rule further subdivide the classifications for certification.

(b) The board may require certification in other miner occupational specialties: Provided, That no new specialty may be created by the board unless certification in a new specialty is made desirable by action of the federal government requiring certification in a specialty not enumerated in this code.

(c) The board may establish criteria and standards for a program of preemployment education and training to be required of miners working on the surface at underground mines who are not certified under the provisions of this article or any other provision of this code.

(d) The board shall set minimum standards for a program of continuing education and training of certified persons and other miners on an annual basis: Provided, That the standards shall be consistent with the provisions of section seven of this article. Prior to issuing the standards, the board shall conduct public hearings at which the parties who may be affected by its actions may be heard. The education and training shall be provided in a manner determined by the director to be sufficient to meet the standards established by the board.

(e) The board may, in conjunction with any state, local or federal agency or any other person or institution, provide for the payment of a stipend to prospective miners enrolled in one or more of the programs of miner education, training and certification provided in this article or any other provision of this code.

(f) The board may also, from time to time, conduct any hearings and other oversight activities required to ensure full implementation of programs established by it.

(g) Nothing in this article empowers the board to revoke or suspend any certificate issued by the Director of the Office of Miners' Health, Safety and Training.

(h) The board may, upon its own motion or whenever requested to do so by the director, consider two certificates issued by this State to be of equal value or consider training provided or required by federal agencies to be sufficient to meet training and education requirements set by it, the director, or by the provisions of this code.

WV Legislature

(i) As part of the annual training required by this section, the board shall include training of certified persons and other miners, instruction on miners' rights as they relate to the operation of unsafe equipment as provided in section seventy-one, article two of this chapter, his or her right to withdrawal from unsafe conditions as provided in section seventy-one-a of article two of this chapter and his or her rights under section twenty-two, article one of this chapter.

WV Legislature

§22A-7-5a. Study of miner training and education.

The Board of Coal Mine Health and Safety is directed to conduct a study of the overall program of education, training and examination associated with the various miner specialties requiring certification under this article or any other provision of this code. The study shall identify ways to enhance miner education and training to adequately reflect technological advances in coal mining techniques and best practices used in modern coal mines, and improve supervision of apprentice miners. Furthermore, the board shall place particular emphasis in its study on ways to improve education and training in the areas of proper mine ventilation, methane monitoring and equipment deenergization, fire-boss procedures and overall core mining competencies.

WV Legislature

§22A-7-6. Duties of the director and office.

The director shall propose rules for legislative approval, pursuant to chapter twenty-nine-a of this code, that are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to, implementation of a program of instruction in each of the miner occupational specialties and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction which he or she is required to have prior to the receipt of a certificate.

The director is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education and such other persons as may be available in implementing the program of instruction and examinations.

The director may, at any time, make such recommendations to the board as he or she may deem appropriate.

The director shall supply any information upon request of the board as long as the information is not in violation of any other laws.

The director is authorized and directed to utilize such state and federal moneys and personnel as may be available to the office for educational and training purposes in the implementation of the provisions of this article.

WV Legislature

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

(a) An underground mine foreman-fire boss certified pursuant to this article on or after the effective date of this section shall complete the continuing education requirements in this section within two years of their certification and every two years thereafter. The continuing education requirements of this section may not be satisfied by the completion of other training requirements mandated by the provisions of this chapter.

(b) In order to receive continuing education credit pursuant to this section, a mine foreman-fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course approved by the board and taught by a qualified instructor approved by the director. The mine foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The mine foreman-fire boss shall submit documentation to the office certified by the instructor that indicates the required continuing education has been completed prior to the deadlines set forth in this subsection: Provided, That a mine foreman-fire boss may submit documentation of continuing education completed in another state for approval and acceptance by the board.

(c) The mine foreman-fire boss shall complete at least eight hours of continuing education every two years.

(d) The content of the continuing education course shall include, but not be limited to:

(1) Selected provisions of this chapter and 30 U. S. C. § 801, et seq.;

(2) Selected provisions of the West Virginia and federal underground coal mine health and safety rules and regulations;

(3) The responsibilities of a mine foreman-fire boss;

(4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training, the Board of Coal Mine Health and Safety, and from any safety analysis performed by the company;

(5) A review of fatality and accident trends in underground coal mines; and

(6) The board shall solicit input from mining companies on the substance of the training and discuss how the training shall be scheduled during the year.

(e) The board may approve alternative training programs tailored to specific mines.

(f) A mine foreman-fire boss who fails to complete the requirements of this section shall have his or her certification suspended pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office

WV Legislature

shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the Board of Appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the Board of Appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: Provided, That an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

(g) The office shall make a program of instruction that meets the requirements for continuing education set forth in this section regularly available in regions of the State, based on demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity: Provided, That the office may collect a fee from program participants to offset the cost of the program.

(h) The office shall make available to operators and other interested parties a list of individuals whose mine foreman-fire boss certification is in suspension or has been revoked.

WV Legislature

§22A-8-1. Certificate of competency and qualification or permit of apprenticeship required of all surface and underground miners.

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 the person holds at the time he or she performs such duties a certificate of competency and qualification or a permit of apprenticeship issued under the provisions of this article.

WV Legislature

§22A-8-2. Definitions.

For purposes of this article the term "surface miner" means a person employed at a "surface mine", as that term is defined in section three, article three, chapter twenty-two of this code, and in section two, article four of said chapter.

For purposes of this article, the term "underground miner" means an underground worker in a bituminous coal mine, except as hereinafter provided.

For purposes of this article, the term "Board of Miner Training, Education and Certification" means that board established in article seven of this chapter.

WV Legislature

§22A-8-3. Permit of apprenticeship-underground miner.

A permit of apprenticeship-underground 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 underground mines, including, but not limited to, general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, general mining hazards, roof control, ventilation, mine health and sanitation, mine mapping, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, That each applicant for said permit shall complete a program of education and training of at least eighty hours, which shall be determined by the Board of Miner Training, Education and Certification and provided for and implemented by the director: Provided, however, That if a sufficient number of qualified applicants having successfully completed the state training program provided by the Office of Miners' Health, Safety and Training are not available, the operator may request approval from the director to conduct the operator's 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 for trainees undergoing training provided by the state.

WV Legislature

§22A-8-4. Permit of apprenticeship-surface miner.

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 regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, That each applicant for said permit shall complete a program of education and training of at least forty hours, which program shall be determined by the Board of Miner Training, Education and Certification and provided for and implemented by the director: Provided, however, That if a sufficient number of qualified applicants having successfully completed the state training provided by the Office of Miners' Health, Safety and Training are not available, the operator may request approval from the director to conduct the operator's 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 for trainees undergoing training provided by the state.

WV Legislature

§22A-8-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him or her, and under his or her supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and calling of mining. Any mine foreman or fire boss, or assistant mine foreman or fire boss, may have three persons working with him or her under his or her supervision and direction, as apprentices, for the purpose of learning and being instructed in the duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman, or fire boss supervising apprentices in an area where no coal is being produced or which is outby the working section may have as many as five apprentices under his or 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.

Every apprentice working at a surface mine shall be at all times under the supervision and control of at least one person who holds a certificate of competency and qualification.

In all cases, it is the duty of every mine operator who employs apprentices to ensure that such persons are effectively supervised and to instruct such persons in safe mining practices. Each apprentice shall wear a red hat which identifies the apprentice as such while employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the Director of the Office of Miners' Health, Safety, and Training.

WV Legislature

§22A-8-6. Certificate of competency and qualification -- Underground or surface miner.

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 months' total experience as an apprentice and demonstrated his or her competence as a miner by successful completion of an examination given by the director or his or her representative in a manner and place to be determined by the Board of Miner Training, Education and Ccertification: Provided, That 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 fellow employees: Provided, however, That notice of the time and place of such examination shall be given to management at the mine, to the local union thereat 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. 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.

WV Legislature

§22A-8-7. Refusal to issue certificate; appeal.

If the director or the director's representative finds that an applicant is not qualified and competent, the director shall so notify the applicant not more than ten days after the date of examination.

Any applicant aggrieved by an action of the director in failing or refusing to issue a certificate of qualification and competency may, within ten days' 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.

WV Legislature

§22A-8-8. Limitations of article.

All persons possessing certificates of qualification heretofore issued by the Department of Mines of this state, or by the Division of Mines and Minerals, or hereafter by the Office of Miners' Health, Safety and Training entitling them to act as mine foreman-fire bosses, or assistant mine foreman-fire bosses, are eligible to engage at any time as miners in the mines of this state. Supervisory and technically trained employees of the operator, whose work contributes only indirectly to mine operations, are not required to possess a miners' certificate.

Notwithstanding the provisions of this article, 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.

WV Legislature

§22A-8-9. Violations; penalties.

Any person who knowingly works in or at a mine without a certificate issued under the provision of this article, 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 section five of this article, is guilty of a misdemeano, and, upon conviction thereof, shall be fined not less than $50 nor more than $500.

WV Legislature

§22A-8-10. Loss of certification for unlawful trespass.

Upon a conviction under the provisions of §61-3B-6 of this code, the certification of any person certified under the provision of §22A-8-1 et seq. of this code, including a safety sensitive certification issued pursuant to 56 CSR 19, shall be deemed revoked and person shall be permanently barred from holding a certification under the provisions of §22A-8-1 et seq. of this code.

WV Legislature

§22A-9-1. Mine Inspectors' Examining Board duties imposed upon the Office of Miners' Health, Safety and Training.

The Mine Inspectors' Examining Board is hereby abolished, and all powers, duties, and responsibilities previously imposed upon the Board of Coal Mine Health and Safety pursuant to this article are transferred to the Office of Miners' Health, Safety, and Training. The Board of Coal Mine Health and Safety, having previously assumed the duties of the Mine Inspectors' Examining Board, shall transfer all records and equipment pertaining to the duties of and said transfer of the Mine Inspectors' Examining Board to the Office of Miners' Health, Safety, and Training. In addition to other duties expressly set forth elsewhere in this article, the Director of the Office of Miners' Health, Safety, and Training shall:

(1) Establish and, from time to time, revise forms of application for employment as mine inspectors, which shall include the applicant's Social Security number and forms for written examinations to test the qualifications of candidates for that position;

(2) Adopt and promulgate reasonable rules relating to the examination, qualification, and certification of candidates for appointment as mine inspectors, and hearing for removal of inspectors, held under §22A-1-12 of this code. All of such rules shall be printed and a copy thereof furnished by the director to any person upon request. The director shall determine whether applicants have the necessary experience to take the mine inspector examination, conduct examination of candidates for appointment as a mine inspector, and rank all applicants;

(3) Prepare 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, with the candidate with the highest grade appearing at the top of the list. The Director of the Office of Miners' Health, Safety, and Training shall no less than annually prepare a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons who:

(A) Are no longer residents of West Virginia;

(B) Have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment;

(C) Have been passed over for appointment for three years;

(D) Have become ineligible for appointment since the director originally certified that such person was qualified and eligible for appointment as mine inspector; or

(E) In the judgment of the director, should be removed from the register for good cause;

(4) The director shall keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for a period of two years. Specimens of the examinations given, together with the correct solution

WV Legislature

of each question, shall be preserved;

(5) The director shall issue a letter or written notice of qualification to each successful eligible candidate;

(6) The Board of Coal Mine Health and Safety shall hear and determine proceedings for hearings for the removal of mine inspectors in accordance with the provisions of §22A-1-12 of this code when requested in writing by the mine inspector;

(7) The board shall hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of §22A-1-4 of this code. An aggrieved inspector, in order to appeal from any order of suspension, shall file such appeal in writing with the Board of Coal Mine Health and Safety not later than 10 days after receipt of notice of suspension. On such appeal the board shall promptly affirm the act of the director unless it is satisfied from a clear preponderance of the evidence that the director has acted arbitrarily. Each witness shall be sworn, and a transcript shall be made, of all evidence taken and the proceedings had at the hearing. A continuance may not be granted except for good cause shown. The administrator of the board, or in their absence a member of the board designated by the board, has the power to administer oaths and subpoena witnesses; and

(8) The board and office shall 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 considers to be in the public interest.

WV Legislature

§22A-10-1. Emergency personnel in coal mines.

(a) Emergency medical services personnel must be employed on each shift at every mine that:

(1) Employs more than ten employees; and

(2) Has more than eight persons present on the shift.

(b) The emergency medical services personnel must be employed at their regular duties at a central location or, when more than one person is required pursuant to the provisions of subsection (d) of this section, at a location which provides for convenient, quick response to an emergency. The emergency medical services personnel must have available to them at all times such equipment prescribed by the Director of the Office of Miners' Health, Safety and Training, in consultation with the Commissioner of the Bureau for Public Health.

(c) "Emergency medical services personnel" means any person certified by the Commissioner of the Bureau for Public Health, or authorities recognized and approved by the commissioner, to provide emergency medical services as authorized in article four-c, chapter sixteen of this code, including emergency medical technician- -industrial.

(d) At least one emergency medical services personnel shall be employed at a mine for every fifty employees or any part thereof who are engaged at any time, in the extraction, production or preparation of coal.

(e) Commencing July 1, 2014, the certification for emergency medical technician-miner, also known as emergency medical technician-mining, shall be known as the certification for emergency medical technician-industrial, and the certification is valid until the original expiration date, at which time the person may recertify as an emergency medical technician-industrial pursuant to section six-c, article four-c, chapter sixteen of this code.

(f) A person wanting to be certified or recertified as an emergency medical technician-industrial must comply with the provisions of section six-c, article four-c, chapter sixteen of this code.

WVLegislature

§22A-10-2. First-aid training of coal mine employees.

Each coal mine operator shall provide every new employee within six months of the date of employment with the opportunity for first-aid training as prescribed by the Director of the Office of Miners' Health, Safety and Training 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 hours within each twenty-four months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first-aid training.

WV Legislature

§22A-10-3. Certification requirements for emergency medical technician – mining.

(a) An applicant for certification as an emergency medical technician - mining shall:

(1) Be at least 18 years old;

(2) Apply on a form prescribed by the Director of Miners' Health, Safety and Training;

(3) Pay the application fee;

(4) Possess a valid cardiopulmonary resuscitation certification;

(5) Successfully complete an emergency medical technician - mining education program authorized by the Director of Miners' Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety; and

(6) Successfully complete emergency medical technician - mining cognitive and skills examinations authorized by the Director of Miners' Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety.

(b) The emergency medical technician - mining certification is valid for three years.

(c) A certified emergency medical technician - mining may only practice on mining operations, as defined in §11-13C-3 of this code.

(d) To be recertified as an emergency medical technician - mining, a certificate holder shall:

(1) Apply on a form prescribed by the Director of Miners' Health, Safety and Training;

(2) Pay the application fee;

(3) Possess a valid cardiopulmonary resuscitation certification;

(4) Successfully complete one of the following:

(A) A one-time 32-hour emergency medical technician - mining recertification course authorized by the Director of Miners' Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety; or

(B) Three annual eight-hour retraining and testing programs authorized by the Director of Miners' Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety; and

(5) Successfully complete emergency medical technician - mining cognitive and skills recertification examinations authorized by the Director of Miners' Health, Safety and Training in consultation with the Board of Coal Mine Health and Safety.

WV Legislature

(e) The education program, training, courses, and cognitive and skills examinations required for certification and recertification as an emergency medical technician - miner, also known as emergency medical technician - mining, in existence on January 1, 2014, shall remain in effect for the certification and recertification of emergency medical technician - industrial until they are changed by legislative rule by the director in consultation with the Board of Coal Mine Health and Safety.

(f) The administration of the emergency medical technician - mining certification and recertification program by the Director of Miners' Health, Safety and Training shall be done in consultation with the Board of Coal Mine Health and Safety.

(g) The Director of Miners' Health, Safety and Training shall propose rules for legislative approval, pursuant to the provisions of §29A-3-1 et seq. of this code, in consultation with the Board of Coal Mine Health and Safety and may propose emergency rules to:

(1) Establish emergency medical technician - mining certification and recertification courses and examinations;

(2) Authorize providers to administer the recertification courses and examinations, including mine training personnel, independent trainers, community and technical colleges, regional education service agencies, and educational service cooperatives: Provided, That the mine training personnel and independent trainers must obtain an EMT-M Instructor Certification issued by the West Virginia Office of Miners' Health, Safety and Training;

(3) Establish a fee schedule: Provided, That the application fee may not exceed $10 and there shall be no fee for a certificate; and

(4) Implement the provisions of this section.

WV Legislature

§22A-11-1. Legislative findings, purposes and intent.

The Legislature hereby finds and declares:

(1) That the first priority and concern of all persons in the coal mining industry must be the health and safety of its most precious resource - the miner;

(2) That in furtherance of this priority, the provisions of article two of this chapter are designed to protect the health and safety of this State's coal miners by requiring certain minimum standards for, among other things, certain health and safety technology used by each underground miner;

(3) That the proper implementation of this technology in West Virginia's underground mines would benefit from the specialized oversight of persons with experience and competence in coal mining, coal mine health and safety and the expanding role of technology; and

(4) That, in furtherance of provisions of this section, it is the intent of the Legislature to direct that the Board of Coal Mine Health and Safety, on a continuous basis, evaluate and study issues relating to the commercial availability and functional and operational capability of existing and emerging technologies in coal mine health and safety, as well as issues relating to the implementation, compliance and enforcement of regulatory requirements governing the technologies.

WV Legislature

§22A-11-2. Mine Safety Technology Task Force abolished and duties imposed upon the Board of Coal Mine Health and Safety.

(a) The Mine Safety Technology Task Force hereby abolished. All duties and responsibilities imposed upon the Mine Safety Technology Task Force are transferred and hereby imposed upon the Board of Coal Mine Health and Safety. On the effective date of the reenactment of this article and section of the code, all equipment and records necessary to effectuate the purposes of this article shall be transferred to the Board of Coal Mine Health and Safety.

WV Legislature

§22A-11-3. The Board of Coal Mine Health and Safety's duties regarding mine technology.

(a) The board shall provide technical and other assistance to the office related to the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two of this chapter, as amended and reenacted during the regular session of the Legislature in 2006 and requirements for other mine safety technologies.

(b) The board, working in conjunction with the director, shall continue to study issues regarding the commercial availability, the functional and operational capability and the implementation, compliance and enforcement of the following protective equipment:

(1) Self-contained self-rescue devices, as provided in subsection (f), section fifty-five, article two of this chapter;

(2) Wireless emergency communication devices, as provided in subsection (g), section fifty-five, article two of this chapter;

(3) Wireless emergency tracking devices, as provided in subsection (h), section fifty-five, article two of this chapter; and

(4) Any other protective equipment required by this chapter or rules promulgated in accordance with the law that the director determines would benefit from the expertise of the task force.

(c) The board shall on a continuous basis study, monitor and evaluate:

(1) The potential for enhancing coal mine health and safety through the application of existing technologies and techniques;

(2) Opportunities for improving the integration of technologies and procedures to increase the performance and survivability of coal mine health and safety systems;

(3) Emerging technological advances in coal mine health and safety; and

(4) Market forces impacting the development of new technologies, including issues regarding the costs of research and development, regulatory certification and incentives designed to stimulate the marketplace.

(d) On or before July 1 of each year, the board shall submit a report to the Governor and the director that shall include, but not be limited to:

(1) A comprehensive overview of issues regarding the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two of this chapter, or rules promulgated in accordance with the law;

WV Legislature

(2) A summary of any emerging technological advances that would improve coal mine health and safety;

(3) Recommendations, if any, for the enactment, repeal or amendment of any statute which would enhance technological advancement in coal mine health and safety; and

(4) Any other information the board considers appropriate.

(e) In performing its duties, the board shall, where possible, consult with, among others, mine engineering and mine safety experts, radio communication and telemetry experts and relevant state and federal regulatory personnel.

(f) Appropriations to the board and to effectuate the purposes of this article shall be made to one or more budget accounts established for that purpose.

(g) The board shall annually compile a proposed list of approved innovative mine safety technologies and transmit the list to the Director of the Office of Miners' Health, Safety and Training as provided in section four, article thirteen-bb, chapter eleven of this code. The list shall be approved by unanimous vote of the board.

WV Legislature

§22A-11-4. Approval of devices.

Prior to approving any protective equipment or device that has been evaluated by the board pursuant to the provisions of subsection (b), section three of this article, the director shall consult with the board and review any applicable written reports issued by the board and the findings set forth in the reports and shall consider the findings in making any approval determination.

WV Legislature

§22A-11-5. Existing state rules to be revised.

By August 31, 2017, all existing state rules promulgated pursuant to the authority of this chapter shall be revised to reflect the changes in this chapter enacted by the Legislature during the 2017 regular session.

WV Legislature

§22A-12-1. Report on enforcement procedures.

The director shall, by December 31, 2013, report to the Legislature and Governor on the need for revisions in the state's underground mine safety enforcement procedures. The director shall initiate the study using appropriate academic resources and mining safety organizations to conduct a program review of state enforcement procedures to evaluate what reforms will assure that mining operations follow state-mandated safety protocols. The report shall include recommended legislation, rules and policies, consider various options for improving inspections, accountability and equitable and timely administrative procedures that cause remediation of hazardous working conditions.

WV Legislature