



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

10/24/2019 2:33:24 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Coal Mine Health And Safety TITLE-SERIES: 36-18

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

RULE NAME: THE RESPONSIBILITY FOR CARE AND MAINTENANCE OF EQUIPMENT

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

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 12/09/2019 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Mallory Yates Hicks

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Charleston, West Virginia 25311

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The Series governs the responsibility for care and maintenance of equipment.

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

Pursuant to the regulatory review and reform initiatives established in West Virginia Code § 29A-3-20 (2016) and Executive Order No. 3-18, the proposed legislative-exempt rules modify and update Series 18 of Title 36 of the Code of State Rules to more accurately identify the scope of the rule, to cross-reference the correct authorizing portions of the West Virginia Code, to correct typographical errors, to utilize the current citation formats, and to renumber provisions according to the outline required under W. Va. Code R. §153-1-5.22. & §153-1-6.

Additionally, the proposal moves the requirements related pre-operational equipment checks from W. Va. Code § 36-18-5 to W. Va. Code R. § 36-57-7. It also moves the requirements related to loading and locking values from W. Va. Code R. § 36-18-7 to W. Va. Code R. § 36-16-5. These changes are not intended to modify substantive requirements of the pre-operational equipment check or load locking values; but instead, are intended to facilitate public awareness of and access to the provisions of this section.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed legislative-exempt rule is not anticipated to impact the revenues of State Government. The proposal simply updates Series 18 of Title 36 of the Code of State Rules to reflect proper citations to the West Virginia Code, the proper names of certain State agencies, and the current citation and numbering formats pursuant to the regulatory review and reform initiatives established in West Virginia Code § 29A-3-20 (2016) and Executive Order No. 3-18. The proposal also moves limited sections of the Series to more appropriate and natural locations within Title 36 of the Code of State Rules without substantive alterations to each sections requirements.

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

The proposed legislative-exempt rule is not anticipated to economically impact the State or its residents. The proposal simply updates Series 18 of Title 36 of the Code of State Rules to reflect proper citations to the West Virginia Code, the proper names of certain State agencies, and the current citation and numbering formats pursuant to the regulatory review and reform initiatives established in West Virginia Code § 29A-3-20 (2016) and Executive Order No. 3-18. The proposal also moves limited sections of the Series to more appropriate and natural locations within Title 36 of the Code of State Rules without substantive alterations to each sections requirements.

C. FISCAL NOTE DETAIL:

| Effect of Proposal                 | Fiscal Year                            |  |  |
|------------------------------------|--|--|--|
|                                    | 2019<br>Increase/Decrease<br>(use "-") | 2020<br>Increase/Decrease<br>(use "-") | Fiscal Year (Upon<br>Full<br>Implementation) |
| <b>1. Estimated Total Cost</b>     | 0.00                                   | 0.00                                   | 0.00   |
| Personal Services                  | 0.00                                   | 0.00                                   | 0.00   |
| Current Expenses                   | 0.00                                   | 0.00                                   | 0.00   |
| Repairs and Alterations            | 0.00                                   | 0.00                                   | 0.00   |
| Assets                             | 0.00                                   | 0.00                                   | 0.00   |
| Other                              | 0.00                                   | 0.00                                   | 0.00   |
| <b>2. Estimated Total Revenues</b> | 0.00                                   | 0.00                                   | 0.00   |

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

The proposed legislative-exempt rule is not anticipated to have a fiscal impact.

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

Yes

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

TITLE 36  
LEGISLATIVE RULE  
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 18  
THE RESPONSIBILITY FOR CARE AND MAINTENANCE  
OF EQUIPMENT

**§36-18-1. General.**

1.1. Scope. -- ~~This rule is to provide that personnel carriers used to transport miners to a working section must be maintained at the working section and must have sufficient capacity to transport all persons out of the working section in the event of an emergency.~~ This rule is to govern the responsibility for care and maintenance of equipment.

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

1.3. Filing Date. -- ~~February 20, 2008.~~

1.4. Effective Date. -- ~~January 1, 2009.~~

**§36-18-2. Effect of Regulations.**

2.1. ~~These rules and regulations~~ This Series shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect of law. All provisions of ~~36CSR18~~ W. Va. Code § 22A-1-1 et seq., relative to enforcement, are applicable to the enforcement of these rules and regulations

2.2. ~~These proposed regulations are intended to provide that personnel~~ Personnel carriers or trip cars used to transport miners to a working section must be maintained at the working section and must have sufficient capacity to transport all miners out of the working section in the event of an emergency.

**§36-18-3. Definitions.**

3.1. Unsafe Equipment: -- The term "Unsafe Equipment" shall mean any equipment designated to be operated by a miner that has a defect which is covered by state law, or rule or regulation, and that creates a condition which involves a potential hazard that could reasonably be expected to cause a miner in the vicinity to be placed in danger of injury or death.

**§36-18-4. Responsibility for Care and Maintenance of Equipment.**

4.1. Mine operators shall maintain 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, provided, if equipment has been taken out of service, by being properly tagged out, the operator shall not be issued a violation under the provision of this section; provided however, such tag placed on such equipment shall indicate the date and time such equipment was removed from service. The person removing the equipment from service and tagging such equipment shall place his signature upon the tag.

~~**§36-18-5. Pre-Operational Equipment Check.**~~

~~5.1. Each working shift prior to its operation, all self-propelled section equipment to be operated during~~

~~that shift shall be examined by the equipment operator for safety defects and/or unsafe conditions.~~

~~— 5.2. Pre-Operational equipment examination required under 5.1 of this rule shall include the following items at a minimum. In addition, a list of these items shall be maintained on such equipment.~~

~~—— 5.2.1. Stop/Start Control~~

~~—— 5.2.2. Panic Bar~~

~~—— 5.2.3. Tram Controls~~

~~—— 5.2.4. Steering~~

~~—— 5.2.5. Service Brakes~~

~~—— 5.2.6. Automatic Emergency Brakes~~

~~—— 5.2.7. Lights~~

~~—— 5.2.8. Warning Device~~

~~—— 5.2.9. Canopies Where Required~~

~~—— 5.2.10. ATRS System and Boom Controls on Roof Bolting Machines~~

~~— 5.3. Upon completion of the required examination under 5.1, if the equipment is determined to be unsafe, the individual making the examination shall report such unsafe equipment to his/her foreman. Any unsafe equipment shall be taken out of service and tagged until such unsafe condition is corrected. Before the unit of equipment can be placed back into service, the operator of such unit shall make a pre-operational examination.~~

~~§36-18-6~~ **§36-18-5. Maintenance of Personnel Carriers.**

~~6.1. 5.1. By January 1, 2009, on On working sections where personnel carriers are used to transport miners underground, the personnel carrier or combination of personnel carriers, shall be of sufficient capacity to accommodate the number of persons reasonably likely to be on the section and shall be available to transport persons to a safe area in the event of an emergency.~~

~~§36-18-7. Load Locking Valves.~~

~~— 7.1. All continuous mining machines and loading machines shall be equipped with load locking valves in the boom and head lift cylinders.~~