WEST VIRGINIA LEGISLATURE
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ENROLLED

HOUSE BILL No. 2890

Staton, Amores, Linch, Fleischauer,
(By Delegate Thomas, Kominar and Buchanan)

Passed April 10, 1997

In Effect From Passage
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H. B. 2890

(BY DELEGATES STATON, AMORES, LINCH, FLEISCHAUER, THOMAS, KOMINAR AND BUCHANAN)

[Passed April 10, 1997; in effect from passage.]

AN ACT to amend and reenact section thirty-seven, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-a, all relating to the establishment of standards and procedures for the use and maintenance of diesel-powered equipment in underground coal mines; modifying the prohibition on underground equipment powered by internal combustion engines; authorizing the use of diesel-powered equipment; stating purpose and intent; defining certain terms; creating the West Virginia diesel equipment commission; establishing the qualifications and eligibility of members of the commission; prescribing terms of office for members; providing for nomination and appointment of members; providing for removal of members; providing for compensation and reimbursement for expenses; defining a quorum of the commission and the necessary affirmative vote required for adoption of a measure; providing for the promulgation of rules by the commission; establishing an arbitration process to be followed in the event the commission fails to adopt rules before the first day of April, one thousand nine hundred ninety-eight; describing the duties of the commission after the adoption of initial rules; directing the promulgation of rules requiring the monitoring and control of exhaust emissions and establishing standards for
allowable concentrations of exhaust emissions; providing for approval of diesel power package or diesel engine; providing for approval of exhaust emissions control and conditioning systems and establishing requirements and standards for exhaust emissions control and conditioning systems; requiring monitoring and controlling of emissions; requiring monitoring and controlling of exhaust gases; requiring values for minimum quantities of ventilating air; requiring approval of diesel-powered equipment and the attachment of an approval plate; establishing standards for fuel and fuel storage facilities; requiring rules governing the refueling of diesel-powered equipment; providing for rules to govern where refueling may take place; requiring rules governing fire suppression systems for diesel powered equipment, fuel transportation units and permanent underground diesel fuel storage facilities; regulating or prohibiting certain starting aids; providing for fire and safety training; providing for service and maintenance of diesel-powered equipment; requiring training and qualification of persons working on diesel-powered equipment; requiring on-shift examination of equipment by the operator; providing for scheduled maintenance; requiring on-board performance and maintenance diagnostics systems; requiring periodic examination and testing of diesel-powered equipment; providing for record-keeping as to all tests, examinations, maintenance or repair; providing for rules to establish programs for training, a certification process and refresher training.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article two-a, all to read as follows:

ARTICLE 2. UNDERGROUND MINES.

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

1 (a) 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 five hundred feet of the nearest working face, except that when any section is fully developed and being prepared for retreating, then the distance of such maintenance can be extended to eight hundred feet if a rubber tired vehicle is 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 twenty-four 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 twelve 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 twenty-four 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 twenty-four inches.

(i) Shelter holes shall be provided along haulage entries. Such shelter holes shall be spaced not more than one hundred feet apart, except when variances are authorized by the director with unanimous agreement of the
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.

(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 article two-a of this chapter.

(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 in his 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. Motor-men 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 except the operator or his assistant shall ride on locomotives or loaded cars. 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 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 eighty 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 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 three hundred fifty tons of coal are produced on any shift in each twenty-four 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 section forty-two of this article: Provided, however, That the dispatcher may perform other duties which do not interfere with his dispatching responsibilities and do not require him 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 three hundred 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.

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

ARTICLE TWO-A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

PART 1. GENERAL PROVISIONS.


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. Diesel-powered equipment shall not be used in underground coal mines until the West Virginia diesel equipment commission promulgates its initial rules, requirements and standards governing the operation of diesel equipment in underground coal mines.


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.

PART 2. DEFINITIONS.


(a) For the purposes of this article, the words or phrases defined in this part 2 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.


“Board” means the board of coal mine health and safety continued by section three, article six of this chapter.


“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.


“Commission” means the West Virginia diesel equipment commission created under the provisions of section three hundred one of this article.

§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.


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

§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.

§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.

§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.


“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.

§22A-2A-211. MSHA defined.

“MSHA” means the mine safety and health administration of the United States department of labor.

§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.
§22A-2A-213. Safety can defined.

1 "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.


1 "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.

PART 3. WEST VIRGINIA DIESEL EQUIPMENT COMMISSION.

§22A-2A-301. Creation of the West Virginia diesel equipment commission.

1 The West Virginia diesel equipment commission, consisting of six members, is hereby created in the office of miners' health, safety and training of the bureau of commerce.

§22A-2A-302. Members of the commission; qualifications and eligibility.

1 (a) Each member of the commission shall be a citizen of the United States and a resident of the state of West Virginia.

4 (b) No member of the Legislature, or person holding any elective or full-time appointive office in the federal, state, or local government shall be eligible to serve as a member of the commission.


1 (a) The members of the commission shall be appointed to initial terms as follows:

3 (1) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-seven and ending on the thirtieth day of June, one thousand nine hundred ninety-nine;
(2) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-seven and ending on the thirtieth day of June, two thousand;

(3) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-seven and ending on the thirtieth day of June, two thousand one.

(b) Of the two members appointed under each of subdivisions (1), (2) and (3) of subsection (a), one shall be a person who can reasonably be expected to represent the viewpoint or interests of coal operators in this state, and one shall be a person who can reasonably be expected to represent the viewpoint or interests of working miners in this state.

(c) The initial term of each of the six members first appointed shall be designated by the governor.

(d) After the initial appointments, all members shall be appointed for terms of four years. Members shall not serve more than two terms of four years each.


(a) Prior to the appointment of a person to the commission, the governor shall request the nomination of a candidate for the appointment. If the position is to be filled by a person who can reasonably be expected to represent the viewpoint or interests of underground coal operators in this state, the governor shall request the nomination from the major trade association representing underground coal operators in this state. If the position is to be filled by a person who can reasonably be expected to represent the viewpoint or interests of working miners in this state, the governor shall request the nomination from the highest ranking officer of the major employee organization representing coal miners in this state.

(b) The governor shall appoint a member to serve for the term for which the person was nominated, and until his or her successor has been nominated and appointed: Provided, That if a successor is not appointed within one hun-
dred twenty days after the expiration of a member’s term, a vacancy is deemed to exist. The governor may reject a nomination and decline to appoint a nominee only if the person does not have the qualifications, integrity and responsibility necessary to enable the person to perform his or her duties as a member of the commission.

(c) Appointments to fill vacancies on the commission shall be for the unexpired term of the member to be replaced.


When a member fails to appear at three consecutive meetings of the commission or at one half of the meetings held during a one-year period, any member of the commission may notify the member and the governor of such fact. Such member shall be removed by the governor unless good cause for absences is shown.


Each member of the commission 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 the members of the commission. All reimbursement for expenses shall be paid out of the state treasury upon a requisition on the state auditor.

§22A-2A-307. Quorum; majority vote required.

A quorum of the commission consists of not less than two of the members who represent the viewpoint or interests of coal operators and two of the members who represent the viewpoint or interests of working miners. A measure before the commission for its consideration is adopted on the affirmative vote of any four of the six members.
§22A-2A-308. Promulgation of initial rules by the commission.

(a) The West Virginia diesel equipment commission shall prepare and adopt the initial rules for the operation of diesel equipment in underground coal mines in this state. In preparing and adopting initial rules, the commission 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. Authorization for the commission to establish the initial rules shall cease to exist after the thirty-first day of March, one thousand nine hundred ninety-eight, except that the commission shall, if necessary, promulgate initial rules following a decision made by the board of arbitrators pursuant to section three hundred nine of this article.

(b) In promulgating the initial rules pursuant to subsection (a) of this section, the commission shall follow the procedures set forth in article three, chapter twenty-nine-a of this code that are prescribed for an agency proposing a legislative rule, to the point where an agency would approve a rule for submission to the Legislature. At that point, the commission shall proceed to final adoption of the initial rules and file a notice of the final adoption in the state register and with the legislative rule-making review committee. Upon final adoption by the commission, the initial rules are thereby promulgated and have the effect of law without further action by the commission or the Legislature. The initial rules shall be published in the code of state rules and continue in effect until modified or superseded in accordance with the provisions of this article.

§22A-2A-309. Failure to promulgate initial rules; arbitration.

(a) If the commission fails to finally adopt its initial rules before the first day of April, one thousand nine hundred ninety-eight, the members who represent the viewpoint or interests of coal operators and the members who
represent the viewpoint or interests of working miners shall each prepare a final draft of proposed initial rules, which drafts shall be considered the "last best offer" by each group of members. Thereafter, the matters in controversy which the commission is unable to resolve shall be submitted to arbitration as soon as is practicable.

(b) The board of appeals established and continued pursuant to the provisions of article five of this chapter shall begin the selection of arbitrators by contacting the alternative dispute resolution department of the federal mediation and conciliation service to obtain a roster of the names of fifteen persons who are willing to serve as neutral members of a special subcommittee of the board of appeals that will function as a board of arbitration. The board of appeals shall request that the federal mediation and conciliation service, in compiling the roster, consider experience, training, affiliations, actual or potential conflicts of interest and other matters when selecting persons who may serve as neutral and independent arbitrators. From the roster of fifteen persons so compiled, the board of appeals shall draw five names by lot. The persons drawn shall comprise the board of arbitration, and they are empowered to resolve all outstanding issues that prevent final adoption of initial rules by the diesel equipment commission.

(c) In the event that an arbitrator shall die, or refuse to act or become incapable of acting as an arbitrator before the matters pending before the board of arbitration are concluded, then the remaining arbitrators shall appoint another person from the roster of available persons to be an arbitrator in place of the arbitrator who no longer continues to act.

(d) Each arbitrator shall be compensated at a per diem rate of two hundred twenty-five dollars per day for each day or portion thereof engaged in the discharge of official duties. Each member of the commission shall be paid the same 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. No reimbursement for ex-
penses shall be made except upon an itemized account, properly certified by the arbitrators. All reimbursement for expenses shall be paid out of the state treasury upon a requisition on the state auditor.

(e) On the fifth day of January, one thousand nine hundred ninety-nine, the board of arbitrators shall resolve issues presented by the proposed drafts drawn up by the members of the commission. Only matters in controversy may be addressed by the board of arbitration. Arbitration is conditioned by limiting the range of outcomes to a choice between the positions submitted by each opposing group within the commission as their "last best offer." As to each issue raised by the proposed drafts, the board of arbitration shall adopt a position advanced by one of the member groups and shall have no authority to compromise the positions or substitute an alternative position. In making its decisions, the board of arbitrators 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. When the board of arbitration reaches agreement on a proposed rule, at the conclusion of its work the board of arbitration shall transmit a report containing the proposed rule to the commission, the president of the Senate and the speaker of the House of Delegates. The board of arbitration may include in its report any other information, recommendations, or materials that the board of arbitration considers appropriate, including suggested legislation. Any arbitrator may include as an addendum to the report any additional information, recommendations, or materials.

(f) The board of coal mine health and safety shall provide appropriate administrative support to the board of arbitration, including technical assistance.

(g) Within twenty-eight days following the resolution of all issues by the board of arbitration, the commission
shall adopt the initial rules, fully incorporating the decision of the board of arbitration. The commission shall file a notice of the final adoption in the state register and with the legislative rule-making review committee. The initial rules are thereby promulgated and have the effect of law without further action by the commission or the Legislature. The initial rules shall be published in the code of state rules and continue in effect until modified or superseded in accordance with the provisions of this article, or by act of the Legislature.


(a) After the promulgation of the initial rules, the commission shall have as its primary duties the implementation of this article and the evaluation and adoption of state of the art technology and methods, reflected in engines and engine components, emission control equipment, and procedures, that 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 commission shall have been demonstrated to be reliable. In making a decision to adopt new technology and methods, the commission 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 commission shall not reduce or compromise the level of health and safety protection of miners.

(b) Upon application of a coal mine operator, the commission shall consider site-specific requests for use of alternative diesel-related health and safety technologies and methods. The commission's action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon receipt of a site-specific application, the
commission 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 commission shall consult with a reasonable number of miners at the mine.

(1) Within one hundred eighty days of receipt of an application for use of alternative technologies or methods, the commission shall complete its investigation. The time period may be extended with the consent of the applicant.

(2) The commission shall have thirty days in which to render a final decision approving or rejecting the application.

(3) The commission members shall not approve an application made under this section if, at the conclusion of the investigation, the commission members have made a determination 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 commission’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 commission’s investigation and shall outline in detail the basis for the rejection.

(c) The commission shall establish conditions for the use of diesel-powered equipment in shaft and slope construction operations at coal mines.
(d) In performing its functions, the commission shall have access to the services of the board of coal mine health and safety. The board shall make clerical support and assistance available to enable the commission to carry out its duties.

(e) Any action taken by the commission 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 may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission 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 is an abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.

(f) The powers and duties of the commission shall be limited to the matters regarding the use of diesel-powered equipment in underground coal mines.

(g) 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.

PART 4. EXHAUST EMISSION REQUIREMENTS FOR DIESEL POWER PACKAGES.

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

(a) This part 4 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 allow-
§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 West Virginia diesel equipment commission when it complies with applicable requirements, standards, and procedures established by rules of the commission, and be certified or approved, as applicable, by MSHA and maintained in accordance with MSHA certification or approval.

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

(a) All exhaust emissions control and conditioning systems and their component devices shall be approved by the West Virginia diesel equipment commission. Such approval requires compliance with applicable standards and procedures established by rules of the commission for the use of the system or device in reducing or eliminating diesel particulate matter, carbon monoxide and oxides of nitrogen.

The rules of the commission shall require all exhaust emissions control and conditioning systems to undergo an initial series of laboratory tests, using test equipment requirements and standard procedures approved by the commission for testing for gaseous and particulate emissions. The commission 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.

(4) Any additional requirements established by the rules of the commission 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.


Rules of the commission shall establish procedures for monitoring and controlling emissions from diesel-powered equipment. Such procedures shall include, but not be limited to, monitoring and controlling activities to be performed by a qualified person.


(a) For monitoring and controlling exhaust gases, the rules of the commission 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) Rules of the commission 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) Rules of the commission 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, rules of the commission shall provide for service, maintenance and tests which are specific to an engine's fuel delivery system, timing or exhaust emissions control and conditioning system.

PART 5. VENTILATION.


(a) Rules of the commission 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) Rules of the commission shall require that each specific model of diesel-powered equipment shall be approved before it is taken underground. The rules shall provide that in addition to requiring that each diesel engine 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 commission for the specific piece of diesel-powered equipment. The rules shall provide that the minimum ventilating air quantity be determined based on the amount of air necessary at all times to maintain the exhaust emissions at levels not exceeding the exposure limits established by the commission pursuant to section four hundred six of this article.

(c) Rules of the commission shall require that 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 com-
pliance with this requirement shall be made at the individ-
ual unit of diesel-powered equipment.

(d) Rules of the commission shall establish the mini-
imum quantities of air required in any split when multiple
units are operated. Air quantity measurements to deter-
mine 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) Rules of the commission shall provide that mini-
mum quantities of air in any split where any diesel-pow-
ered equipment is operated shall not be less than the mini-
mum air quantities established pursuant to subsections (a)
and (b) of this section and shall be specified in the mine
diesel ventilation plan.

PART 6. FUEL.


(a) The commission 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 gas-
eous 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 mini-
mum flash point for the diesel fuel used.

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


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

(b) (1) Rules of the commission 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 under-
ground diesel fuel storage areas.

(c) Rules of the commission shall govern the trans-
portation and storage of diesel fuel in diesel fuel tanks and
safety cans.

(d) Rules of the commission 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.


Rules of the commission governing the refueling of
diesel-powered equipment shall, at a minimum, comply
with the provisions of part 75 of the code of federal regu-
lations dealing with the dispensing of diesel fuel, set forth
in 30 C.F.R. § 75.1905, effective the twenty-fifth day of
April, one thousand nine hundred ninety seven.

§22A-2A-605. Location of fueling.

(a) Rules of the commission shall require that fueling
of diesel-powered equipment is not to be conducted in the
intake escapeways unless the mine design and entry con-
figuration make it necessary. For those cases where fuel-
ing in the intake escapeways is necessary, the rules 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) Rules of the commission shall require that 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.

**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 the twenty-fifth day of April, one thousand nine hundred ninety-seven.


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 the twenty-fifth day of April, one thousand nine hundred ninety-seven.

§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.


(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.

PART 8. MAINTENANCE.


(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.


(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 the twenty-fifth day of April, one thousand nine hundred ninety-seven.

(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.

§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.


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.


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.
§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).


(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.
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 their 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.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 5th
day of May, 1997.

Governor