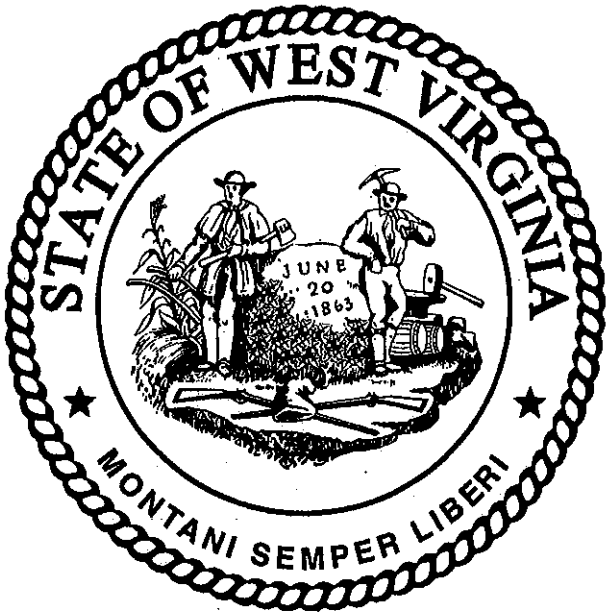
WEST VIRGINIA OFFICE of MINERS' HEALTH SAFETY and TRAINING

QUARRY RULES AND REGULATIONS



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West Virginia Code Chapter 22A, Article 5 – Underground Clay Mines

And

West Virginia Code Chapter 22A, Article 6 – Open Pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines

ARTICLE 5 UNDERGROUND CLAY MINE.

22A-5-1. 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.

22A-5-2. 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 by the division of mines and minerals after an examination by such division. 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.

22A-5-3. Regulations for protection of health and safety of employees.

The director may from time to time promulgate reasonable rules and regulations 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.

ARTICLE 6. OPEN-PIT MINES, CEMENT MANUFACTURING PLANS AND UNDERGROUND LIMESTONE AND SANDSTONE MINES

22A-6-1. 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 waterworks sandstone fragments transported and deposited by water.

(d) "Gravel" means an occurrence of waterworks 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 when treated will yield iron at a profit.

(j) "Manganese ore" means a metalliferous mineral when treated will yield manganese at a profit.

22A-6-2. 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 shall 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.

22A-6-3. Rules and regulations.

The director of the office of miners' health, safety and training shall promulgate reasonable rules and regulations, in accordance with and confined to the provisions of chapter twenty-nine-a of this code, for the effective administration of this article.

22A-6-4. 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.

22A-6-5. Inspectors.

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, having a minimum of five years of practical experience in such mining operations and at the time of his appointment is not more than fifty-five years of age.

To qualify for appointment as such an inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board 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 ninety percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the office of miners' health, safety and training. No candidate's name shall remain in the register for more than three years without requalifying.

Such inspector shall have the same tenure accorded a mine inspector, as provided in subsection (d), section eight, article one-a of this chapter and shall be paid not less than fifteen thousand dollars per year. Such inspector shall also receive reimbursement for traveling expenses at the rate of not less than fifteen 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 shall not exceed two hundred forty dollars per annum.

22A-6-6. Penalties.

Any person who fails or refuses to discharge any provision of this article, rule and regulation promulgated or order issued pursuant to the provisions of this article,

shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both.

West Virginia Administrative Regulations – Title 56, Series 3 - Rules and Regulations Governing the Safety of Those Employed In and Around Surface Mines in West Virginia – (Modified for Quarry Requirements

TITLE 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 3

RULES AND REGULATIONS GOVERNING THE SAFETY OF THOSE EMPLOYED IN AND AROUND SURFACE MINES IN WEST VIRGINIA

(Modified for Quarry requirements)

56-3-1. General.

1.1. Scope. -- These rules govern safety of employees in and around mines.

1.2. Authority. -- W. Va. Code 22-6-4

1.3. Filing Date. -- March 28, 1991

1.4. Effective Date. -- April 29, 1991

1.5. Applicability. -- These regulations shall extend to all surface mining operations. These regulations shall not apply to any utility or railroad having facilities in the vicinity of surface mining operations unless such utility or railroad is also the operators of such surface mining operations.

1.6. Other law applicable. -- All provisions of the mining law of this state, specifically Chapter 22A, Article 2 of the Code, are applicable to surface mining, except to the extent that these regulations cover the specific requirement, and except to the extent that the context of a specific provision would render its applicability totally inappropriate to surface mining.

56-3-2. Effect of Law and Regulations.

2.1. These regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of Article 1, Chapter 22 of the West Virginia Code relative to enforcement are applicable to the enforcement of these regulations.

56-3-3. Definitions.

3.1. "Surface Mine" shall mean all areas surface mined or being surface mined as well as adjacent areas ancillary to the operations, together with preparation and processing plants; storage areas and haulageways, roads, shops and trails; which are

covered by the provisions of Chapter 22A, Article 3 of the Code and coal prospecting subject to Section 7, Article 3, Chapter 22A of the Code.

"Surface Mine" for the purpose of these regulations shall not mean the surface operations connected with an underground coal mine.

3.2. Office: The term "Office" shall mean the state office of miners' health, safety and training provided for in Section 1, Article 7 of Chapter 22A of the West Virginia Code.

3.3. Director of the Office of Miners' Health, Safety and Training: The term "Director of the"Office of Miners' Health, Safety and Training" shall mean the director of the Office of Miners' Health, Safety and Training provided for in Chapter 22A, Article 7, Section 3, of the West Virginia Code, and is synonymous with the term "Chief of the Office of Miners' Health, Safety and Training".

3.4. The term "Inspector" shall mean surface mine inspector employed by the Office of Miners' Health, Safety and Training.

3.5. Mine Inspectors' Examining Board: The term "Mine Inspectors' Examining Board" shall mean the mine inspectors' examining board provided for in Article 11 of Chapter 22 of the West Virginia Code.

3.6. Board of Appeals. -- The term "Board of Appeals" shall mean as provided for in Article 5 of Chapter 22 of the West Virginia Code.

3.7. Agent. -- the term "Agent" means any person charged with the responsibility for the operations of all or a part of a surface mine or the supervision of the miners on a surface mine.

3.8. Operator. -- The term "Operator" shall mean any firm, corporation, partnership or individual operating any surface mine or part thereof, or engaged in the construction of any facility associated with a mine.

3.9. Miner. -- The term "Miner" shall mean any individual working on or around a surface mine who is employed by the operator.

3.10. Person. -- The term "Person" shall mean any individual partnership, association, corporation, firm, subsidiary of a corporation or other organization.

3.11. Superintendent. -- The term "Superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision of one (1) or more mines.

3.12. Mine Foreman. -- The term "Mine Foreman" shall mean the person whom the operator or superintendent shall place in charge of the workings of the surface mine and of the persons employed thereon.

3.13. Assistant Mine Foreman. -- The term "Assistant Mine Foreman" shall mean 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.

3.14. Supervisor. -- The term "Supervisor" shall mean a mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work of employees and who is acting pursuant to such specific designation and instructions.

3.15. Interested Persons. -- The term "Interested Persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized representative of the mine workers and Office of Miners' Health, Safety and Training.

3.18. Accident. -- The term "Accident" shall mean any premature ignition, fire or injury, or death other than natural causes of any person.

3.19. Imminent Danger. -- The term "Imminent Danger" means the existence of any condition or practice on a surface mine which could be expected to cause death or serious physical harm before such condition or practice can be abated.

3.20. Qualified Person. -- The term "Qualified Person" shall mean a person who has completed an examination and is considered qualified on record by the Office of Miners' Health, Safety and Training.

3.21. Approved. -- The term "Approved" shall mean in strict compliance with mining law, or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.

3.22. Berm. -- Means a pile or mound of material or equivalent capable of restraining a vehicle.

3.24. Active Underground Mine Working. -- The term "Active Underground Mine Working" shall mean all places in a mine that are ventilated and inspected regularly.

3.25. Abandoned Underground Mine Workings. -- The term "Abandoned Underground Mine Workings" shall mean 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.

3.26. Working Place. -- The term "Working Place" shall mean all areas in or about a surface mine where persons are working.

3.27. Detonator. -- The term "Detonator" shall mean blasting caps, electrical blasting caps, and nonelectric delay blasting caps.

3.28. Nonelectric delay blasting caps. -- The term "Nonelectric Delay Blasting Caps" shall mean a blasting cap with an intergral delay element in conjunction with and capable of being detonated by a detonation impulse or signal from a miniaturized detonating cord.

3.29. Primer. -- The term "Primer" shall mean a cartridge or container of explosives into which a detonator or detonating cord is inserted or attached, and whose purpose is to initiate the main explosive charge.

3.30. Detonating cord. -- The term "Detonating Cord" shall mean a flexible cord containing a center core of high explosives to detonate other explosives with which it comes in contact.

3.31. Cast primer or booster. -- The term "Cast Primer or Booster" shall mean a case or pressed block or solid high explosives (i.e., not nitroglycerin sensitized) which is normally used to detonate insensitive or noncapsensistive explosives.

3.32. Safety fuse. -- The term "Safety Fuse" shall mean a flexible cord containing an internal burning medium by which fire or flame is conveyed at a continuous and uniform rate from the point of ignition to the point of use, usually a blasting cap.

3.33. Detonating cord millisecond delay connectors. -- The term "Detonating Cord Millisecond Delay Connectors" shall mean nonelectric shot interval (millisecond) delay devices for use in delaying blasts which are surface initiated by detonating cord.

3.34. Blasting agent. -- Means any material consisting of a mixture of a fuel and oxidizer which:

(a) is used or intended for use in blasting;

(b) is not classified as an explosive by the Department of Transportation;

(c) passes all United States DOT tests defining blasting agent, including insensitivity to a No. 8 blasting cap in accordance with CFR49, 173.114a.

3.35 Blasting area. -- Shall mean the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury.

3.36 Explosives. -- The term "Explosives" shall mean any or all of the following, but is not limited to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps, nonelectrical delay blasting caps, cast primer and boosters, detonating cord, and detonating cord delay connections.

3.37. Electric blasting caps. -- The term "Electric Blasting Caps" shall mean instantaneous electric blasting caps and all types of delay electric blasting caps.

3.38. Armored cable. -- The term "Armored Cable" shall mean a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

3.39. Branch circuit. -- The term "Branch Circuit" shall mean any circuit, alternating current or direct current, connected to and leading from the main power lines.

3.40. Cable. -- The term "Cable" shall mean a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

3.41. Circuit breaker. -- The term "Circuit Breaker" shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

3.42. Delta connected. -- The term "Delta Connected" shall mean a power system in which the windings or transformers or S.C. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

3.43. Effectively grounded. -- The term "Effectively

Grounded" is an expression which means grounded through a grounding connection of sufficiently low impendance (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.

3.44. Flame-resistant Cable, Portable. -- The term "Flame-resistant Cable, Portable" shall mean a portable flame-resistant cable that has passed the flame test of the Federal Bureau of Mines.

3.45. 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, shall mean a metallic conductor used to connect the metal frame, or enclosure or any equipment, device or wiring system with a mine track or other effective grounding medium.

3.46. Grounded (earthed). -- The term "grounded (earthed)" shall mean that the system, circuit, or apparatus referred to is provided with a ground.

3.47. High voltage. -- The term "High Voltage" shall mean voltages of more than one thousand (1,000) volts.

3.48. Lightning Arrestor. -- The term "lightning arrestor" shall mean a protective device for limiting surge voltage on equipment by discharging or by passing surge current, it prevents continued flow or follow current to ground and is capable of repeating these functions as specified.

3.49. Low voltage. -- The term "low voltage" shall mean up to and including six hundred sixty (660) volts.

3.50. Medium voltage. -- The term "medium voltage" shall mean voltages from six hundred sixty-one (661) to one thousand (1,000) volts.

3.51. Mine Power Center or Distribution Center. -- The term "mine power center or distribution center" shall mean a combined transformer or distribution unit, complete within a metal enclosure from which one (1) or more low-voltage power circuits are taken.

3.52. Neutral (derived). -- The term "neutral (derived)" shall mean a neutral point or connection established by the addition of a "zigzag" or grounding transformer to a normally underground power system.

3.53. Neutral Point. -- The term "neutral point" shall mean the connection point of transformer or generator windings from which the voltage to ground is nominally zero (0), and is

the point generally used for system groundings in wye-connected A.C. power system.

3.54. Portable (Trailing) Cable. -- The term "portable (trailing) cable" shall mean 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.

3.55. Wye-Connected. -- The term "wye-connected" shall mean a power system connection in which one (1) end of each phase windings or transformers or A.C. generators are connected together to 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.

3.56. ZigZag Transformer (Grounding Transformer). -- The term "zigzag transformer (grounding transformer)" shall mean a transformer intended primarily to provide a neutral point for grounding purposes.

3.57. Brake systems:

(a) Service brake system - The primary brake system used for stopping a vehicle.

(b) Emergency stopping system - the system used for stopping a vehicle in the event of any single failure in the service brake system.

(c) Parking system - A system to hold a stopped vehicle in a stationary position.

3.58. "Barricaded" means to obstruct passage of person, vehicles, or flying materials.

56-3-4. Applicability and Enforcement of Laws Safeguarding Life and Property; Regulations; Authority of Department of Energy Regarding Safety Laws.

4.1. All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface mining operations insofar as such laws are applicable thereto. The director of the Office of Miners' Health, Safety and Training shall promulgate reasonable regulations in accordance with the provisions of Chapter 29a of this code to protect the safety of those employed in and around surface mines. The enforcement of all laws and regulations relating to the safety of those employed in and around surface mines is hereby vested in the Office of Miners' Health, Safety and Training, and shall be

enforced according to the provisions of Chapter 22 of the West Virginia Code.

56-3-5. Director of the Office of Miners' Health, Safety and Training. - Appointment; Term of Office.

5.1. There shall be a Director of the Office of Miners' Health, Safety and Training, who shall be appointed by the Governor with the advice and consent of the Senate and who shall serve for a term of four (4) years, subject to the provisions of Chapter 6, Article 6, Section 4(6-6-4) of the West Virginia Code, as amended. The original term of the director of the Office of Miners' Health, Safety and Training appointed under Chapter 22 of the West Virginia Code shall commence as of the effective date of this article (July 1, 1971), and all appointments to such office made thereafter shall be made for a full term of four (4) years, except that in case of a vacancy, the appointment shall be made for the unexpired term only.

56-3-6. Director of the Office of Miners' Health, Safety and Training - Powers and Duties.

The director of the Office of Miners' Health, Safety and Training shall have full charge of the department. He shall have the power and duty to:

6.1. Supervise and direct the execution and enforcement of the provisions of Chapter 22A of the West Virginia Code.

6.2. Appoint a deputy director of the Office of Miners' Health, Safety and Training, fix his compensation and prescribe his powers and duties.

6.3. Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out the provisions of this law and fix their compensation, except as otherwise provided in Article 1A, Chapter 22A of the West Virginia Code.

6.4. Employ mine inspectors, and assign them to divisions or districts in accordance with the provisions of Chapter 22A, Article 1A, Section 7 of the West Virginia Code as may be necessary to fully and effectively carry out the provisions of this law, including the hiring and training of inspectors for the specialized requirements of surface mining, shaft and slope sinking, and surface installations and to supervise and direct such mine inspectors in the performance of their duties.

6.5. Suspend, for good cause, any mine inspector without compensation for a period not exceeding thirty (30) days in any calendar year.

6.6. Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with Chapter 22A of the West Virginia Code.

6.7. 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 Article 1A, Chapter 22A of the West Virginia Code.

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

6.9. Make annually a full and complete written report of the administration of his office to the Governor and the Legislature of the state for the year ending the thirteenth day of June. Such 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 (including oil and gas) produced in the state, the number of men 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 department from all sources identifying each source of such 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 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: Provided, That no inspector shall be identified by name in this report. Such reports shall be filed with the Governor and the Legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

6.10. 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 the hearing. Any witness so called or subpoenaed shall receive forty dollars ($40) per diem and shall receive mileage at the rate of fifteen cents (15ó) for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such witness.

6.11. 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 his agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his representative.

6.12. Perform all other duties which are expressly imposed upon him by the provisions of Chapter 22A of the West Virginia Code.

6.13. Make all records of the office open for inspec-tions of interested persons and the public.

6.14. In conjunction with the director of the Department of Natural Resources, adopt programs, regulations and procedures designed to assist the small coal operator with obtaining permits and meeting the environmental protection performance standards for strip and underground coal mining operations with the State. For the purpose of this subdivision, a small coal operator is one who anticipated to mine less than two hundred thousand (200,000) tons per year, but the office in determining tonnage shall consider wholly owned subsidiaries to be the same operation as the parent corporation.

56-3-7. Director of the Office of Miners' Health, Safety and Training; Eligibility; Salary.

7.1. The director of the Office of Miners' Health, Safety and Training shall be a male citizen of West Virginia, shall be competent person of good repute and temperate habits and shall have had at least fifteen (15) years experience underground in coal mines, at least ten (10) of which shall have been underground in mines in this state. He shall possess a practical knowledge of the different systems of working, ventilating and draining of coal mines, and a practical and scientific knowledge of all noxious and dangerous gases found in such mines. A diploma in mining engineering from the West Virginia University school of mines or any similarly accredited engineering school shall be counted as two (2) years working experience. The director shall devote all of his time to the duties of his office and shall not be directly or indirectly interested financially in any mine in this state. The salary of the director of the Office of Miners' Health, Safety and Training shall be twenty five thousand dollars ($25,000) per year and traveling expenses, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the Office of Miners' Health, Safety and Training.

56-3-8. Director of the Office of Miners' Health, Safety and Training; Oath and Bond.

8.1. The director of the Office of Miners' Health, Safety and Training shall, before entering upon the discharge of his duties, take the oath of office prescribed by Section 5, Article 4 of the constitution, and shall execute a bond in the penalty of two thousand dollars ($2,000), which security to be approved by the Governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state.

56-3-9. Mine Inspectors May Be Appointed to Fill Vacancy in Department; Permanent Tenure Benefits not Affected.

9.1. Notwithstanding any other provisions of law, if vacancy occurs in any appointive position within the Office of Miners' Health, Safety and Training, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position without forfeiting any of the benefits which have accrued to him because of his permanent tenure as a mine inspector.

56-3-10. Eligibility for Appointment as Surface Mine Inspector; Qualifications; Salary and Expenses; Removal.

10.1. In order to qualify for an appointment as a surface mine inspector, an eligible applicant shall have had at least five (5) years practical experience in surface mines, at least one (1) year of which, immediately preceding his original appointment, shall have been in surface mines in this state, and submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a surface mine inspector and may, subject to the approval of the mine inspectors' examining board, be prepared by the director of the West Virginia Office of Miners' Health, Safety and Training.

If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a grade of at least eighty percent (80%), the board shall add such applicant's name and grade to register of qualified eligible candidates and certify its action to the director Office of Miners' Health, Safety and Training. The director may then appoint one (1) of the candidates from the three (3) having the highest grades.

All such appointees shall be citizens of West Virginia, in good health, not less than twenty-five (25) years of age, of good character and reputation, and temperate in habits. No person shall be eligible for permanent appointment as a surface mine inspector until he has served in a probationary status for a period of one (1) year to the satisfaction of the director of the Office of Miners' Health, Safety and Training.

Surface mine inspectors serving as such on the effective date of this section (July 1, 1977) may continue to serve for a probationary period not exceeding one (1) year and if eligible as prescribed by this section, may qualify for appointment during such probationary period in accordance with the provisions of this section.

However, surface mine inspectors employed on the effective date of this section (July 1, 1977) and who have served to the satisfaction of the Director of the Office of Miners' Health, Safety and Training for a period of two (2) years or more may continue to serve on a permanent tenure basis. In the performance of duties devolving upon surface mine inspectors, they shall be responsible to the inspector-at-large of the Office of Miners' Health, Safety and Training of their respective division.

The salary of the surface mine inspector supervisor shall be not less than seventeen thousand dollars ($17,000) per year. Salaries of surface mine inspectors shall be not less than twelve thousand nine hundred dollars ($12,900) per year during the first year of probationary service. After serving for a probationary period of one (1) year, the salary of a surface mine inspector shall be not less than fifteen thousand dollars ($15,000) per year.

In the discharge of their official duties in privately owned vehicles, surface mine inspectors and the surface mine inspector supervisor shall receive mileage at the rate of not less than fifteen cents (15ó) per mile. A surface mine inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

56-3-11. Mine Inspectors' Examining Board.

11.1. There shall be a mine inspectors' examining board consisting of five (5) members who, except for the public representative of such board, shall be appointed by the Governor, by and with the advice and consent of the Senate. Members so appointed may be removed only for the same caused and in like manner as elective state officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia University. Two (2) members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two (2) members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.

The Director of the Office of Miners' Health, Safety and Training shall be an ex-officio member of the board and shall serve as secretary of the board, without additional compensation; but he shall have no right to vote with respect to any matter before the board.

The members of the board except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two (2), four (4), six (6) and eight (8) years, respectively. Any member whose term expires may be reappointed by the governor.

Each member of the board shall receive fifty dollars ($50) per diem while actually engaged in the performance of the work of the board, and shall receive mileage at the rate of 10 cents (.10) for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member shall serve as chairman of the board. Members of the board before performing any duty, shall take and subscribe to the oath required by Article 4, Section 5 of the constitution of West Virginia.

The mine inspectors' examining board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of three (3) members or the Director of the Office of Miners' Health, Safety and Training. Notice of each meeting shall be given in writing to each member by the secretary at least five (5) days in advance of the meeting. Three (3) members shall constitute a quorum for the transaction of business.

In addition to other duties expressly set forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of application for employment as mine inspectors and forms for written examinations to test the qualification of candidates for the position;

(2) Adopt and promulgate reasonable rules and regulations relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearings for removal of inspectors, required to be held under Chapter 22A, Article 1A. All of such rules and regulations shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

(3) Conduct after public notice of the time and place thereof, examinations of candidates for appointment as mine inspector. By unanimous agreement of all members of the board, one (1) or more members of the board or an employee of the Office of Miners' Health, Safety and Training may be designated to give a candidate the written portion of the examination.

(4) Prepare and certify to the Director of the Office of Miners' Health, Safety and Training 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, the candidates with the highest grade appearing at the top of the list.

After each meeting of the board held to examine such candidates, and at least annually, the board shall prepare and submit to the director of the Office of Miners' Health, Safety and Training a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing indicating their continued availability for such appointment, (c) who have passed over for appointment for three (3) years, (d) who have become ineligible for appointment since the board originally certified that such person was qualified and eligible for appointment as mine inspector, or (e) who, in the judgment of at least four (4) members of the board, should be removed from the register for good cause.

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualifications to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of mine inspectors in accordance with the provisions of Chapter 22A, Article 1A;

(8) Hear and determine appeals of mine inspectors from suspension orders made by the director pursuant to the provisions of Chapter 22A, Article 1A, Section 4: Provided, that an aggrieved inspector, in order to appeal from any order or suspension, shall file such appeal in writing with the mine

inspectors' examining board not later than ten (10) days after receipt of notice of suspension. On such appeal the board shall affirm the act of the director unless it be satisfied from a clear preponderance of the evidence that the director has acted arbitrarily;

(9) Make an annual report to the governor and the director of the office of miners' health, safety and training concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.

56-3-12. Director and Inspectors Authorized to Enter Mines; Duties of Inspectors to Examine Mines; No Advance Notice; Reports After Fatal Accidents.

12.1. The Director of the Office of Miners' Health, Safety and Training shall have authority to visit, enter, and examine any mine, whether underground or surface and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director of the Office of Miners' Health, Safety and Training or mine inspector proper facilities for entering such mine and making examination or obtaining information.

If miners at any mine or one of their authorized representatives have reason to believe 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.

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 the respective districts and as often, in addition thereto, as the Director of the Office of Miners' Health, Safety and Training 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 surface mine operation for the purpose of determining whether a danger, described in Chapter 22A, Article 1A, Section 13 of the West Virginia Code exists in any such mine, or whether any provisions of article two of this chapter is being violated or has been violated within the past forty-eight (48) hours in any such mine.

In addition to the other duties imposed by these rules and regulations, it shall be the duty of each inspector to note each violation he 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.

The mine inspector shall visit the scene of each fatal accident occurring in any mine within his district and shall make an examination into the particular facts of such accident; make a report to the Director of the Office of Miners' Health, Safety and Training, setting forth the results of such examination, including the condition of the mine and the cause or causes of such fatal accident, if known, and all such reports shall be made available to the interested parties, upon written requests.

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 at the time of such inspection shall be given an opportunity to accompany the authorized representative of the director on such inspection.

56-3-13. Findings Orders and Notices.

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

All employees on the inside and outside of a mine who are idle 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 more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order shall be 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 (4) hours of such shift.

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

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

(1) Any person whose presence in such 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 to enter such area;

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

(4) Any consultant to any of the foregoing.

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

13.3. Each notice or order issued under these regulations shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the director issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative and posted on the bulletin board at the mine.

13.4. A notice or order issued pursuant to these regulations may be modified or terminated by an authorized representative of the director.

56-3-14. Review of Orders and Notices by the Director.

14.1. An operator, issued an order pursuant to the provisions of Chapter 22A, Article 1A, Section 13 of the West Virginia Code, 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 (30) days of receipt thereof or within thirty (30) days of its modification or termination. An operator, issued a notice pursuant to Chapter 22A, Article 1A, Section 13, subsection (b) of the West Virginia Code or any representative of miners in any mine affected by such notice, may, if he believes that the period of time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty (30) 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 he 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, present information relating to the issuance and continuance of such order or the modification or termination thereof or the time fixed in such notice. The filing of an application for review under this law shall not operate as a stay of any order or notice.

The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five (5) days prior to the hearing.

Upon receiving the report of such investigation, the director shall make findings of fact, and he shall 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 his findings therein.

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 issues involved.

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 order, or from any order issued under Chapter 22A, Article 1A, Section 13 of the West Virginia Code, except, an order issued under Chapter 22A, Article 1A,

Section 14 of the West Virginia Code, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he 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.

No temporary relief shall be granted in the case of a notice issued under Chapter 22A, Article 1A, Section 13 of the West Virginia Code.

56-3-15. **Posting of Notices, Orders, and Decisions; Delivery to Agent of Operator; Names and Addresses to be Filed by Operator.**

15.1. (a) At each 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 con-spicuous place near an entrance of the mine, in such manner that notices, orders, and decisions required by this law or regula-tions 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 unauth-orized removal. A copy of any notice, order, or decision required by these regulations 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 his agent.

(b) The director shall cause a copy of any notice, order, or decision required by these regulations 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 insure prompt compliance with any notice, order, or decision issued under these regulations, 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 insure compliance with such notice, order, or decision.

(d) Each operator of a mine shall designate a respon-sible 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 these regulations 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 shall have 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 shall not be construed as making such official subject to any penalty under these regulations.

56-3-16. Judicial Review.

16.1. (a) Any order or decision issued by the director under these regulations except an order or decision under Chapter 22A, Article 1A, Section 13 of the West Virginia Code shall be subject to judicial review by the circuit court of the county in which the mine affected is located or the circuit court of Kanawha County 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 these regulations and files within thirty (30) days from the 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 of the Office of Miners' Health, Safety and Training 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 these regulations, except an order or decision pertaining to an order issued under subsection (a), Chapter 22A, Article 1A, Section 13 of the West Virginia Code or an order or decision pertaining to a notice issued under subsection (b), Chapter 22A, Article 1A, Section 13

of the West Virginia Code, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if:

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

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

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

(d) The judgment of the court shall be subject to review only by the supreme court of appeals of West Virginia upon a writ of certiorari filed in such court within sixty (60) 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 him in any proceeding instituted under this section.

56-2-17. Injunctions.

17.1. 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 or the circuit court of Kanawha County, whenever the operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under these regulations, or (b) interferes with, hinders, or delays the director or his authorized representative in carrying out the provisions of these regulations, or (c) refuses to admit such representatives to the mine, or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of these regulations, or (f) refuses to permit access to, and copying of, such records as the director determine necessary in carrying out the provisions of these regulations. Each court shall have the 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 these regulations, 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.

56-3-18. Penalties.

18.1. (a) (1) Any operator of a mine in which a violation occurs of any health or safety rule or regulation or who violates any other provision of these regulations, shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which penalty shall be not more than three thousand dollars ($3,000), for each violation. Each such violation shall constitute a separate offense. In determining the amount of the penalty, the director shall consider the operators' history of previous violations, the appropriateness of such 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) Any miner who knowingly violates any health or safety provision of these regulations or health or safety rule or regulation promulgated pursuant to these regulations shall be subject to a civil penalty assessed by the director under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars ($250) for each occurrence of such violation.

(3) A civil penalty shall be assessed by the director only after the person charged with a violation under these regulations has been given an opportunity for a public hearing and the director has determined, by a decision incorporating his findings of fact therein, that a violation did occur, and that the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the director shall file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against hom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith 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, and thereupon the director shall certify and file in such court the record upon

which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so 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 such further action as 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 Chapter 22A, Article 1A, Section 18 of the West Virginia Code, and upon the request of the respondent, such 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 him in any action to enforce and order assessing civil penalties under this subdivision.

(b) Any operator who knowingly violates a health or safety provision of these regulations or health or safety rule or knowingly violates or fails or refuses to comply with any order issued under Chapter 22A, Article 1A, Section 13 of the West Virginia Code, or any order incorporated in a final decision issued under this section, except an order incorporated in a decision under subsection (a) of this section or subsection (b), Chapter 22A, Article 1A, Section 20 of the West Virginia Code, shall be assessed a civil penalty by the director under subdivision (3) of subsection (a) of this section, of not more than five thousand dollars ($5,000), and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars ($10,000).

(c) Whenever a corporate operator knowingly violates a health or safety provision of these regulations or health or safety rules, or knowingly violates or fails or refuses to comply with any order issued under these regulations or any order incorporated in a final decision issued under these regulations, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), Chapter 22A, Article 1A, Section 20 of the West Virginia Code, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be 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 these regulations or any order or decision issued under these regulations shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five thousand dollars ($5,000) or imprisoned in the county jail not

more than six (6) months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by him under Chapter 22 of the West Virginia Code which certify him or authorized him to direct other persons in coal mining operation of law and shall bar him from being issued any such license under Chapter 22A of the West Virginia Code except a miners' certification, for a period of not less than one (1) year or for such 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 coal mines, including, but not limited to, components and accessories of such equipment, who willfully misrepresents such equipment as complying with the provisions of these regulations, or with any specification or regulations of the director applicable to such equipment, and which does not so comply, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.

56-3-19. Discrimination.

19.1. (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 he believes or knows that such miner or representative, (1) has notified the director, his 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 these regulations, (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of these regulations. 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 (1), (2), (3), above.

(b) Any miner or representative of miners who believes that he 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 (30) 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 (5) days prior to the hearing. Mailing of the notice of hearing to the charged party at last address of record as reflected in the records of the Office of Miners' Health, Safety and Training shall be deemed adequate notice to the charged party. Such notice shall be 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 (45) 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 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 findings therein. If the proceedings under this section relative to the 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 (45) 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 (45) 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 cost and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

56-3-20. Record and Reports.

20.1. In addition to such records as are specifically required by these regulations, 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 him to perform his functions under these regulations. 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 these regulations, all records, information, reports, findings, notices, orders or decisions required or issued pursuant to or under these regulations may be published from time to time, may be released

to any interested person, and shall be made available for public inspection.

56-3-24. Board of Appeals.

24.1. There is hereby created a board of appeals, Chapter 22, Article 5, consisting of three (3) members. Two (2) members of the board shall be appointed by the Governor, one (1) person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one (1) person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third (3rd) person, who shall be chairman of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, shall be selected by the two (2) members appointed by the Governor. The term of office of members of the board shall be five (5) years.

The function and duties of the board shall be 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 chairman of the board shall have 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.

Each member of the board shall receive fifty dollars ($50) per diem while actually engaged in the performance of the work of the board and shall receive mileage at the rate of ten cents (10ó) for each mile actually traveled going from home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

Board members, before performing any duty, shall take and subscribe to the oath required by Article 4, Section 5 of the constitution of West Virginia.

56-3-26. Instruction of Employees and Supervision of Apprentices

26.1. It shall be the duty of the mine foreman or the assistant mine foreman of every mine in this state to see that every person employed to work in such mine shall, before beginning work therein, be instructed in the particular danger

incident to his work in such mine, and be furnished a copy of the mining laws and rules of such mine.

26.3. Job assignments to any miner. -- When a job assignment is given to any miner that he has not performed in the recent past, such person inexperience, in the particular job assignment shall be instructed in the hazards incident thereto and the law and regulations relevant thereto prior to performing any duties in such new job assignment. When such job assignment includes the operation of equipment, the instruction shall include a supervised dry run. When the job assignment related to a plan in effect at the mine, the relevant portions of the plan shall be reviewed. A record shall be kept of such instruction.

56-3-27. Mine Foreman and Assistant Mine Foreman; Daily Inspection of Working Places; Records.

27.1. Pre shift examination. (a) Prior to the beginning of any shift the mine foreman or assistant mine foreman shall visit and carefully examine highwalls in the working area and spoil piles for cracks, loose materials, overhanging ledges, and other dangerous conditions.

(b) Upon completion of the examination, the foreman shall record the results in a book prescribed by the director of the Office of Miners' Health, Safety and Training, at the designated station at the surface mine before persons enter the working area of the mine.

(c) The operator shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the mine and rules and regulations applicable thereto.

27.2. On-shift examination. (a) The mine foreman or assistant mine foreman shall examine all working places in the pit under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety.

(b) It shall further be the duty of the mine foreman or the assistant mine foreman to carefully examine the haulage roads in the pit area for slips, cracks, overhanging trees and other dangerous conditions during his pre-shift and on-shift examinations.

27.3. Dangerous conditions. -- Should the mine foreman or his 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 shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.

27.4. Close deep operations. -- When a surface mine operations is known to be close to an active underground mine, the mine foreman or superintendent shall give the official representative of the underground mine at least twelve (12) hours notice in advance of any contemplated blasting that may endanger the safety of persons employed in the underground mine.

27.5. Instructions. -- The mine foreman shall see that every person employed to work at such mine shall, before the beginning work therein, be instructed in the particular dangers incident to his work in such mine, and be furnished a copy of the state surface mining rules and regulations.

27.6. Records of examinations. (a) All violations or hazardous conditions and the action taken to correct such violations or conditions including the pre-shift and on-shift examinations shall be recorded with ink or indelible pencil in a book prescribed by the Director of the Office of Miners' Health, Safety and Training, kept for such purpose at a place at the surface mine designated by mine management. All records of daily and weekly reports as prescribed herein, shall be open for inspection by interested persons, and the record book shall be kept for a period of one (1) year.

27.7. It shall be the duty of the mine foreman, assistant mine foreman to examine each mine within three (3) hours prior to the beginning of a shift and before any miner on such shift enters the active workings of the mine.

27.8. The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, 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.

56-3-28. Duty of Mine Foreman to Notify Operator When Unable to Comply with Law; Duty of Operator.

28.1. The mine foreman shall notify, in writing the operator or superintendent of the mine, and the director of the Office of Miners' Health, Safety and Training, 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.

56-3-30. Excavating.

30.1. Loose material removal. -- Loose hazardous material shall be stripped for a safe distance (minimum of fifteen (15) feet), except where vegetation is required to support the slope from the top of pit or highwalls, and the loose unconsolidated material shall be sloped to the angle of repose, or barriers, baffle boards, screen, or other approved devices that afford equivalent protection.

30.2. Benches. -- When a bench is required to insure safe operations, the width and height of the bench shall be governed by the type of equipment to be used and the operations to be performed, type of material and height of wall.

30.3. Highwall and spoil bank work areas. (a) The highwall shall be sloped or benched when required by the Office of Miners' Health, Safety and Training, to prevent or minimize the danger of slide. All overhanging ledges and loose material shall be scaled from the highwall. When scaling of highwalls is necessary to correct conditions, a safe means shall be provided to perform such work.

(b) When the highwall is cracked and shows evidence of movement, or of weakening, the area shall be made safe or abandoned and dangered off.

(c) Trees endangering workmen along highwalls shall be removed. Such work shall be completed during daylight hours.

(d) Spoil banks shall be placed an adequate distance from the pit to prevent any material from rolling back and endangering the workmen. Spoils shall be kept free of bodies of water which would be hazardous in active work areas. Spoil material shall be sloped to the angle of repose or other measures taken to prevent the material from slothing, sliding, or rolling into the pit.

(e) Persons, other than those designated to correct unsafe conditions, shall not work near or under dangerous highwalls or banks.

(f) During bench loading, adequate precautions shall be taken to prevent equipment from going over a highwall.

30.4. Examinations. (a) Should a slide occur, a certified foreman or assistant shall examine the area of the slope for danger of additional slides. No person shall work in the area until the examination is complete and the area declared safe.

30.5. Repairs in excavation areas. -- Special safety precautions shall be taken when persons are required to perform repair work between immobilized equipment and within twenty (20)

feet of the highwall or spoil bank where such equipment may hinder escape from falls or slides. A competent person shall be designated to observe the highwall or spoil bank. If equipment is mobile and repair work is necessary on such equipment, such equipment will be moved to a location out by the highwall or spoil bank.

30.6. Tree removal. -- When men are in the area, suitable warning shall be given before equipment shoves over or uproots trees, and workmen shall be removed from the immediate vicinity.

30.7. Night work. -- When surface mining is performed at night, the pit in the vicinity of the work shall be adequately illuminated.

56-3-31. **Drilling.**

31.1. Inspection. -- Where required by the director, all drilling equipment shall be provided with restraining devices installed properly to prohibit the free fall of drill steels which may break or become dethreaded at the point of the adaptor.

31.2. Horizontal drill. (a) When horizontal drills are used, the operator shall not leave the controls while the drill stems are in operation.

(b) All persons shall be required to keep in the clear of auger and drill stems while in motion. No person shall be permitted to pass under or step over a moving drill stem or auger.

(c) Prior to horizontal holes being drilled in overburden, a careful inspection of the highwall face shall be made. All loose hazardous material shall be removed before other work is performed.

31.3. Vertical drilling. (a) When vertical drilling operations are being performed, the drill machine shall be continuously attended.

(b) When churn drills or vertical rotary drills are used, the drill machine operator shall not work under suspended tools. When collaring holes, inspecting, or during any operation where tools are removed from the hole, the tools shall be lowered to the ground or platform.

31.4. General precaution (drilling). (a) When drilling operations are being performed in the area of abandoned mines, special precautions shall be taken to protect against methane.

(b) In the event of a power failure, drill machine controls shall be placed in the neutral position.

(c) No person shall be permitted around auger and drill stems that are in motion.

(d) Starter hole drill steels shall be utilized when collaring holes with a hand-held drill.

(e) No person shall be permitted on the drill mast while the drill bit or carriage is in motion. Tools and/or other material shall not be left on the drill mast.

31.5. Drilling position. (a) Drill machine operators shall not drill from positions that hinder their access to controls levers, or from insecure footing, or staging, or from atop equipment not designated for this purpose.

(b) Men shall not hand grasp the drill steel while collaring holes or place their hand on the chuck or centralizer while drilling.

(c) Men operating or working near jackhammers or jackleg drills, shall position themselves so they will not be struck or lose their balance if the drill steel breaks.

31.6. Movement of drills. (a) Vertical drill holes and blast crevices that remain open after blasting and constitute a hazard shall be protected to prevent persons from falling into them.

(b) While moving a drill machine from one (1) area to another, drill steel tools and other equipment shall be secured and the mast placed in a safe position.

(c) The location of the drill machine helper shall be known to the drill machine operator at all times while such drill is being moved.

(d) Hand-held air drills shall be turned off and all air bled from air hoses before such drill is moved from one (1) working area to another and at the end of each shift.

(e) The Director of the Office of Miners' Health, Safety and Training shall be responsible for the examinations and certification of persons engaging in or directly responsible for blasting or use of explosives in surface mining operations.

56-3-32. Explosives and Blasting.

32.1. Transportation vehicles. -- Motor vehicles used to haul explosives shall comply with the following provisions:

(a) Portable fire extinguisher. -- A portable fire extinguisher shall be a multi-purpose dry chemical type, containing a nominal weight of five (5) pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two (2) and one-half (1/2) gallons of foam-producing liquid and enough expellant to supply foam. Only fire extinguishers approved by the Underwriters Laboratories, carrying appropriate labels as to type and purpose, shall be used.

(b) All electric wiring shall be adequately protected and securely fastened. Damaged insulated wiring shall be repaired or replaced immediately.

(c) Chassis, engine, pan and bottom of vehicle body shall be reasonably clean and free of oil and grease.

(d) Fuel tanks and lines shall have no leaks.

(e) Safety devices including but not limited to lights, horn, brakes, windshield wipers, and steering apparatus shall be functioning properly.

(f) When explosives are not transported in their original closed containers, or in special closed cases constructed of nonconductive material, the vehicle cargo space shall be lined with wood or approved nonsparking material.

(g) The vehicle shall be plainly marked to indicate the nature of the cargo.

(h) The vehicle shall be equipped with suitable side and tailgates. The explosives shall not be piled higher than the side or end.

32.2. Transportation of explosives - precautions. (a) Explosives and/or detonators shall not be transported in the same vehicle unless separated by a substantially fastened four-inch (4") hardwood partition or equivalent approved material.

(b) Explosives and/or detonators shall be transported promptly without undue delays.

(c) Only those persons necessary shall be permitted to ride on or in vehicles containing explosives and/or detonators.

(d) When vehicles containing explosives or detonators are parked on a grade, the parking brakes shall be set and the vehicle blocked securely against rolling.

(e) Vehicles containing explosives and/or detonators shall not be taken to a repair garage or shop.

32.3. General requirements - explosives. (a) After the effective date of the certified blasters rules and regulations, all handling and transporting of explosives shall be under the direct supervision of a blaster.

(b) Previously frozen explosives of nitroglycerin base shall not be used.

(c) Open fires and flames are prohibited within fifty (50) feet of the area where explosives are being stored, handled or used. Any person who violates this subsection shall be subject to the maximum assessment of two hundred fifty dollars ($250).

(d) Explosives, blasting caps and electric blasting caps shall not be carried in pockets of clothing or left lying around unguarded.

(e) The use of explosives and all handling incident thereto, will be discontinued during the approach of and during thunderstorms and/or electrical storms.

(f) All runways, chutes and conveyors used for unloading of explosives shall have no exposed sparking metal parts.

(g) Explosives and detonators shall be kept a safe distance from the highwall and spoil bank.

(h) Driving vehicles or dragging boxes over firing lines, detonator wires, explosives, blasting agents, and detonators shall be prohibited. The backing of drills over loaded holes shall be prohibited.

(i) Deteriorated or damaged explosives and detonators shall be destroyed by an authorized representative of the manufacturing company.

(j) Explosives and/or detonators shall not be transported in a bucket or a dragline or like equipment.

32.4. Shooting preparation. (a) Primers shall not be made up until ready to be inserted in the hole.

(b) Two (2) way radio equipment shall be turned off prior to the handling and use of electric detonators for proposed shot.

This rule does not apply to radios operating beyond the distances shown on Table 38-3A found at the end of this regulation.

Adequate warning signs shall be located on all travel roads, distance of not less than one hundred (100) feet from the minimum transmitting distance.

(c) No equipment except the drill and explosive truck, other than necessary equipment for road repairs to remove the drill or explosive truck, shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. Equipment powered by external electrical sources and power cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded; where such equipment is being used and electrical detonators are being used, stray current test shall be made on the bench prior to commencing the loading of holes, if current is detected, such power cables be moved to a safe distance or the power cables shall be deenergized.

(d) Holes shall not be drilled if there is danger of intersecting a loaded or a misfired hole.

(e) Only wooden or other approved nonsparking implements shall be used to punch holes in an explosive cartridge.

(f) Tamping poles shall be blunt and squared at the end and made of wood or other, nonsparking, approved material.

(g) Tamping shall not be performed directly on a capped primer.

(h) When a surface mine has cut into a known active underground mine, the surface mine inspector of the district and an official representative of the deep mine shall be notified before any blasting is performed. The surface mine inspector, deep mine representative and surface mine representative shall determine and agree during what hours blasting shall be performed.

(i) Misfires shall be handled only by or under the direction of a designated blaster or foreman.

(j) Blasting caps shall be crimped to fuses only with implements designed for that specific purpose.

(k) In no case shall any forty (40)-second-per-foot safety fuse less than thirty-six (36) inches long or any thirty (30)-second-per-foot fuse less than forty-eight (48) inches long be used.

(l) Nothing except a safety fuse is to be inserted in the open end of a blasting cap.

(m) No detonators, detonating cord, igniter cord, safety fuse, or any explosives shall be used if they have been water soaked.

(n) Electric blasting caps shall be fired with an approved blasting device.

(o) Explosives shall be kept separated at least fifteen (15) feet from detonators until loading is started, unless an approved container is utilized.

(p) Ample warning shall be given by an approved audible warning device before blasts are fired. All persons shall be removed from the blasting area.

(q) Detonating caps taken into a pit prior to being used shall be kept in a wooden box or other approved suitable container.

(r) At least a five (5)-foot air gap shall be provided between the blasting circuit and the power circuit when the hole or series of holes are being connected.

32.5. Shooting cables. (a) Shooting cables shall be well insulated and 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.

(b) Shooting cables shall be kept away from power wires and all other ources of electric current.

(c) When shooting highwall and overburden, the shooting cable shall be at least five hundred (500) feet in length when new and never less than four hundred fifty (450) feet.

(e) The shooting cable shall be kept shunted until connected to the approved blasting device.

(f) Except when being tested with a blasting galvanometer, or other approved device, electric detonators shall be kept shunted until they are connected to the blasting line or wired into a blasting round.

(g) A wired round shall be kept shunted until connected to the shooting cable.

32.6. Blasting. (a) Any area in which loaded holes are prepared to be fired shall be guarded by a barricade and danger

signs, or by a person physically present to prevent unauthorized entry.

(b) The blaster shall make sure that all persons are in a safe place before firing a shot.

(c) The blaster performing the blasting shall be the person who makes the detonating cord connections or connects the leg wires of the detonating caps to the shot cable.

(d) All holes or series of holes containing detonators shall be fired immediately upon completion of loading. However, after connecting the loaded holes, if for any reason the holes cannot be fired immediately, all work shall cease within a radius of three hundred (300) feet of the blasting area and work shall not commence again until the holes have been fired.

(e) The firing of holes shall be conducted during daylight hours.

(f) After a blast the blaster shall examine the area and pronounce it safe before others enter.

32.7. Post firing. (a) Shooting cables shall be disconnected immediately from the blasting unit after each blast and shunted.

(b) No person shall return to the area where blasting has been performed until the dust has settled and the area cleared of smoke.

32.8. Misfires. (a) When electric blasting caps have been used the blaster or no other person shall not return to misfired holes for at least fifteen (15) minutes. Misfires shall be handled only by a designated blaster in the presence of the mine/pit foreman.

(b) When a shot has misfired, extra precaution shall be taken in the handling of the misfires.

(c) The blaster shall wait thirty (30) minutes before returning to a misfired shot, when using blasting caps and fuse.

(d) After shooting a misfired shot, the blasting cable shall be disconnected from the source of power and the battery end short circuited before electric connections are examined.

(e) If explosives or blasting agents are suspected of burning in a hole, all persons in the blasting area shall move to a safe location and no person shall return to the hole for at least one (1) hour.

32.9. Storage of explosives. (a) After loading boreholes all unused explosives shall be returned to the proper explosive storage magazine.

(b) Separate surface magazines shall be provided for storage of explosives, detonators, and blasting heater elements. Surface magazines shall be constructed of incombustible material exposed inside the magazine. Surface magazines shall be provided with doors constructed of at least one-fourth (1/4) inch steel plate lined with a two (2) inch thickness of wood, or the equivalent, provided with adequate and effectively screened ventilation openings near the floor and ceiling, kept locked securely when unattended, posted with suitable danger signs so located that a bullet passing through the face of the sign will not strike the magazine. The location of the magazine shall not be less than two hundred (200) feet from any active work area, occupied buildings, or public roads unless barricaded. If magazines are illuminated electrically the lamps shall be of vapor-proof type, properly installed and wired. Smoking, open flames, open lights or spark-producing devices shall be prohibited in or within fifty (50) feet of a detonator or explosive magazine or facility.

(c) Explosives magazines shall be located at least one hundred (100) feet away from power lines and fuel storage areas.

(d) Cases or boxes containing explosives shall not be stored on their ends or sides in magazines nor stacked more than six (6) feet high.

(e) An area of twenty-five (25) feet around magazines shall be kept clear of dry leaves, grass, undergrowth, trash and debris.

(f) Detonator and explosives storage magazines shall be separated by at least twenty-five (25) feet.

(g) Ground rods shall be properly installed and secured on explosive storage magazines so as to provide sufficient electrical ground.

(h) Semitrailer van(s) used for highway or on-site transportation of blasting agents are satisfactory for storing these materials, provided they are located according to the American Table of Distance with respect to inhabited buildings, passenger railroads and public highways. Trailers will be provided with substantial means for locking, and the trailer doors shall be kept locked except during time of placement and removal of blasting agents.

56-3-33. Underground Workings.

33.1. (a) The operator shall refrain from surface mining

within five hundred (500) feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (a) the nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the Director of the Office of Miners' Health, Safety and Training, and (b) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, that any breakthrough which does occur shall be sealed.

(b) The official representative of any known underground mine shall be notified immediately when a surface mine operation may in any way interfere with the safe operation of the active underground mine.

(c) Special precautions shall be taken to protect the employees where excavating is being performed in the vicinity of a known abandoned underground mine which may contain a dangerous accumulation of water and/or gas.

(d) All cut-through into underground mine workings shall be closed immediately.

56-3-34. Haulage.

34.1. Roads - traffic directions and warning signs. (a) Traffic directions which differ from standard highway practice shall be posted on signs along the haulage roads at strategic points in letters at least three (3) inches high.

(b) 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 extreme grade.

(c) Traffic rules, signals, and warning signs shall be standardized at each mine.

(d) 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 insure the safety of the workers.

(e) Flashers, flares, or other means of signaling shall be used to warn approaching drivers of a hazard created by an obstruction in the roadway.

(f) Regulatory signs shall be used to indicate required method of traffic movement, (Example: "Stop", "Yield", "One Way".)

(g) Posted warning signs shall be used where necessary to indicate potential hazardous conditions. (Example: "Hill", "Curve", "Truck Crossing".)

(h) Object marking shall be used to mark physical obstruction in or near the haulage way that presents possible hazards. (Example: Reflectors and high visibility paint.)

(i) All signs and markings shall be displayed and utilized so as to be effective as possible.

(j) 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.

34.2. Haulage roads - construction and maintenance. (a) Haulage roads shall be located an adequate distance from highwalls and spoil banks to minimize the danger of falling material onto personnel and equipment.

(b) When dust created by haulage is thrown into suspension in such quantities that may obscure the vision of the operators of vehicles, and adequate means shall be taken to allay such dust.

(c) Only authorized persons shall be permitted on haulage roads and at loading or dumping locations.

(d) Berms or guards shall be provided where required on the outer bank of elevating roadways.

(e) 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 visibility for safe haulage.

(f) 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.

(g) Provisions shall be made to adequately drain and remove excessive water from the haulage roads.

(h) Haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage

operations being conducted to insure 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.

(i) 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.

(j) All haulage vehicles placed into service after the effective date of these rules and regulations shall be equipped with an approved supplementary emergency braking system.

(k) All power lines constructed over haulage roads after the effective date of this section shall be maintained a minimum of twelve (12) feet above all equipment used on haulage roads including dump trucks in a raised position.

34.3. Haulage equipment - construction and maintenance. (a) Haulage trucks shall not be operated with dirty windshields, cracked, dirty, or broken rear view mirrors.

(b) Supplies, materials, and tools other than small hand tools shall not be transported with persons in vehicles unless such vehicles are specifically designed to make such transportation safe.

(c) All new haulage vehicles placed into service shall be equipped with an emergency steering and braking system.

(d) Where required by the director, trucks used for haulage of men or supplies shall be equipped with two (2) way communication instruments.

(e) Where required by the director or his authorized representative runaway roads or "J" roads shall be provided on all haulage roads on which is first hauled from such surface mine after the effective date of this section.

34.4. Haulage equipment - operation. (a) Haulage truck operators shall make sure their truck path is unobstructed, especially when starting or moving the trucks forward or backward.

(b) Radio or visual contact shall be made with an operator of a haulage truck to insure that it is safe to approach the truck.

(c) Vehicles shall follow at a safe distance: passing shall be limited to areas of adequate clearance and visibility.

(d) Men shall not work or pass under the buckets or bonds of loaders in operation.

(e) Drivers shall drive their trucks according to the condition of the road and the weather. At no time shall truck speeds exceed the safe predetermined speed limit that has been established on that haul road.

(f) Haulage trucks traveling in the same direction, shall not pass any vehicle until signals have been exchanged between both drivers and the vehicle to be passed pulls to the right side of the road.

(g) Haulage trucks shall maintain a safe distance between the truck they are following. Other vehicles shall maintain a minimum of one (1) car length for each ten (10) m.p.h. of travel in back of the vehicle they are following.

(h) When approaching a state or county road, drivers shall maintain their trucks under control to stop, yield right of way, or obey the signals of a flagman.

(i) When the body of a haulage unit is being raised, no person will be permitted in close proximity where they may be endangered.

(j) Materials or equipment required in the cab of haulage equipment shall be adequately secured.

34.5. Parked vehicles. (a) Lights, flares, or other approved warning devices shall be adequately located when parked equipment creates a hazard to vehicular traffic.

(b) Mobile equipment shall not be left unattended unless the brakes are set, the wheels shall be turned into a bank or berm, or shall be blocked, when such equipment is parked on a grade.

34.6. Employee parking and mantrips. (a) On all active surface mines, a designated area shall be provided for parking of employee's vehicles.

(b) No vehicle or other conveyance used to transport persons to and from work areas at surface mines shall be overcrowded and all persons shall ride in a safe position.

(c) All mantrips shall have ten (10) unit first aid kits, and audible warning devices.

56-3-36. General Provisions.

36.1. Horseplay - Horseplay, practical jokes, wrestling, fighting or other actions which threaten persons with personal

injury, causing them to fear for their personal safety or causing damage resulting in interference with safe operations shall be prohibited.

36.2. Alcohol and drugs - Persons under the influence of alcohol or drugs shall not be permitted on a surface mine or attendant facility.

36.3. Housekeeping - Paths, walkways, stairways, and roadways shall be kept free of obstructions. Structures and inside work areas shall be kept free of oil, coal spillage, litter, and coal dust accumulations.

36.4. Smoking - Smoking or open flames shall not be permitted in the following areas:

Within 50 feet of explosive storage area;
Within 150 feet of flammable liquid storage areas;
Within 150 feet of liquified and nonliquified gas storage areas;
Within 150 feet of the proximity of auger holes.

36.5. Compressed air or gases. (a) Safety chains or suitable locking devices shall be used at connections to machines or high-pressured hose lines where a connection failure would create a hazard.

(b) Compressors and compressed-air receivers shall be equipped with automatic pressure relief valves, pressure gauges, and drain valves.

(c) All hoses exceeding one-half (1/2) inch inside diameter shall have a safety device at the surface of supply at the branch line to reduce pressure in case of hose failure.

36.6. No working alone - No person shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.

36.8. Reclaiming hazards - No person shall be permitted to walk or stand immediately above a reclaiming area at or near a slurrage or storage pile where the reclaiming operations may expose him to a hazard.

56-3-37. Electricity.

37.1. Performance of electrical work. (a) 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 the person who performs such work, except that in cases where locking out is not possible, such devices shall be open and suitably tagged by such person. They shall be removed only by the person who installed them or if such person is unavailable, by a qualified person authorized by the operator or his agent. Suitably tagged, as used in these sections, means that a sign such as, "Danger, Hands Off, Do Not Close, Men Working On Line", shall be attached to the locked switches. The signs or tags shall bear the name, date, and certification of the workman who installed the tag. Keys used to lock out switches shall be kept only on the person who is performing the work on the equipment and his immediate supervisor. Such locks shall be provided by the operator.

(b) All power circuits and electrical equipment shall be deenergized before work is performed on such circuits and equipment, except when necessary for troubleshooting or testing.

37.2. Transformers. (a) All surface transformers, unless of the construction which will eliminate shock hazard, or unless installed at least eight (8) feet above ground, shall be enclosed in a house or surrounded by a fence at least six (6) 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.

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

(c) "Danger - High Voltage" signs with voltage indicated shall be posted conspicuously at all transformer enclosures, high potential switch boards, and other high potential installations.

37.3. Electrical equipment generally. (a) Capacitors used for power factor connections shall have suitable drain off resistors or other means to protect workmen against electrical shock following removal of power.

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

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

(d) 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 materials. In no case will the requirements be less than set forth in the current National Electric Code.

(e) All electrical connections or splices and conductors shall be mechanically and electrically efficient and suitable connectors shall be used. All electric connections or splices and insulating wires shall be reinsulated at least to the same degree of protection as the remainder of the wire. Splices made shall provide continuity of all components.

(f) All power wires, except trailing cables on mobile equipment, specially designed cables conducting high voltage power shall be supported on well installed insulators and shall not contact different potential passes within eighteen (18) inches of each other, such cables shall be insulated to the potential of the highest voltage wire or cable.

(g) All electrical equipment shall be provided with switches or controls that are safety designed, constructed, and installed. Power cable, trailing cable or conductor couplings or connections cannot be connected or disconnected while under load.

(h) Single phase loads such as transformer primaries shall be connected phase to phase.

37.4. Testing maintenance and repair of electrical equipment.

(a) All electrical equipment, except circuit breakers, shall be examined daily, by a competent person to assure safe operating condition. All electrical equipment shall be examined monthly, tested and properly maintained by a certified electrician. When a potential dangerous condition is found on electrical equipment, such equipment shall be removed from service until the condition is corrected by a certified electrician. A record of such examination and the action taken when the potential dangerous condition is found shall be kept and made available to an authorized representative of the Director of the Office of Miners' Health, Safety and Training and to the miners at such mine.

(b) Circuit breakers and their auxiliary devices shall be tested and examined at least once each month by a qualified person and a record of such examination shall be kept and made available to an authorized representative of the director and to the miners at such mine. Circuit breaker tests shall include:

(1) Breaking continuity of the ground check conductor where ground check monitoring is used.

(2) Actuating all of the auxiliary protective relays, and;

(3) Visual observation of all components of the circuit breaker and its auxiliary devices.

Such repairs or adjustments as are indicated by such tests and examination shall be carried out immediately.

37.5. Circuit breakers. (a) Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electrical equipment and circuits against short circuit and overload. Three (3) phase motors on electrical equipment shall be provided with overload protection that will deenergize all three (3) phases in the event that any phase is overloaded. As used in this section, adequate current interrupting capacity requires that the fuse or circuit breaker is capable of interrupting the maximum short circuit current that the circuit may conduct without destruction to the device.

(b) Electric equipment shall be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

(c) One (1) circuit breaker may be used to protect two (2) or more branch circuits if the circuit breaker is adjusted to afford over current protection for the smallest conductor.

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

(e) Power circuits serving three (3) phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacities 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 over current.

(f) Disconnecting devices shall be installed at the beginning of branch lines in 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.

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

37.6. Cables. (a) Cables shall enter metal frames of motors, splice boxes and electrical compartments only through proper fittings. When insulated wire, other than cables pass through metal frames, the hole shall be substantially bushed with insulated bushings.

(b) 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 cable will be hung in a manner which will damage the insulation or conductors.

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

(d) 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 and shall be labeled to show which unit they control.

(e) Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductor shall be broken last when the coupler is being uncoupled.

(f) When two (2) or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting the trailing cable to the wrong size circuit breaker.

(g) 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 (1) or more conductors that have been severed.

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

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

(2) Effectively insulated and sealed so as to exclude moisture:

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

(4) Made in accordance with the manufacturers specifications.

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

37.7. Grounding. (a) all metallic shields, armours and conduits enclosing power conductors will be electrically continuous throughout and shall be grounded by method approved by an authorized electrical representative of the director. Where grounding wires are used to ground metallic shields, armours, conduits, frames, casings and other metallic enclosures, such grounding wire will be approved if:

(1) Where the power conductor used is #6 AWG or larger, the cross sectional area of the grounding wire is at least one-half (1/2) the cross sectional area of the power conductor.
(2) Where the power conductor used is less than 6 AWG, the cross sectional area of the grounding wire is equal to the cross sectional area of the power conductor.

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

(c) Metallic frame, casing, and other enclosures of electrical 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, to monitor continuously the grounding circuit, to assure continuity, such 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 authorized electrical representative, to assure such continuity, except a temporary waiver may be permitted by the Director of the Office of Miners' Health, Safety and Training, on a mine to mine basis if he determines that such equipment is not available.

(d) In instances where single phase one hundred ten (110)-two hundred twenty (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 or other enclosures of such equipment to a separate grounding conductor which established a continuous connection to a grounded center tap of the transformer.

(e) Where batteries are being charged without removing them from mobile equipment, or are sitting on wooden blocks, the

frames of the machine or battery case shall be grounded to the grounded frame of the charger to prevent the machine from becoming alive through failure of insulation in the charger. All ground conductor connections shall be clamped or bolted connections.

(f) All buildings and structures shall be earth grounded if they are constructed of metal. Also, any building or structures which could become alive with electrical energy shall be effectively grounded.

(g) Guy wires from poles supporting high voltage power lines shall be securely connected to the system grounding medium or shall be provided with insulators rated at the highest voltage installed near the pole end.

37.8. Energized lines generally. (a) All guy wires shall be marked or flagged when equipment is working in the area.

(b) Energized power lines crossing an access road or work area shall be identified by warning signs visible from each direction. Warning signs shall include height if lines for clearance and made of reflective material. In no event shall any high voltage power line be installed less than fifteen (15) feet above ground, walkways, or working areas.

(c) All equipment near energized power lines with the following voltages shall maintain the following clearances: one hundred (100) to sixty-nine thousand (69,000) - ten (10) feet; sixty-nine thousand (69,000) to one hundred fourteen thousand (114,000) - twelve (12) feet; one hundred fifteen thousand (115,000) to two hundred twenty-nine thousand (229,000) - fifteen (15) feet; two hundred thirty thousand (230,000) to three hundred forty-four thousand (344,000) - twenty (20) feet; three hundred forty-five thousand (345,000) to four hundred ninety-nine thousand (499,000) - twenty-five (25) feet; five hundred thousand (500,000) or more - thirty-five (35) feet.

(d) All personnel, except those directly involved in the operation, shall stay clear of the equipment working near energized lines.

(e) If equipment comes in contact with an energized line, the operator shall stay in the equipment until notified by a certified electrician or foreman that the line is deenergized.

(f) All electrical wiring and equipment installed shall meet the requirements of the current National Electrical Code.

37.9. High voltage. (a) High voltage lines on the surface 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 the procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide tests, and maintain protective devices in making such repairs. No work shall be performed on any high voltage line on the surface which is supported by any pole or structure which also supports other high voltage lines until all lines supported on that pole are deenergized and grounded.

(b) No high voltage lines shall be regarded as deenergized for the purpose of performing work on it until it has been determined by a qualified person that such high voltage line has been deenergized and grounded. Such qualified person shall, by visual observation, determine that the connecting devices on the high voltage circuit are in open position and insure that each ungrounded conductor of the high voltage circuit upon which work is to be done is properly connected to the system grounding medium.

(c) An energized high voltage line may be repaired only when the operator has determined that such repairs cannot be scheduled during period when the power circuit could be properly deenergized and grounded. Such repairs will be performed on power circuits with a phase to phase nominal voltage no greater than fifteen thousand (15,000) volts. The weather conditions shall be noted so that it would not interfere with such repairs or expose those persons assigned to such work to an imminent danger. The operator shall designate a person qualified to perform such work as the person responsible for carrying out such repairs. In order to insure protection for himself and other interested persons assigned to perform such repairs from the hazards of said repairs, he must prepare and file with the operator; (1) a general description of the nature and location of the damage or defect to be repaired; (2) the general plan to be followed in making of such repairs; (3) a statement that a briefing of all qualified persons assigned to make such repairs was conducted informing them of the general plan, their individual assignments, and the dangers inherent in such assignments; (4) a list of proper protective equipment and clothing that will be provided and such other information as the person designated by the operator feels necessary to describe properly the means or methods to be employed in such repairs. All statements obtained by the operator shall be recorded and contain a notation of the time, date, location and general nature of the repairs.

(d) When two (2) or more persons are working on an energized high voltage surface line simultaneously and anyone of them is within reach of another, such persons shall not be allowed to work on different phases or equipment with different potentials.

(e) All persons performing work on energized surface high voltage lines shall wear protective rubber lineman's 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 work on high voltage surface lines shall be worn continuously from the time he leaves the ground until he returns to the ground and if such devices are employed for extended periods, such persons shall visually inspect the equipment assigned him for defects before each use and in no case, less than twice each day.

(f) All rubber protective equipment used for work on energized high voltage surface lines shall be electrically tested by the operator in accordance with ASTM Standards, part 28 published February, 1968.

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

(h) No new additional circuits may be tied to a high voltage surface line when such line is energized.

(i) Solely for purposes of grounding ungrounded high voltage power systems grounded messenger wires used to suspend the cable of such system may be used as a grounding medium.

(j) All high voltage circuits supplying portable, mobile or stationary equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformer and a grounding circuit originating at the grounded side of the grounding resistor shall extend along the power conductors and serve as a grounding conductor for the frames which receives power from that circuit. The grounding resistor shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred (100) volts under fault conditions, the grounding resistor shall be rated for maximum volt current continuously and insulated from ground for a voltage equal to the phase to phase voltage of the system.

(k) High voltage resistant grounded system 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 authorized representatives to assure such continuity.

(l) High voltage cables used in resistant grounded systems shall be equipped with metallic shields around each power conductor with one (1) or more ground conductors having a total cross sectional area of not less than one-half (1/2) the power conductor and with an insulated internal or external conductor not smaller than #10 AWG for the ground continuity check circuit.

37.10. Movement of electrical equipment. (a) Power centers, portable transformers, cable couplings and enclosures shall be deenergized before they are moved from one (1) location to another. Except that when equipment powered by source other than such centers or transformers is not available the director may permit such centers or transformers to be moved while energized if he determines that such 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 hazard to the miner. A record shall be kept of such examination.

(b) High voltage cables other than trailing cables shall not be moved or handled at any time while energized as permitted under this section.

(c) Energized high voltage trailing cables may be moved only by a qualified person and the operator of such mines shall require that such person wear approved and tested insulated workmen's gloves.

37.11. Other electrical apparatus or areas. (a) Ladders for electrical work shall be of nonmetal type.

(b) No electrical machinery or apparatus shall have unguarded exposed energized parts.

(c) Lighting plants shall be located so as not to obstruct or be a safety or health hazard to any part of the mining operation or miners.

(d) Employees performing work that requires them to come in contact with electrical equipment involving shock hazards shall be provided with suitable insulating gloves. Suitable insulation shall be of approved type that will protect such person from voltage to which he is exposed. All such protective equipment shall be furnished by the operator.

(e) Rooms in which circuit breakers or controls are installed shall have two (2) separate and distinct travelable passageways, designated as escapeways.

(f) Open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

(g) All lights with less than eight (8) feet overhead clearance shall be guarded and the lamps be installed in weatherproof sockets. Lamps installed in a hazardous area must be of substantial construction and fitted with a glass enclosure.

56-3-38. Hand-Held Electric Drills and Rotating Tools; Trailing Cables.

38.1. 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 or shall be equipped with friction or safety clutches.

56-3-39. Installation of Lighting.

39.1. 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.

56-3-40. Compressed Gases and Welding.

40.1. Handling and use of welding or cutting equipment generally. (a) The clothing of any person using any welding or cutting equipment in or about a surface mine shall be reasonably free of petroleum products. When handling oxygen cylinders or apparatus the use of oily hands or gloves is prohibited.

(b) Compressed gases shall not be used under direct pressure from tanks or cylinders but must be used under reduced pressures not exceeding that recommended by the manufacturers.

(c) At no time shall compressed air be directed toward a person when in use.

(d) A suitable wrench designed for compressed tanks shall be in the possession of the person authorized to use the equipment.

(e) Oxygen and gas cylinders and their contents shall be used solely for their intended purposes.

(f) Only an approved type spark-lighter shall be used for lighting torches.

(g) All welding and cutting equipment shall be continuously maintained in a safe condition.

40.2. Storage of compressed gas cylinders. (a) Cylinders shall be securely stored in an upright position with valve protection caps hand tight. The storage area shall be well ventilated, protected and at least twenty (20) feet from highly combustible materials such as oil or other flammables.

(b) Signs at storage areas of cylinders shall be conspicuously posted, "Danger No Smoking, Matches or Open Flame".

(c) When storing oxygen cylinders and acetylene or other fuel gas cylinders inside buildings, a minimum distance of twenty (20) feet or a noncombustible barrier at least five (5) feet high having a fire resistance rating of at least one-half (1/2) hour shall be maintained between the oxygen cylinders and other fuel gas cylinders.

40.3. Transportation of compressed gas cylinders. (a) When tanks and cylinders are not used and they are being transported, valve protection caps shall be placed on all tanks or cylinders. Oxygen tanks, gas tanks, or cylinders shall not be transported with the hoses or gauges attached.

(b) When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced.

(c) Gas cylinders shall not be transported on vehicles used to transport employees unless separate approved compartments are provided.

40.4. Welding preparations. (a) Person or persons assigned to use and work with welding and cutting tools shall be properly instructed of their uses and fully understand the danger of their misuse.

(b) All persons welding, cutting, heating, brazing or soldering shall be provided with goggles or shields, gloves, safe type spark-lighter and proper torch tip cleaner.

(d) Welding operations shall be shielded when necessary and the area shall be well ventilated.

(e) Fire watchers shall be used whenever welding, cutting, heating, brazing or soldering is performed at locations where a fire hazard exists.

(f) Adequate fire protection shall be provided at the location where welding, cutting, heating, brazing and soldering is performed.

40.5. Acetylene welding. (a) Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, back flow check valves and gas cylinders shall be used.

(b) Back flow check valves shall be attached to the exhaust side of a regulator before using.

(c) Repairs involving the pressure system of compressors, receivers, or compressed-air-powered equipment shall be prohibited until the pressure has been relieved from the part of the system to be repaired.

(d) Gas cylinders shall be protected from contacting sparks, hot slag or flame during welding, cutting, heating, brazing or soldering.

(e) Regulators shall be adequately attached to the cylinders before using their contents.

(f) The cylinder valve shall be opened partially for an instant, then closed before connecting a regulator. Such person performing said act shall stand to one (1) side (not in front) of the outlet when opening the cylinder valve.

(g) When removing a regulator from a cylinder bottle valve, such valve shall be closed and the gas released from the regulator.

(h) Empty cylinders shall be marked as such and removed from the work area immediately.

(i) Oxygen and acetylene tanks or cylinders or compressed gases shall be protected from power lines or energized electrical machinery or equipment. These tanks or cylinders shall be kept away from the place where the cutting is being done in order to prevent damage or accident and to prevent heat from affecting such tanks or cylinders.

40.6. Electrical welding. (a) All connections at the welding machine shall be checked before starting such operations.

(b) The ground lead shall be adequately attached to the work.

(c) Magnetic work clamps shall be free of adherent metal particles or spattex on contact surfaces.

(d) Coiled welding cable shall be adequately separated to avoid serious overheating and damage to cable insulation.

(e) The welding machine frame shall be adequately grounded.

(f) The welding machine shall be free of leaks, cooling water, shielding gas and engine fuel.

(g) Proper switches shall be provided for deenergizing the welding machine.

(h) Electrode holders shall be located so they do not make electrical contact with persons, conducting objects, fuel or compressed gas cylinders. Energized electrode holders may be laid down or placed only in approved nonconductive trays or holders.

(i) There shall be splice-free cables within ten (10) feet of the electrode holder.

(j) The welding cable shall not coil or loop around parts of the welder's body.

(k) When welding has ceased for any substantial period of time, all electrodes shall be removed from holders. Holders shall be located so that accidental contact cannot occur.

(l) Where work permits, arc welders shall be enclosed by individual booths or non-combustible screens painted with a finish of low reflectivity such as zinc oxide or lamp black.

40.7. Safety Hazards. (a) Welding, cutting, and burning shall be prohibited in dusty areas.

(b) After welding operations, the area where metal particles could come into contact with other workers, shall be posted with signs to provide warning.

(c) Welders shall report any equipment defect or safety hazard to their supervisor and discontinue welding until safety has been assured.

40.8. Maintenance and repairs.

(a) Cylinders, valves, couplings, regulators, hoses and apparatus shall be kept free from oil, dirt, greasy substances, and maintained in good condition.

(b) Test for leaks on hoses, valves, or gauges shall be made with a soft brush and soapy water or soap suds.

(c) Welding machines, electrodes, and cables shall be examined weekly for wear and/or damage.

56-3-41. When Respiratory Equipment to be Worn; Control of Dust.

41.1. Men 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.

56-3-42. Nontitled.

42.1. (a) Immediately prior to the beginning of each working shift, all equipment except licensed vehicles subject to state highway inspection requirements shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation daily for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the director; such form shall be given to the mine foreman or his assistant within four (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report form and the foreman receiving such form, shall initial upon receipt. A record of all above such examinations shall be maintained for thirty (30) days and made available to an authorized representative of the director and to the miners at the mine.

(b) Immediately prior to the beginning of each working shift, equipment operated by independent contractors in the removal of overburden on a surface mine shall be examined by the equipment operator for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the Director; such form shall be signed by the person performing the examination and such form shall remain with the vehicle for thirty (30) days and upon request be made available to an authorized representative of the Director.

(c) Imminent danger equipment defects shall be corrected before the equipment is put into operation.

42.2. Operation of shovel, draglines, tractors, backhoes, loaders, etc.

(a) Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

(b) Operators of shovels, draglines, and backhoes shall sound a signal distinguishable from the surrounding noise level such as a whistle, bell, horn or other approved device, before moving forward or backward, and all persons not in the clear shall respond immediately.

(c) Equipment operators shall not leave their cabs without lowering all raised equipment to the ground.

(d) When the equipment operator is present, men shall notify him before getting on or off his equipment.

(e) Persons shall not be permitted in the immediate vicinity of shovels, draglines, and backhoes unless in the line of duty.

(f) Walkways and platforms on shovels, draglines and backhoes shall be maintained in a safe condition and shall be equipped with safe handrails, toe boards, walkways and platforms.

(g) Equipment that revolves in a horizontal arc on a turntable shall have a minimum clearance of four (4) feet from the highwall or other obstructions.

(h) The operator of shovels, draglines, and backhoes shall have a general knowledge of the location of his oiler at all times.

(i) Operators of shovels and draglines shall not leave their cabs to wet the digging brake or dog, unless the master clutch is in the "off" position. Operators of shovels and draglines shall have visual contact, when possible, with the person assigned to setting the digging brake or dog.

(j) Operators shall not leave the cab of the shovel, dragline or crane without placing the controls into the "Off" position. If the power should fail, the controls shall be placed in the "Off" position.

(k) All ropes shall be securely attached to the drum and the dipper by at least four (4) suitable wire rope clips or properly wedged. Drums shall have at least three (3) wraps of cable on at all times.

(l) Riding a dipper or bucket shall be prohibited.

42.3. Maintenance and repairs. (a) All safety equipment on all machinery shall be maintained in a safe working condition.

(b) Mobile and stationary equipment shall be maintained in safe operating condition and equipment in unsafe condition shall be removed from service immediately.

(c) Good housekeeping shall be practiced on all equipment. All heavy duty equipment shall be cleaned as necessary to maintain the equipment reasonably free of combustible substances.

(d) Men shall not work on or from a piece of mobile equipment in a raised position until it has been securely blocked in place.

(e) No work shall be performed under machinery or equipment that has been raised until such machinery or equipment has been securely blocked in place.

(f) While greasing or doing repair work on a boom of a shovel, dragline, or backhoe, the boom shall be lowered to a position whereby the work can be done from the ground or the workmen shall use safety belts. This does not apply on shovels, draglines, or backhoes that are equipped with safe handrails or ladders.

(g) Dippers of buckets or shovels, draglines and backhoes shall be lowered for repairs.

(h) Repairs or maintenance shall not be performed on equipment until the power is off and the equipment is blocked against motion, except where the movement of the machine or parts is necessary to make adjustment.

42.4. Warning devices, lights, brakes. (a) Dump trucks used to haul coal or other material shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse.

(b) Equipment such as fork lifts, front-end loaders, tractors, dozers, and graders shall be provided with an approved audible warning device.

(c) Lights shall be provided on both ends of equipment when equipment is being worked other than during daylight hours. Also lights on both ends of equipment shall be provided during other existing conditions such as fog, etc.

(d) Power driven mobile equipment shall be equipped with adequate brakes. All trucks and front-end loaders shall be equipped with adequate parking brakes.

42.5. Dump trucks and dumping. (a) Dump bodies of trucks shall be properly blocked when raised for any purpose except dumping of load.

(b) No person shall be permitted in or on the cargo space of dump trucks while being loaded with coal or other materials.

(c) No person shall be allowed in the cab or a dump truck while the truck is being loaded with power shovel, front-end loader, or backhoe unless the cab is shielded.

(d) Truck cabs where rear vision is impaired shall be equipped with adequate rear view mirrors on both sides.

(e) The dipper of a loading shovel shall be swung over the body of the truck and not the cab.

42.6. Dippers. (a) Riding on a dipper or bucket shall be prohibited.

(b) Workmen shall keep out from under suspended dippers at all times.

(c) Trailing cables on shovels shall not be moved with the shovel dipper unless cable slings or sleds are used.

(d) Operators shall not swing a dipper or bucket over passing haulage equipment.

42.7. Equipment generally. (a) No equipment or machinery shall be altered or modified in a manner that reduces the level of safety.

(b) Road maintenance equipment such as graders or other equipment normally used shall be equipped with roof mounted approved flashing lights.

(c) All equipment, when equipped with a safety bar for automatic transmission, shall be set in locked position before the operator leaves the cab. Operators of dozers that are equipped with standard transmission, shall lock the park brake, place the transmission in a neutral position, and lock the clutch in before leaving the cab.

(d) All steps and handrails on surface mining equipment shall be maintained in a safe condition.

(e) Electrically powered mobile equipment shall not be left unattended unless the master switch is in the "Off" position. All operating controls shall be placed in neutral position, and the brakes set or other equivalent precautions taken against rolling.

(f) A tow bar or other approved device shall be used for towing equipment. A safety chain shall be used in conjunction with a tow bar.

(g) All exhaust tail pieces shall be positioned and properly maintained to prevent carbon monoxide and other toxic fumes from entering an operator's compartment.

(h) The operator of a grader shall face in the direction of travel except during grading operations in a local area.

42.8. Glass and doors. (a) Cab windows of glass on equipment shall be safety glass or equivalent material with good visibility, in good condition, not broken or cracked to such extent that it can be felt, and kept clean.

(b) When required by the director, all mobile equipment shall be provided with windshield wipers and such wipers shall be maintained in good operating condition.

(c) All doors on mobile equipment shall be maintained in good operating condition.

42.9. Guards. (a) Fan blades, shafts, gears, flywheels, coupling, and similar exposed moving machine parts which may be contacted by persons shall be adequately guarded.

(b) Guards installed on equipment to prevent accidental contact with moving parts shall:

(1) Be of substantial construction;

(2) Not have openings large enough to admit a persons hand;

(3) Be firmly bolted or otherwise installed in stationary position; and

(4) Be of sufficient dimension to exclude the possibility of bodily contact while in motion.

42.10. Operation of mobile equipment. (a) Mobile equipment operators shall have full control of the equipment while in motion.

(b) The type of equipment and posted operating speeds shall be prudent and consistent with conditions of roadways, grades, clearance, visibility and traffic.

(c) All mobile equipment shall be completely stopped before a person gets on or off.

(d) No person other than the operator shall be permitted to ride in or on equipment unless in line of duty, and only then when adequate safe seating facilities are provided.

(e) Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated.

(f) When necessary to protect the operator of the equipment, all rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors that are used on surface coal mines shall be provided with substantial falling object protective structures.

(g) Equipment shall be operated only by persons trained in the use of and authorized to operate such equipment.

(h) Operators of all equipment shall keep a reasonable safe distance from the edge of all vertical or abrupt excavations or fills.

42.11. Loads. (a) Equipment which is to be hauled shall be secured.

(b) Any load extending more than four (4) feet beyond the rear of the vehicle body shall be marked clearly with a red flag.

(c) Dump trucks shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

42.12. Track type dozers - Track type dozers shall meet the following standards:

(a) Adequate fan blade guards.
(b) Track brakes shall be working properly.
(c) Steering clutches shall be in operating condition.
(d) Portable fire extinguisher of at least five (5) pounds.
(e) All floor boards shall be kept secured in place.
(f) Safety bar lever for automatic transmission shall be in working condition.
(g) Approved warning device which the operator can operate manually.
(h) Cab protection when the dozer is being operated near the highwall or where there is a hazard from falling materal.

42.13. Front-end loaders - Rubber tire front-end loaders shall meet the following standards.

(a) Portable fire extinguishers, of at least five (5) pounds.
(b) Fan blade guards.

(c) Adequate lights.

(d) Approved warning devices.

(e) If loader is provided with a windshield type cab, the windshield shall be of safety type glass, or the equivalent with good visibility and shall be equipped with windshield wipers.

(f) Steering apparatus shall be functioning properly.

(g) Adequate foot brakes - each individual wheel brake shall be working properly.

(h) The parking brake shall have capability equivalent to hold the vehicles stationary on the twelve percent (12%) dry swept concrete grade under all conditions.

(i) The service braking system using stored energy shall be equipped with a warning device that activates when the system energy drops below fifty percent (50%) of the manufacturer's specified minimum operating energy level.

42.14. Machinery.

(a) All overhead belts shall be adequately guarded if the whipping action from a broken belt could be hazardous to a person below, or if within seven (7) feet of a person's work area or where persons may pass.

(b) Belt conveyors in locations where fire would create a hazard to personnel shall be provided with switches to stop the drive pulley automatically in the event of excessive slippage.

(c) Unguarded conveyor belt walkways, less than five (5) feet in width, shall be equipped with emergency stop switches or pull cord along their entire length.

42.15. Hand-held tools, power tools and safety devices.

(a) Conditions of tools - all tools, power tools and similar equipment shall be maintained in a safe condition.

(b) Hand-held power tools shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety device.

(c) Employers shall not issue or permit the use of unsafe hand tools.

(d) Adjustable, pipe, end and socket wrenches shall not be used when jaws are sprung to the point that slippage occurs.

(e) Impact tools such as drift pins, wedges, and chisels, shall be kept free of mushroomed heads.

(f) The wooden handles of tools shall be kept tight and free of splinters or cracks and shall be kept tight in the tool.

(g) Electric power operated tools shall be approved double-insulated or grounded type.

(h) Only proper hoisting equipment shall be used for hoisting or lowering tools. The use of hoses or electric cords for such purpose is prohibited.

(i) Pneumatic power tools shall be secured to the hose by some positive means to prevent the tools from becoming accidentally disconnected.

(j) Safety clips or retainers shall be securely installed and maintained on pneumatic impact (percussion) tools.

(k) The manufacturer's safe operating pressure for hoses, pipes, valves, filters, and other fittings shall not be exceeded.

(l) All fuel powered tool engines shall cease operations while being refueled, serviced, or maintained.

(m) When fuel powered tools are used in enclosed spaces, the applicable requirements for concentrations of toxic gases and use of personal protective equipment shall apply.

(n) Only approved fuel containers shall be used, and such containers shall be safely stored.

42.16. Jacks. (a) The manufacturer's rated capacity shall be legibly marked on all lifting jacks and shall not be exceeded.

(b) All lifting jacks shall have a positive stop to prevent over-travel.

(c) Blocking - When it is necessary to provide a firm foundation, the base of the lifting jack shall be blocked or cribbed. Where there is a possibility of slippage of the metal cup or the jack, a wood block shall be placed between the cap and the load. Work shall not be performed under any machinery until the proper blocking is in place and, with the exception of a jack, tight.

42.17. Stationary grinding machines, protective devices. (a) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods and goggles or approved eye shields.

(b) Adjustable tool rests shall be set as close as required to manufacturer's specifications.

(c) Grinding wheels shall be operated according to the specification of the manufacturer.

42.18. Stationary grinding machines. (a) Grinding wheels shall be equipped with (1) safety washers of adequate size; (2) substantial retaining hoods with maximum angular exposure of the grinding wheel periphery and sides of not more than ninety (90) degrees except that when work requires contact with the wheel below the horizontal plane of the spindle, an angular exposure shall begin not more than forty-five (45) degrees above the horizontal plane of spindle, which safety guards shall be strong enough to withstand the effect of a bursting wheel, (3) face shields or goggles, in good condition, to be worn by all operators, (4) work rests on floor and bench mounted grinders which are rigidly supported, readily available, and which shall be kept at a distance not to exceed one-eighth (1/8) from the surface of the wheel; (5) all other applicable requirements of the American National Standards Institute Safety Code for the use, care, and protection of abrasive wheels; and (6) dust collectors or exhaust ventilation systems vented to the outside of the building. Safety hoods, (guards or flanges) shall be mounted so as to maintain proper alignment with the wheel, and shall be of sufficient strength to retain fragments of the wheel in the case of accidental breakage. All abrasive wheels shall be ring-tested before mounting to insure they are free from cracks or defects, and shall fit freely on the spindle and not be forced on.

(b) All grinding wheels shall be operated in accordance with the manufacturer's specifications.

42.19. Protective structures fall object and roll over protective structures - All rubber tired or crawler mounted self-propelled scrapers, front-end loaders, dozers, graders, and tractors, manufactured after January 1, 1969 shall be provided with roll over protective structures.

42.20. Tires and repairs. (a) A safety tire rack, cage, or equivalent protection shall be provided when inflating tires installed on split or rims equipped with locking rings or similar devices. Tires shall be deflated before repairs on them are started and means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation.

(b) Heat shall not be applied to lug bolts, rims or wheels while tires are inflated.

(c) When work is being performed on models that are equipped with dual wheels both tires must be deflated for heating lugs before repair work begins.

(d) No person shall be permitted in front of a tire being inflated either on or off equipment and persons engaged in inflating or deflating tires shall perform such work in an area isolated from other persons.

(e) When fork lift trucks are used in mounting or transporting of tires, adequate means shall be taken to assure that tires are secured properly. No person shall be permitted to stand between the hub of a vehicle and fork lift truck when used to change a tire.

(f) A clip-on-air chuck shall be provided at all tire airing stations. At least six (6) feet of air hose shall be provided between the valve stem and inflation gauge.

(g) All tires shall be maintained in a safe condition. Any tire with a defect which could be a hazard to the safe operations of a vehicle or to other persons shall be replaced immediately.

56-3-43. Ramps, Tipples, Cleaning Plants, and other Surface Areas.

43.1. Surface installations generally. (a) Surface installations, generally all mine structures, enclosures, and other facilities (including custom coal preparation) shall be maintained in good condition.

(b) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures.

(c) Opening in surface installations through which men or material may fall shall be protected by railings, barriers, covers or other protective devices.

(d) 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.

(e) Materials shall be stored and/or stacked in a manner to prevent stumbling or falling.

(f) Compressed and liquid gas cylinders shall be secured in a safe manner.

43.2. Machinery guards. (a) Gears, sprockets; chains, drive, head, tail and take-up pulleys; flywheels; couplings; shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, shall be guarded adequately.

(b) Except when testing is necessary, machinery guards shall be secured in place while being operated.

(c) Belt rollers shall not be cleaned while belts are in motion.

43.3. Ramps and dumping. (a) Both sides of any tipple or cleaning plant dumping ramp shall be provided with securely anchored rubbing boards of ample dimensions.

(b) An adequate dumping block at least eight (8) inches high shall be installed at all dumping points, excluding stockpiles.

(c) Adequate protection shall be provided at dumping locations where persons may be endangered by falling material.

(d) Dust control measures shall be taken where dust significantly reduces visibility of equipment operators.

(e) After the effective date of these regulations, all power lines in dumping areas shall, be maintained at least a minimum of six (6) feet above the largest piece of equipment used at such facility, including a dump truck in a raised position.

(f) All dumping ramps shall be of sufficient width to insure safe operation of vehicles used thereon.

(g) At no time shall any person be permitted to enter onto any bin, crusher, or any other dumping facility for means of breaking or removing materials that is of such a size that it will not drop through the grizzley, or screening device of said dumping facility, unless the equipment has been tagged out, deenergized, and locked out with a key or other approved adequate safeguards approved by the director.

(h) Ramps and dumps shall be of solid construction and have ample width, clearance and head room and be kept reasonably free of accumulations of material and spillage.

(i) Truck spotters shall be used when required by an authorized representative of the director.

(j) When car couplers are to be aligned in such rotary dump areas, a hook or other device shall be used. A suitable lifting jack and handle shall be provided at any rotary dump.

43.4. Fire protection. (a) Where cutting or welding is performed at any location, means of prompt extinguishment of any fire accidentally started shall be provided.

(b) Adequate fire-fighting facilities, required by the Office of Miners' Health, Safety and Training, shall be provided on all floors. At least two (2) exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of these regulations.

(c) 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 exists.

(d) Smoking or open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

43.5. Repairs of machinery. (a) 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 persons lubricating or repairing it has given a clear signal.

(b) 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.

(c) Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary.

(d) Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

43.6. Stairs, platforms, etc. (a) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements.

(b) 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.

43.7. Belts, etc. (a) Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters.

(b) Belt dressing shall not be applied while in motion.

(c) Belt, chains and ropes shall not be guided onto power-driven moving pulleys, sprockets, or drums with the hand except equipment especially designed for hand feeding.

43.8. Conveyors and crossovers. (a) 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.

(b) 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.

(c) 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.

(d) Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation.

(e) Guards, nets, or other suitable protection shall be provided where tramways pass over roadways, walkways or buildings.

(f) 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.

43.9. Tipple or cleaning operations. (a) At least two (2) persons shall be continuously employed in the operation of a tipple or cleaning plant.

(b) Good housekeeping shall be practiced in and around tipples and cleaning plants. 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.

(c) Adequate ventilation shall be provided in tipples and preparation plants.

43.10. Travelways. (a) Safe means of access shall be provided and maintained to all working places.

(b) Travelways, platforms and other access to areas where persons are required to travel or work, shall be kept free of all extraneous material and other stumbling or slipping hazards.

(c) Inclined travelways shall be constructed of nonskid material or equipped with cleats.

(d) Regularly used travelways shall be salted, sanded or cleared of snow and ice as soon as practicable.

43.11. Ladders. (a) All ladders shall be securely fastened. Permanent ladders more than ten (10) feet in height shall be provided with backguards.

(b) Ladders shall be of substantial construction and maintained in good condition.

(c) Wooden ladders shall not be painted.

(d) Fixed ladders shall not incline backward at any point unless equipped with backguards.

(e) Fixed ladders shall be anchored securely and installed with at least three (3) inches of toe clearance.

(f) Side rails of fixed ladders shall project at least three (3) feet above landings, or substantial handholds shall be provided above the landing.

(g) No person shall be permitted to work off of the top step of any ladders.

(h) 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.

(i) The maximum length of a step ladder shall be twenty (20) feet and an extension ladder sixty (60) feet.

43.12. Hoisting. (a) Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted.

(b) Persons shall stay clear of hoisted loads.

(c) Tag lines shall be attached to hoisted materials that require steadying or guidance.

(d) A hoist shall not lift leads greater than the rated capacity of the hoist being used.

(c) Dust accumulation in surface installations - Coal dust on surface structures, enclosures, or other facilities shall not be permitted to exist or accumulate in dangerous quantities.

43.15. Railroad equipment. (a) 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 insure that the car dropper maintains a safe position while working and traveling around the cars. The car dropper shall control the trip from one (1) location and not drop more cars than can be controlled from such location. A car dropper shall not drop more than three (3) cars at one (1) time with one (1) brake.

(b) 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 cars from inside curves.

(c) No person shall ride the drawhead or coupler of a railroad car. No person other than the car dropper shall ride cars. No car dropper shall ride the end of a car about to be coupled with another car if other brakes are available.

(d) Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. A car dropper shall only in case of an emergency, get on or off a moving car.

(e) Rail cars shall not be left on side tracks unless ample clearance is provided for traffic on adjacent tracks. Parked rail cars, unless held effectively by brakes, shall be blocked securely.

(f) Railroad cars shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

(g) A minimum of thirty (30) inches continuous clearance from the fartherest projection of moving railroad equipment shall be provided on at least one (1) side of the tracks; all places where it is not possible to provide thirty (30) inch clearance shall be marked conspicuously.

(h) Roadbeds, rails, joints, switches, frogs, and other elements on railroads shall be designed, installed and maintained in a safe manner consistent with the speed and type of haulage.

(i) Positive - Acting stopblocks, derail devices, track skates, or other adequate means shall be installed where ever necessary to protect persons from runaway railroad equipment.

(j) Switch throws shall be installed so as to provide adequate clearance for switchmen.

(k) Where necessary, bumper blocks or the equivalent shall be provided at all track dead ends.

(l) Cars shall be inspected for broken steps, platforms and brake wheels and for defective brakes before dropping.

(m) Equipment operating speeds shall be consistent with conditions of roadways, grades, clearance, visibility, traffic and the type of equipment used.

(n) Safety belts shall be worn and properly attached by all car droppers handling railroad cars. All such belts shall be of a design to allow maximum safety to provide for immediate uncoupling.

43.16. 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 trucks 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 (24) hour period, operations shall be inspected at least every twenty-four (24) hours to assure safe operation and compliance with the law and regulations. 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 (10) feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten (10) feet shall be provided with back guards. Walkways around thickness that are less than four (4) 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.

56-3-44. Storage Bins; Recovery Tunnels; Storage Piles.

44.1. (c) 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 (30) inches in diameter and where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

(d) Extreme caution shall be exercised by all employees required to work at or near storage piles during recovery operations to avoid injury by slides or by being in or drawn into a chute.

56-3-45. Fire Protection.

45.1. Fire extinguishers. (a) A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment.

(b) All portable fire extinguishers on equipment shall be properly secured.

45.2. Flammable liquids. (a) Flammable liquids, such as oils, greases, gasoline and such other like materials shall be stored in buildings, compartments or closed containers used for this purpose only.

(b) The storage of surplus gasoline, oil, or other fuels, other than that which is in the fuel tank, shall be prohibited on any piece of equipment except for diesel equipment using gasoline starting engines, in this instance one (1) extra gallon of gasoline in an approved safety can (flash arresting screen with self-closing lid) may be stored on the equipment securely fastened in a location on the equipment out of the way of moving objects.

(c) Flammable liquids shall not be used to clean machinery.

(d) Combustible materials, grease, lubricants, paints, flammable liquids, shall not be permitted to accumulate where fire hazards exist.

45.3. Fueling and storage. (a) Internal combustion engines, except diesels, shall be shut off and stopped before being fueled.

(b) Areas surrounding flammable liquid storage tanks, electric substations and transformers shall be kept free from grass, (dry) weeds, underbrush, and other combustible materials, for at least twenty-five (25) feet in all directions.

(c) Fuel lines on fuel storage tanks shall be equipped with valves to cut off fuel at the source and shall be located and maintained to minimize fire hazard.

(d) Smoking and use of open lights are prohibited in all places in which flammable materials are stored and in other places where there is a fire hazard.

45.4. Maintenance of fire fighting equipment. (a) Fire fighting equipment shall be continuously maintained in a usable and operative condition. Fire extinguishers shall be examined at least once every six (6) months. The date of such examination shall be recorded on a permanent tag attached to the extinguisher.

45.5. Warnings - Warning signs prohibiting smoking and open flames shall be posted where they can be readily observed in areas or locations where fire or explosion hazards exist.

45.6. Drills - Fire drills and demonstrations with various types of available fire-fighting equipment shall be held for employees at least once annually. A record of such demonstration shall be recorded.

56-3-46. Duties of Persons Subject to Article; Rules and Regulations of Operators.

46.1. (a) It shall be the duty of the operators, mine foremen, supervisors, mine examiners, and other officials to comply with and to see that others comply with the provision of these rules and regulations.

(b) It shall be the duty of all employees to comply with these rules and regulations and to cooperate with management and the Office of Miners' Health, Safety and Training, in carrying out the provisions hereof.

(c) Reasonable rules and regulations of an operator for the protection of employees and preservation of property that are in harmony with the provisions of these rules and regulations 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.

56-3-47. Protective Equipment and Clothing.

47.1. Eye protection. (a) Welders and helpers shall use adequate shields or goggles to protect their eyes.

(b) All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other eye hazards.

47.2. Clothing. (a) Employees engaged in haulage operations and all other persons employed around moving equipment shall wear snug-fitting clothing.

(b) Protective gloves shall be worn when material which may injure hands is handled. Gloves with gauntleted cuffs shall not be worn around moving equipment.

47.3. Safety hats and safety toed shoes. (a) Safety hats and safety toed shoes shall be worn by all persons while in or

around tipples or cleaning plants. Safety toed shoes shall be worn by all persons while in or around a surface mine tipple or cleaning plant.

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

47.4. Life jackets and belts. (a) Persons shall wear safety belts and lifelines where there is a danger of falling. A person shall continuously tend the lifeline when bins, tanks, auger holes, or other dangerous areas are entered.

(b) Life jackets or belts shall be worn where there is a danger from falling into water.

56-3-48. First Aid Equipment.

48.1. First aid stations and equipment - Each operator of a surface coal mine, tipple, and preparation plant shall maintain a supply of first aid equipment. First aid equipment shall be located within one thousand (1,000) feet of the working pit, unless a ten (10) unit first aid kit is provided in the pit. When ten (10) unit kits are provided in the pit, such first aid equipment may be maintained within two thousand (2,000) feet of the pit area.

First aid equipment shall contain the following:

(1) One stretcher.
(2) One broken-back board, or approved combination stretcher.
(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 approved blankets.
(9) One rubber blanket.
(10) Two tourniquets.
(11) One one-ounce bottle of aromatic spirits of ammonia.
(12) Two inflatable plastic leg splints.
(13) Two inflatable plastic arm splints.
(14) Six small splints, metal or wooden.
(15) Two cold packs.

48.2. Proper storage of first aid supplies - All first aid supplies required to be maintained shall be stored in suitable sanitary, dust-tight, moisture proof containers. First aid supplies shall be accessible to the miners.

48.3. Emergency arrangements. (a) Each operator of a mine shall make arrangements with a licensed physician, medical service, medical clinic, or hospital to provide emergency medical assistance while any person is on duty at a mine.

(b) Each operator of a mine shall make arrangements with an approved ambulance service or otherwise provide for an approved emergency transportation while any person is on duty at a mine.

(c) Each operator shall have arrangements made with an ambulance service, or other emergency transportation facilities for injured persons to be transported from the work site to a licensed physician, medical service, medical clinic, or hospital provided pursuant to subsection (b) above, while people are actually employed at the operation.

(d) Each operator of a mine shall immediately after making arrangements required under this section, or immediately after any change of such agreement, post at the appropriate places at the mine, the names, titles, addresses, and telephone numbers of all persons and/or services currently available under such arrangements to provide medical assistance and transportation of injured persons at the mine.

48.4. Emergency communications. (a) Each operator of a surface mine shall provide two (2)-way communication at all times miners are present between all work sites at the mine and an emergency communication center which may be at the mine office or elsewhere at the mine.

(b) Each operator of a mine shall establish and maintain a direct two-way (2) communication system from such emergency communication center at the mine to the nearest point of medical assistance for use in an emergency. Except as hereinafter provided, such emergency communication system shall be by telephone. If telephone communication from the emergency communication center to the nearest point of medical assistance is not possible at any one (1) mine, the director may allow by

permit such communication by radio transmission to any emergency assistance facility (e.g. state police, sheriff, local hospital) which has available the means of communication with the person or persons providing the requisite emergency medical assistance or transportation.

56-3-50. Explosion or Accident; Notice: Investigation by Office of Miners' Health, Safety and Training.

50.1. Whenever, by reason or any explosion or other accident in or about any mine or the machinery connected therewith, loss of life, or serious personal injury shall occur, it shall be the duty of the superintendent of the mine, and in his absence, the mine foreman in charge of the mine, to give immediate notice to the Director of the Office of Miners' Health, Safety and Training and the inspector of the district, stating the partic-ulars of such accident. If anyone is killed, the inspector shall immediately go the scene of such accident and make such recommendations and render such assistance as he may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he shall preserve with the other records of his office, the cost of such records to be paid by the Office of Miners' Health, Safety and Training, and a copy shall be furnished to the operator and other interested parties. To enable him to make such investigation, he shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. The Director of the Office of Miners' Health, Safety shall have the right to appear and testify and to offer any testimony that may be relevant to the question and to cross-examine witnesses.

56-3-51. Preservation of Evidence Following Accident or Disaster.

51.1. Following a mine accident resulting in the death of one (1) 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.

56-3-52. Monthly Report by Operator.

52.1. The operator of every surface 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, on each permit issued by the Department of Natural Resources.

56-3-53. Emergency Medical Personnel.

53.1. Emergency personnel in coal mines, emergency medical personnel shall be employed in every mine in the state. On or before the first day of July, one thousand nine hundred seventy-eight (1978), at least one (1) emergency medical attendant as defined in section 2(16-4C-2), article 4C, chapter 16 of this Code, paramedic as defined in section 2 (30-3b-2), article 3B, chapter 30 of this code, or physician assistant as defined in section 1 (30-3a-1), article 3A, chapter 30 of this code, shall be employed at a mine for every seventy (70) employees or any part thereof who are engaged at one (1) time, in the extraction, production or preparation of coal: Provided, that the provision of this section shall not apply to mines employing no more than ten (10) employees.

Said emergency medical attendants shall be employed at their regular duties at a central location convenient for quick response to emergencies, and further shall have available to them at all times such equipment as shall be prescribed by the director, in consultation with the director of the Office of Miners' Health Safety and Training.

56-3-54. First Aid Training of Coal Mine Employees.

54.1. Each coal mine operator shall provide every new employee within six (6) months of the date of his employment with the opportunity for first aid training as prescribed by the director 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 (5) hours within each twenty-four (24) months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training.

56-3-62. Operators Filing of Plans - Oil and Gas Wells.

62.1. Before a coal operator conducts surface or strip mining operations as defined in article 3, chapter 22A of this code, within two hundred (200) feet of any well, including the removal of material, the operator shall file with the Office of Miners' Health, Safety and Training 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 (200) feet of the well, together with a notice, or a form furnished by the Office of Miners' Health, Safety and Training, 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 operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum insurance coverage required by article 3, chapter 22A of this code, and the rules and regulations promulgated thereto and thereunder.

Once these mining maps and plans are filed with the Office of Miners' Health, Safety and Training, 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.

TABLE 38-3A

Transmitter Power (Watts) (except FM mobile)	Minimum Distance (Feet)
5 - 25	100
25 - 50	150
50 - 100	220
100 - 250	350
250 - 500	450
500 - 1000	650
1000 - 2500	1000
2500 - 5000	1500
5000 - 10000	2200
10000 - 25000	3500
25000 - 50000	5000
50000 - 100000	7000

Transmitter Power (Watts) (FM mobile)	Minimum Distance (Feet)
1 - 10	5
10 - 30	10
30 - 60	15
60 - 250	30

West Virginia Administrative Regulations – Title 56, Series 6 – Rules and Regulations Governing Open Pit Mines, Exclusive of Surface Mines

TITLE 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 6
RULES AND REGULATIONS GOVERNING OPEN PIT MINES, EXCLUSIVE OF SURFACE MINES

56-6-1. General.

1.1. Scope. -- Rules and Regulations Governing open Pit Mines, Exclusive of Surface Mines.

1.2. Authority. -- W. Va. Code §22A-6-3, §29A-3

1.3. Filing Date. -- August 11, 1969

1.4. Effective Date. -- September 11, 1969

56-6-2. Excavating.

2.1. Highwall overburden shall be sloped to minimize slides and overhanging ledges and all loose material scaled.

2.2. If the highwall shows evidence of movement, or appears to be weakened in any way, the area shall be made safe or abandoned and dangered off.

2.3. When open pit mines work at night, the vicinity in which the work is performed shall be well illuminated.

2.4. When an open pit mine is worked over an underground mine, the interval between mines shall be adequate to insure the safety of persons in the mine.

2.5. In the event of the collapse of the floor of an open pit mine into an underground mine, both mines shall be immediately closed, until this condition is made safe.

2.6. Persons scaling highwalls shall wear a safety harness that is adequately secured.

2.7. Blasted materials shall be loaded in such manner as to minimize the danger of rock slides endangering workmen.

56-6-3. Drilling.

3.1. While a drill is operating, the operator shall not leave the machine.

3.2. Employees shall keep in the clear of any drill stem while it is in motion.

3.3. When a churn drill or a vertical rotary drill is used, the driller shall not work under its suspended tools.

3.4. Vertical drillholes shall be blocked before moving the drill to a new location. ventilated and in which miners are extracting coal from its natural deposit.

3.5. Drilling equipment shall be inspected daily and hazardous defects corrected promptly.

56-6-4. Explosive and Blasting.

4.1. Permissible explosives applicable to local conditions shall be used exclusively.

4.2. Primers shall not be made up until the charge is ready to be inserted in the hole. All holes, or series of holes, containing electric detonators shall be fired immediately after being charged or at end of shift: Provided, however, that if, for any reason, the holes cannot be fired immediately or at end of shift, all work shall cease within a radius of two-hundred (200) feet of blast area, and work shall not commence again until the holes have been fired. This rule does not apply if primacord is used.

4.3. Frozen explosives shall not be used.

4.4. The shot firer shall wait fifteen (15) minutes before returning to a misfired shot, except when using an electric blasting cap.

4.5. Extra precaution shall be taken in recovering of the explosive and blasting cap from a misfired shot.

4.6. Immediately after each blast the shot firing cables shall be immediately disconnected from the blasting unit and shunted.

4.7. Explosives shall not be handled or used during an electrical storm.

4.8. Magazines shall be located at least two hundred (200) feet from the face and roadway and out of the line of blasting.

4.9. Trailer vans may be used for the temporary storing of explosives: Provided, however, that it is

located in accordance with the American Table of Distances to inhabited buildings, passenger railroads and public highways. The trailer vans shall be provided with substantial means for locking, and the doors shall be kept locked, except for the placement and removal of stock.

4.10. Only competent persons designated by management shall handle explosives and do blasting.

4.11. Only electric detonators of proper strength shall be used and they must be fired with permissible shot firing units.

4.12. Drill holes shall be cleaned of cuttings before being charged.

4.13. Ample warning shall be given and care taken that all persons are in the clear before firing any shot.

4.14. After firing a shot the shotfirer, or any other person, shall not return to the working face until the smoke has cleared.

4.15. The number of holes fired in any one round shall not exceed the limit of the permissible firing unit used.

4.16. The shot firing circuit shall be tested with a galvanometer before firing.

4.17. While bore holes are being charged, equipment shall not be operated in the immediate area.

4.18. All shooting shall be done at the end of the working shift.

4.19. Two-way radio on motor vehicles shall not be used in a mine while shots are being loaded.

4.20. Tamping poles shall be made of wood or other nonsparkable material.

4.21. Shooting stations shall be kept locked when not in use and only authorized persons shall have the keys.

4.22. Prill loading machines shall be of an approved type and equipped with static strip hose and grounded.

4.23. When caps and fuse are used an approved cap crimper shall be used.

4.24. When shots are fired by means of caps and fuse, two or more persons shall do the firing.

56-6-5. Operation of Equipment.

5.1. Operators of shovels, draglines, tractors, and head-end bucket loaders shall not operate such equipment when a person or persons are within proximity to be endangered.

5.2. Operators of equipment which have a dipper or bucket shall not swing the dipper or bucket over passing haulage units.

5.3. The dipper of a shovel, or dragline, or head-end bucket loader shall always be swung over the body of the truck.

5.4. No person or persons shall remain in the cab of a truck while said truck is being loaded, unless the cab is shielded.

5.5. Workmen shall not get on or off draglines or shovels without first notifying the operator.

5.6. Before greasing or repairing a boom, the boom shall be lowered to permit the work to be performed from the ground, if the boom is not equipped with a handrail or ladder.

5.7. Operators shall practice good housekeeping.

5.8. Dump bodies of trucks shall be properly blocked when raised for any purpose except dumping.

56-6-6. Fire Protection.

6.1. Fire extinguishers of correct type and ample capacity shall be kept on each piece of mobile equipment and in all buildings.

6.2. Flammable liquids, such as oils, greases, gasoline and such other like materials, shall be stored in buildings, compartments, or closed containers used for this purpose only.

6.3. Smoking and use of open lights are prohibited in all places in which flammable materials are stored and in other places where there is a fire hazard.

6.4. The storage of surplus gasoline, oil, or other fuels, other than that which is in the fuel tank, shall be prohibited on any piece of equipment, except diesel

equipment using gasoline starting engines. In this instance one extra gallon of gasoline in an approved safety can (flash arresting screen with self-closing lid) may be stored on the equipment securely fastened in a specific location on the equipment out of the way of moving objects.

6.5. Flammable liquids shall not be used to clean machinery.

56-6-7. Haulage.

7.1. Traffic directions which differ from standard highway practice shall be posted on signs with letters at least two-inches high along the haulage roads at strategic points.

7.2. Safety equipment on trucks shall be maintained in a safe operating condition.

7.3. When dust created by haulage is thrown into suspension in quantities that obscure the vision of operators of vehicles, an adequate means shall be taken to allay such dust.

7.4. Haulage roads shall be constructed and maintained in a manner consistent with vehicular speed to insure safe operation.

7.5. Each haulage unit shall be equipped with an audible warning device.

7.6. When working at night, all mobile equipment shall be provided with headlights and back-up lights.

7.7. Only authorized persons shall ride haulage equipment.

7.8. Ample clearance shall be provided wherever supplies are loaded or unloaded.

West Virginia Administrative Regulations – Title 56, Series 7 – Rules and Regulations Governing Open Pit Limestone and Sandstone Mines and Underground Limestone and Sandstone Mines

TITLE 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 7
RULES AND REGULATIONS GOVERNING OPEN PIT LIMESTONE AND SANDSTONE MINES AND UNDERGROUND LIMESTONE AND SANDSTONE MINES

56-7-1. General.

1.1. Scope. -- These rules govern open pit and underground limestone and sandstone mining operations.

1.2. Authority. -- W. Va. Code 22A-6-3 and 29A-3

1.3. Filing Date. -- August 11, 1969

1.4. Effective Date. -- September 11, 1969

56-7-2. Surface structures.

2.1. Dust shall not accumulate on roof of tipples and buildings to an excess that would endanger workmen.

2.2. Dust shall be controlled by the use of permissible dust collectors, water or other approved methods, within practicable limits.

2.3. Belt conveyors shall be equipped with side boards or other prospective devices, where necessary, to protect persons from falling material.

2.4. Ladders shall be securely fastened.

2.5. Ramps shall be provided with securely anchored rubbing boards of ample dimensions.

2.6. A dumping block at least 8 inches high shall be installed at all dumping points, excluding stockpiles.

2.7. Lights shall be provided as needed in or around surface structures.

2.8. Electrical wiring in tipples and buildings shall be done in a safe and workman-like manner.

2.9. Persons working over or in open bins or silos shall use a safety harness.

2.10. Each open bin or silo shall be equipped with an inside ladder.

56-7-3. Excavating.

3.1. Highwall overburden shall be sloped to minimize slides and overhanging ledges and all loose material scaled.

3.2. If the highwall shows evidence of movement, or appears to be weakened in any way, the area shall be made safe, or abandoned and dangered off.

3.3. When open pit mines work at night, the vicinity in which the work is performed shall be well illuminated.

3.4. When an open pit mine is worked over an underground limestone or sandstone mine, cooperation between the underground and surface shall be established to assume the safety of persons in the mines.

3.5. When taking up the floor of an "open pit" mine over top of a limestone or sandstone mine, the opening of the mine shall be scaled and kept safe at all times.

3.6. In the event of the collapse of the floor of an open pit mine into a limestone or sandstone mine, both mines shall be immediately closed, until this condition is made safe.

3.7. Removal of any overburden from a limestone or sandstone mine within 100 feet of an active opening is prohibited while the mine is working.

3.8. The driving of coyote tunnels shall be governed as follows:

a. A volume of 600 cubic feet of air per minute shall be circulated to the headings.

b. Explosives adaptable to the general location shall be used.

c. Explosives shall be detonated by permissible firing devices.

d. Entrance to tunnel shall be kept free of loose rock and over-hanging ledges.

e. Roof and walls shall be properly scaled.

f. Work in and around the tunnel shall be done in a safe manner.

3.9. Persons scaling highwalls shall wear a safety harness that is adequately secured.

3.10. Blasted materials shall be loaded in such a manner as to minimize the danger of rock slides endangering workmen.

56-7-4. Drilling.

4.1. While a drill is operating, the operator shall not leave the machine.

4.2. Employees shall keep in the clear of any drill stem while it is in motion.

4.3. When a churn drill or a vertical rotary drill is used, the driller shall not work under its suspended tools.

4.4. Vertical drillholes shall be blocked before moving the drill to a new location.

4.5. Drilling equipment shall be inspected daily and hazardous defects corrected promptly.

56-7-5. Explosives and blasting.

5.1. Permissible explosives applicable to local conditions shall be used exclusively.

5.2. Underground storage of explosives and detonators shall be in approved magazines.

5.3. Primers shall not be made up until the charge is ready to be inserted into the hole. All holes, or series of holes, containing electric detonators shall be fired immediately after being charged or at end of shift: Provided, however, that if, for any reason, the holes cannot be fired immediately or at end of the shift, all work shall cease within a radius of 200 feet of blast area, and work shall not commence again until the holes have been fired. This rule does not apply if primacord is used.

5.4. Frozen explosives shall not be used.

5.5. The shot firer shall wait fifteen (15) minutes before returning to a misfired shot, except when using an electric blasting cap.

5.6. Extra precaution shall be taken in recovering the explosive and blasting cap from a misfired shot.

5.7. Immediately after each blast the shot firing cables shall be disconnected from the blasting unit and shunted.

5.8. The roads and entrances to any mine shall be barricaded and guarded where such roads or entrances to said mine are located within 1,000 feet of a blast. Homes within 1,000 feet shall be notified by a prearranged plan.

5.9. Explosives shall not be handled or used during an electrical storm.

5.10. Underground magazines shall be located at least 300 feet from the face and roadway and out of the line of blasting.

5.11. The maximum quantity of explosives and detonators stored underground at any time shall not exceed the amount required for one shift.

5.12. Trailer vans may be used for the temporary storing of explosives: Provided, however, that it is located in accordance with the American Table of Distances to inhabited buildings, passenger railroads and public highways. The trailer van shall be provided with substantial means for locking, and the doors shall be kept locked, except for the placement and removal of stock.

5.13. Underground temporary magazines shall be constructed to the standard of surface magazines.

5.14. When explosives and detonators are transported underground they shall be handled in either the original unopened cases or in special closed cases constructed of nonconductive material. Prills shall be in the original bag or box.

5.15. Explosives and detonators shall not be transported on drill trucks or scale cars. When explosives and detonators are transported in the same container, they shall be separated by a 4-inch hardwood partition or the equivalent; bodies of trucks transporting explosives shall be lined with nonconductive material.

5.16. Only competent persons designated by management shall handle explosives and do blasting.

5.17. Drill holes shall be cleaned off cuttings before being charged.

5.18. Ample warning shall be given and care taken that all persons are in the clear before firing any shot.

5.19. Shots shall not be fired in any place known to liberate explosive gas until such place has been properly examined by a competent person designated by a mine management for that purpose.

5.20. Shots shall not be fired in any place where gas is detected with a permissible flame safety lamp until such gas has been removed.

5.21. After firing a shot, the shotfirer, or any other person, shall not return to the work face until the smoke has cleared. A careful examination of the face, pillars and roof shall be made before any work is performed.

5.22. The number of holes fired in any one round shall not exceed the limit of the permissible firing unit used.

5.23. The shot firing circuit shall be tested with a galvanometer before firing.

5.24. While underground bore holes are being charged, equipment shall not be opened in the immediate area.

5.25. All underground shooting shall be done at the end of the working shift.

5.26. Two-way radios on motor vehicles shall not be used in a mine while shots are being loaded.

5.27. Tamping poles shall be made of wood or other nonsparkable material.

5.28. Shooting stations shall be kept locked when not in use and only authorized persons shall have the keys.

5.29. Prill loading machines shall be of an approved type and equipped with static strip hose and grounded.

5.30. Mudcaps (adobes) may be used in taking down loose slabs from roof and pillars.

5.31. When caps and fuses are used, an approved cap crimper shall be used.

5.32. When shots are fired by means of caps and fuses, two (2) or more persons shall do the firing.

5.33. Premixed ammonia nitrate and prills are classified as explosives and shall be handled and stored as such.

5.34. Only electric detonators of proper strength shall be used and they must be fired with permissible shot firing units.

56-7-6. Underground workings.

6.1. The superintendent or mine foreman of any limestone or sandstone mine shall be notified immediately when an open pit mine may interfere with the safe operation of the said active mine.

6.2. Precautions shall be taken to protect employees where excavating is being done in the vicinity of an abandoned limestone or sandstone mine, or portion thereof, which may contain an accumulation of water.

6.3. All cut-throughs into an abandoned limestone or sandstone mine shall be immediately closed or fenced.

56-7-7. Operation of equipment.

7.1. Operators of shovels, draglines, tractors and head-end bucket loaders shall not operate such equipment when a person or persons are within proximity to be endangered.

7.2. Operators of equipment which have a dipper or bucket shall not swing the dipper or bucket over passing haulage units.

7.3. The dipper of a shovel, dragline or head-end bucket loader shall always be swung over the body of the truck.

7.4. No person or persons shall remain in the cab of a truck while said truck is being loaded, unless the cab is shielded.

7.5. Workmen shall not get on or off draglines or shovels without first notifying the operator.

7.6. Before greasing or repairing a boom, the boom shall be lowered to permit the work to be performed from the ground if the boom is not equipped with a handrail or ladder.

7.7. Operators shall practice good housekeeping.

7.8. Dump bodies of trucks shall be properly blocked when raised for any purpose except dumping.

56-7-8. Ventilation.

8.1. Natural ventilation shall provide not less than 6,000 cubic feet of air per minute through the last open crosscut, otherwise the ventilation shall be produced by a mechanically operated fan.

8.2. Air currents shall always be adequate to carry away smoke and harmful gases.

8.3. Active working places shall be ventilated with air containing a minimum of nineteen and five tenths percent (19.5%) of oxygen, not containing more than one percent (1%) of carbon dioxide and without harmful amounts of noxious or poisonous gases.

8.4. Auxiliary fans may be used, but recirculation of air is prohibited.

8.5. Bore holes are permitted for ventilation.

56-7-9. Roof support.

9.1. Pillars shall be of adequate size to support the roof.

9.2. Pillars shall not be split without prior approval of the Director of the Office of Miners' Health, Safety and Training.

9.3. Roof and ribs shall be scaled in a safe manner.

9.4. Mine openings shall be kept free of fallen rocks or other objects that may endanger workmen.

9.5. A copy of the adopted roof support plan shall be posted at the mine and a copy given to the state mine inspector.

56-7-10. Transportation of men.

10.1. Equipment transporting men shall always travel at a safe rate of speed.

10.2. Underground and outside mobile transportation units shall be maintained in a safe operating condition.

56-7-11. Fire protection.

11.1. Fire extinguishers of correct type and ample capacity shall be kept on each piece of mobile equipment and in all buildings.

11.2. Flammable liquids, such as oils, greases, gasoline and such other like materials, shall be stored in buildings, compartments or closed containers used for this purpose only.

11.3. Smoking and use of open lights are prohibited in all places in which flammable materials are stored and in other places where there is a fire hazard.

11.4. The storage of surplus gasoline, oil or other fuels, other than that which is in the fuel tank, shall be prohibited in any piece of equipment, except diesel equipment using gasoline starting engines. In this instance one (1) extra gallon of gasoline in an approved safety can (flash arresting screen with self-closing lid) may be stored on the equipment securely fastened in a specific location on the equipment out of the way of moving objects.

11.5. Flammable liquids shall not be used to clean machinery.

56-7-12. Haulage.

12.1. Traffic directions which differ from standard highway practice shall be posted on signs with letters at least 2 inches high along haulage roads at strategic points.

12.2. Safety equipment on trucks shall be maintained in a safe operating condition.

12.3. When dust created by haulage is thrown into suspension in quantities that obscure the vision of operators of vehicles, an adequate means shall be taken to allay such dust.

12.4. Haulage roads shall be constructed and maintained in a manner consistent with vehicular speed to ensure safe operation.

12.5. An adequate clearance space on all haulage roads shall be kept clean.

12.6. Haulage equipment shall be maintained in good condition.

12.7. Each underground haulage unit shall be equipped with headlights and backup lights.

12.8. All underground mobile equipment shall be provided with headlights and backup lights.

12.9. Only authorized persons shall ride haulage equipment.

12.10. Ample clearance shall be provided wherever supplies are loaded or unloaded.

West Virginia Administrative Regulations – Title 56, Series 19 – Rules and Regulations Governing Written Reports of Accidents

TITLE 36
LEGISLATIVE RULES
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 19
RULES AND REGULATIONS GOVERNING WRITTEN REPORTS OF ACCIDENTS

36.19.1 General.

1.1 Scope. Rules and regulations governing written reports of accidents.

1.2 Authority. WV Code 22-6-4.

1.3 Filing Date. December 1, 1983

1.4 Effective Date - January 15, 1984

36-19-2 Effect of Regulations.

2.1 These rules and regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the safe effect as law. All provisions of Article one A, Chapter twenty-two A, of the Code relative to enforcement are applicable to the enforcement of these rules and regulations.

36-19-3 Definitions.

3.1 All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in Section one, Article one A, Chapter twenty-two A of the West Virginia Code.

3.2 Accident - The term "accident" means:

(1) A 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) An entrapment of an individual for more than thirty (30) minutes;

(4) An unplanned inundation of a mine by liquid or gas;

(5) An unplanned ignition or explosion of gas or dust;

(6) An unplanned ignition or explosion of a blasting agent or an explosive;

(7) An unplanned fire in or about a mine not extinguished within five (5) 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 (1) hour;

(10) An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which cause individuals to evacuate an area; or, 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 (30) minutes;

(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;

(13) An event at a mine which causes bodily injury to an individual which requires such individual to be admitted to a medical facility overnight for reasons other than strains, sprains or observation as determined by a physician.

3.3 Occupational injury. - The term "occupational injury" means any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to perform all duties on any day after an injury, temporary assignment to other duties, or transfer to another job.

36-19-4 Notification of Accidents and Occupational Injuries

4.1 Whenever loss of life or personal injury which is determined by the attending physician to have a reasonable potential to cause death shall occur by reason of any accident or occupational injury in or about any coal mine, it shall be the duty of the operator, agent, superintendent or mine foreman to give immediate notice to the Director of

the Office of Miners' Health, Safety and Training and the inspector of the district, stating the particulars of such accident or injury. The operator, agent, superintendent or mine foreman shall, within twenty-four (24) hours, report the same in writing to the director of the Office of Miners' Health, Safety and Training.

4.2 Whenever any accident or occupational injury occurs in or about any coal mine to any employee or person connected with the mining operation, which does not result in death, the operator, agent, mine superintendent or mine foreman shall, within ten (10) working days, report the same in writing to the director of the Office of Miners' Health, Safety and Training and upon request, to the miner representative within twenty-four (24) hours of submittal, giving full details thereof on forms provided by the department. If the operator is not made immediately aware of the injury, the written accident/injury report shall be submitted within ten (10) working days of the date the operator was notified.

36-19-5 Difference Between Medical Treatment and First Aid

5.1 Medical treatment includes, but is not limited to, the suturing of any wound, treatment of fractures, application of a cast or other professional means of immobilizing an injured part of the body, treatment of infection arising out an injury, treatment of bruise by the drainage of blood, surgical removal of dead or damaged skin (debridement), amputation or permanent loss of any part of the body, treatment of the second (2nd) and third (3rd) degree burns. Procedures which are diagnostic in nature are not considered by themselves to constitute medical treatments. Visits to a physician, physical examinations, X-ray examinations, and hospitalization for observations, where not evidence of injury is found and no medical treatment given, do not in themselves constitute medical treatment. Procedures which are preventative in nature also are not considered by themselves to constitute medical treatment. Tetanus and flu shots are considered preventative in nature.

5.2 First aid includes any one-time treatment, and follow-up visit for the purpose of observation, of minor injuries such as, cuts, scratches, first (1st) degree burns and splinters. Ointments, salves, antiseptics, and dressings to minor injuries are considered to be first aid.

5.3 The guidelines contained in thirty (30) CFR 50.20-3 and any subsequent amendments to such regulation shall be used by the Office of Miners' Health, Safety and Training to

differentiate between medical treatment and first aid for specific types of injuries.

36-19-6 Investigation of Accidents.

6.1 The mine inspector shall visit the scene of each accident as defined in Section 3.2 occurring in any mine within his district and shall make an examination into the particular facts of such accidents. The inspector shall make a report to the Director of the Office of Miners' Health, Safety and Training, setting forth the results of such examination, including the condition of the mine and the cause or causes of such accident, if known. All such reports shall be made available to interested parties upon written request.

6.2 The mine inspector may investigate an occupational injury as defined in Section 3.3. However, the operator shall investigate each occupational injury that requires hospitalization within (10) days of occurrence.

36-19-7 Preservation of Evidence Following Accident or Disaster

7.1 Following a mine accident resulting in the death of one (1) 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.

West Virginia Administrative Regulations – Title 56, Series 8 – Rules and Regulations Governing the Right of a Miner to Refuse to Operate Alleged Unsafe Equipment

TITLE 36
LEGISLATIVE RULES
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 8
RULES AND REGULATIONS GOVERNING THE RIGHT OF A MINER TO REFUSE TO OPERATE ALLEGED UNSAFE EQUIPMENT

36-8-1 General.

1.1 Scope - Rules and regulations governing the right of a miner to refuse to operate alleged unsafe equipment.

1.2 Authority - WV Code 22-6-4

1.3 Filing Date - October 8, 1980

1.4 Effective Date - December 1, 1980

36-8-2 Definitions.

As used in this series:

(a) Unsafe Equipment: The term "unsafe equipment" shall mean any equipment designed 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.

(b) Safety representative: The term "safety representative" shall mean any safety representative of the miners at the mine affected.

36-8-3 No Miner Shall Be Required to Operate Unsafe Equipment

3.1 Miner's procedure when equipment is believed to be unsafe. When a miner believes the equipment he or she is operating, or is assigned to operate, is unsafe, the miner shall cease or refuse to operate the alleged unsafe equipment and promptly inform his or her immediate supervisor as to the identify of the alleged unsafe equipment and the particular alleged defect causing the equipment to be unsafe.

36-8-4 Equipment Examination: Immediate Supervisor-Miner

4.1 Prior to the alleged unsafe equipment being placed back into operation after a miner has alleged it to be unsafe, the immediate supervisor shall examine, or have examined by maintenance personnel, the alleged unsafe equipment with regard to each alleged defect noted by the miner. If the alleged defects are corrected the equipment may be placed back into operation.

36-8-5 Dispute Procedures: Immediate Supervisor-Miner

5.1 (a) When the immediate supervisor fails to have the alleged defects corrected, the alleged unsafe equipment may be parked in a manner that will allow the movement of other equipment; and the alleged unsafe equipment shall be de-energized, locked-out, and suitably tagged so as to keep the alleged unsafe equipment from being operated by any person.

(b) No miner shall be discriminated against for refusing to operate alleged unsafe equipment.

36-8-6 Operator's Procedure If Dispute Remains Unsettled

6.1 (a) If the allegations of the miner are disputed, the immediate supervisor shall notify at least one safety representative and a maintenance foreman, who shall inspector and/or test the alleged unsafe equipment within four (4) hours after notification to determine if the alleged defect exists. If the safety representative and the maintenance foreman find that the alleged defect does exist, the defect shall be corrected before the equipment is placed back into operation; if no defect is found, the equipment can be placed back into operation.

(b) If the safety representative and the maintenance foreman disagree as to the alleged defect, they shall reduce to writing in detail the results of their inspection and/or test of the alleged unsafe equipment on a form, and in the manner, prescribed by the Director of the Office of Miners' Health, Safety and Training. The form shall contain at least the date and time of the inspection and/or test, description and location of the alleged unsafe equipment and the detailed results of the inspection and/or test.

36-8-7 Inspection: Office of Miners' Health, Safety and Training

7.1 (a) At the conclusion of the steps outlined in Section 4, 5, and 6 of these rules and regulations, the operator or his representative shall immediately notify the Director or the authorized representative requesting an investigation of his allegations to unsafe equipment. Upon receiving a request to investigate from an operator or his representative, the Director or his authorized representative shall immediately inform the operator when an inspection of the alleged unsafe equipment can be made by the Director of the Office of Miners' Health, Safety and Training: Provided, that such investigation shall be started within twenty-four (24) hours after the Office of Miners' Health, Safety and Training is requested to investigate. The operator or his representative shall give notice of the investigation time and place to the immediate supervisor and the miner involved in the dispute. The miner shall be given reasonable time to notify his or her safety representative, if he or she so chooses, in order that they may participate in the inspection.

(b) A qualified authorized representative of the Director shall be at the place set for inspection at the time designated in order to conduct and investigation of the alleged unsafe equipment. Prior to inspecting the alleged unsafe equipment, the authorized representative of the Director shall read the form required to be completed in section 6.1(b) of these rules and regulations. The authorized representative of the Director shall inspect and/or test the alleged unsafe equipment and enter the results thereof on a form and, in the manner, prescribed by the Director. The authorized representative's conclusions as to whether or not the equipment was "unsafe equipment" shall be entered on the form, along with the reasons for such conclusion. At the conclusion of the investigation, the authorized representative of the Director shall discuss the results of the investigation with, and in the presence of, the miner, the miner's safety representative if the miner so chooses, the immediate supervisor, the maintenance personnel involved in the dispute, the mine foreman and/or superintendent.

(c) If the authorized representative of the Director finds the equipment involved in the dispute to have a defect which is covered by state law, or rule or regulation, appropriate notices and/or orders shall be issued; which notices and/or orders shall be complied with prior to the subject equipment being placed back into operation.

36-8-8 Decision By the Director or the Deputy Director As to Whether or Not the Miner Acted With Good Faith and With Good Cause

8.1 (a) When the operator believes the miner involved in the dispute acted in bad faith and without good cause, the operator may make application to the Director charging the miner with having acted in bad faith and without good cause and requesting a determination of such charge: Provided, that such charge is made within five (5) days of the alleged dispute.

(b) The operator's application charging the miner shall be mailed by certified mail to the Director, the charged miner, and the safety representative, if any.

8.2 Upon receiving a charge from an operator, the Director shall promptly cause such investigation as he deems appropriate and schedule a hearing within twenty (20) days after receiving the charge, allowing the operator and the miner an opportunity to be heard.

(a) Notice of hearing; Contents of notice. (1) Unless waived by the operator and the miner involved in the dispute, no hearing shall be conducted under these rules and regulations unless the miner and operator shall have received at least ten (10) days' written notice.

(2) Each written notice of the hearing shall contain the date, time and place of the hearing and a short and plain statement of matters which are to be the subject of or asserted at the hearing. Such notice shall be given by certified mail.

(b) Date, time and place of hearing. The date, time and place of the hearing shall be determined by the Director.

(c) Representation at hearings. The miner involved in the dispute may represent himself, be represented by a safety representative or be represented by an attorney at law admitted to practice before the courts of any state or the District of Columbia. The operator may be represented by a full-time employee or an attorney at law admitted to practice before the courts of any state or the District of Columbia.

(d) Applicability of Administrative Procedures Act. All of the pertinent provisions of Article 5, Chapter 29A of the West Virginia Code shall apply to and govern hearings conducted under these rules and regulations with like effect

as if the provisions of said Article 5 were set forth herein. If any provision of these rules and practice and procedure contained in Section 8 herein are inconsistent with any pertinent provisions of said Article 5, the provisions of said Article 5 shall control.

(e) Waiver of evidentially presentation. (1) Any party who desires to submit written pleadings, comments or information in lieu of an evidentially hearing may submit such documents prior to the haring date, for the Director's consideration in the matter in the event hearing is waived as provided in subsection (e)(2) of this section.

(2) Parties entitled to an evidentially hearing may waive such right in writing, but unless all entitled parties file timely waivers, a hearing will be conducted. Such waivers must be unequivocal and request the Director to decide the matter at issue on the materials submitted in subsection (e)(1) of this section and any stipulations the parties might enter into.

(3) When a hearing is waived under the provisions of this subsection, the written record in the case shall be submitted to the Director for decision.

(f) Burden of proof. In proceedings under these rules and regulations, the operator making application to the Director under subsection 8.1(a) of this section shall have the burden of proving his case by a preponderance of the evidence.

(g) Proposed findings, conclusions and orders. The Director may request the submission by parties of the proposed findings of fact, conclusions of law and orders, together with a supporting brief: Provided, that such documents shall be submitted within twenty (20) days after their request. Such proposals and briefs shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

(h) Hearings to be public. All hearings conducted under these rules and regulations shall be open to the public.

(i) Decisions and orders. (1) Within twenty (20) days after conclusion of the hearing and submission of all documents or after submission of the case and consideration of the record as a whole in the event a hearing is waived, the Director shall render a decision and order which shall be in writing and shall include a statement of (a) findings and conclusions, and the reasons or basis therefore on the

material issues of fact and law and (b) the appropriate ruling or order granting, granting in part or denying the relief sought.

(2) A copy of all decisions and orders shall be served, by certified mail, upon all parties and, unless the decision and/or order provides, the decision and order so served shall become effective immediately following service.

West Virginia Administrative Regulations – Title 56, Series 1 – Procedural Rules

TITLE 56
PROCEDURAL RULES
Office of Miners' Health, Safety and Training
SERIES 1
PROCEDURES AND PRACTICE BEFORE THE OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

56-1-1. General.

1.1. Scope, Construction, and Applicability.

a. The procedures and rules of practice set forth herein shall govern and apply to proceedings before Presiding Officers, the Director of the Office of Miners' Health, Safety and Training or the Department generally including proceedings to assess monetary civil penalties pursuant to Section 19, Article 1A, Chapter 22A of the Code, proceedings to review orders and notices pursuant to Section 16, Article 1A, Chapter 22A of the Code and proceedings initiated upon a petition for declaratory ruling pursuant to Section 1, Article 4, Chapter 29A of the Code.

b. In any proceedings initiated prior to the effective date of these rules, the provisions hereof shall govern and apply to all activities in such proceedings conducted after the effective date of these rules. Except when ordered by the Presiding Officer, no reissuance of any pleading, documents or requests shall be required in such a proceeding.

c. These rules shall be liberally construed to secure the just, prompt and inexpensive conduct and determination of all proceedings before the Office of Miners' Health, Safety and Training consistent with adequate consideration of the issues involved.

d. On any procedural question not regulated by the rules, the pertinent provisions of the Administrative Procedure Act shall apply. On any matter not regulated by these rules and for which there is no pertinent provision in the Administrative Procedure Act, the provisions of the West Virginia Rules of Civil Procedure or the rules of evidence and privilege applicable in the courts of general jurisdiction of this State, as appropriate, shall apply.

1.2. Authority. -- W. Va. Code §22A-3-3-1, §29A-1-4, §29A

1.3. Filing Date. -- December 30, 1982

1.4. Effective Date. -- January 30, 1983

1.5. Definitions. As used in these rules:

a. All terms used in these rules, not defined herein, shall have the meanings set forth in Section 1, Article 1A, Chapter 22A of the Code.

b. Assessment officer: The term "Assessment Officer" shall mean any person or persons designated and appointed by the Commissioner to carry out the duties of the Assessment officer outlined in Part 2 of these rules.

c. Assessment review officer: The term "Assessment Review Officer" shall mean any person or persons designated and appointed by the Director to carry out the duties of the Assessment review officer outlined in Part 2 of these rules.

d. Code: The term "Code" when following a reference to a specific section, article, and chapter, shall mean the West Virginia Code of 1931, as amended.

e. Declaratory ruling: The term "Declaratory Ruling" means a decision and order issued by the Director of the Office of Miners' Health, Safety and Training as a ruling pursuant to Section 1, Article 4, Chapter 29A of the Code.

f. Mine: The term "Mine" shall mean any mine as defined in Section 1, Article 1A, Chapter 22A of the Code, and any surface mine as that term is defined in Section 3, Article 3, Chapter 22A of the Code.

g. Notice of violation: The term "Notice of Violation" shall mean a notice issued pursuant to the provisions of Section 13, Article 1A, Chapter 22A of the Code.

h. Notice of assessment: The term "Notice of Assessment" shall mean a notice issued for the assessment of a civil penalty pursuant to the provisions of Section 19, Article 1A, Chapter 22A of the Code, and described in Section 2.4, Part 2 of these rules.

i. Presiding officer: The term "Presiding Officer" shall mean the Director or any person authorized by the Director to conduct hearings required or authorized under the coal mine health and safety laws of this State.

j. Representative of miners: The term "Representative of Miners" shall mean a person or organization designated by a group of miners to act as their representative before the Department.

k. Withdrawal order: The term "Withdrawal Order"

means an order issued pursuant to Section 13, Article 1A, Chapter 22A of the Code.

1.6. Parties.

a. In proceedings to assess monetary civil penalties against any operator of a coal mine under Section 19(a), Article 1A, Chapter 22A of the Code; and when the amount of the assessment only is in dispute, the parties shall be:

1. the operator against whom a penalty is proposed, and

2. the Office of Miners' Health, Safety and Training.

b. In proceedings to assess monetary civil penalties against any miner under Section 19(a), Article 1A, Chapter 22A of the Code, the parties shall be:

1. the miner charged with a violation and against whom a penalty is proposed, and,

2. the Office of Miners' Health, Safety and Training.

c. In proceedings to assess monetary civil penalties against any operator of a coal mine under Section 19(b), Article 1A, Chapter 22A of the Code; and where the amount of the assessment only is in dispute, the parties shall be:

1. the operator against whom a penalty is proposed, and

2. the Office of Miners' Health, Safety and Training.

d. In proceedings to assess monetary civil penalties under Section 19(c), Article 1A, Chapter 22A of the Code, the parties shall be:

1. the corporate operator, director, officer, agent or other person or persons charged with a violation and against whom a penalty is proposed, and,

2. the Office of Miners' Health, Safety and Training.

e. In proceedings to review an order or notice under Section 15, Article 1A, Chapter 22A of the Code or in a proceeding to assess monetary civil penalties against any operator of a coal mine under Section 19(a), (b), and (c), Article 1A, Chapter 22A of the Code, where the operator is disputing the notice or order alleging a violation, the parties shall be:

1. the representatives of the miners at the mine affected by the notice of order, and

2. the operator of the affected mine, and

3. the Office of Miners' Health, Safety and Training.

f. In proceedings initiated by a petition for declaratory ruling pursuant to Section 1, Article 4, Chapter 29A of the Code, the parties shall be:

1. the person requesting a declaratory ruling;

2. the Office of Miners' Health, Safety and Training, and

3. any interested person of record allowed to intervene under Section 1.7 of these rules or any other person so allowed to intervene.

1.7. Intervention.

a. Any person claiming a right of participation in a proceeding on the basis that the person has an interest in the outcome of the proceedings or any person otherwise seeking to intervene in a proceeding may become a party to a proceeding upon the Presiding Officer's granting of such person's petition to intervene.

b. A petition seeking intervention must be written, setting forth the interest of the petitioner in the proceedings, containing a showing that petitioner's participation will assist in the determination of the issues in question, and such petition must be served, contemporaneously with the filing, on the Director who shall serve such petition on all other parties to the proceeding.

c. Any party may file objections to a petition for intervention within fifteen (15) days after service of the petition on the party.

d. A petition for leave to intervene may be filed at any stage of a proceeding before the commencement of a hearing. After the commencement of a hearing, a petition for leave to intervene may be filed only with the waiver by all parties or upon a showing by the petitioner of good cause for the delay in seeking intervention.

e. The Presiding Officer may grant or deny petitions for intervention or may permit intervention limited to a particular stat of the proceeding.

1.8. Form of documents.

a. Caption. The documents filed in any proceeding conducted under these rules shall be captioned in the name of the person or persons charged with a violation or seeking relief from the Department and may contain or include other information appropriate for the identification of the proceeding, including any docket number assigned to the case.

b. Title. After the caption, each such document shall contain a title which shall be descriptive of the document and which shall identify the party by whom the document is submitted.

c. Signature. The original of each document filed shall be signed at the end by the party submitting the document, or, if the party is represented by an attorney, by such attorney. The address and telephone number of the party or the attorney shall appear beneath the signature.

1.9. Filing and service of pleadings and other documents.

a. Where to file. All pleadings or documents in a proceeding described in these rules shall be filed with the Director, Office of Miners' Health, Safety and Training, 1615 Washington Street, E., Charleston, West Virginia 25311.

b. Number of copies. Except as otherwise provided in these rules, a party shall furnish an origin and two (2) copies of all pleadings and other documents required or permitted to be filed.

c. How to file. All filing may be accomplished by personal delivery or first class mail.

d. When filing effective. In the case of mailing by first class mail, filing is effective upon mailing. In the case of personal delivery, filing is effective upon delivery.

e. Copies to be served. Copies of all pleadings and other documents filed in any proceeding described in these rules and copies of all notices pertinent to such proceedings shall be served upon all other parties to the proceeding.

f. Method of service. Documents by which any proceeding is initiated shall be served on each other party personally or by registered or certified mail, return

receipt requested. All subsequent documents may be served personally or by first class mail. Service by mail is complete upon mailing.

g. Service of attorney. Whenever a party is represented by an attorney who has signed any document filed on behalf of such party or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney.

h. Proof of service. Any person initiating a proceeding under these rules shall file proof of service in the form of (i) a certificate of service, or (ii) a return receipt where service is by certified mail, or (iii) an acknowledgement by the party served or (iv) a verified return where service is made personally. The certificate of service shall include a statement of how and when service was accomplished.

1.10. Amendments.

a. The strict formal requirements in pleadings are not required to be observed in documents, answers or any other papers filed with the Department and amendments or supplemental statements may be made and filed at any time prior to a scheduled hearing as long as the documents are filed and served as called for under these rules at least ten (10) days prior to the scheduled hearing date. If a party desires to file amended or supplemental statements less than ten (10) days before the scheduled hearing of the matter, the party or his representative shall make a written request to the Presiding Officer to file those amendments along with the amendments. Said request will set forth with particularity the reason for the need to file such documents at the late date. The Presiding Officer will then allow or disallow the filing based solely on his discretion as justice might require.

b. A further and better statement of any cause or ground of complaint or defense, or a further and better statement of particulars of any matter stated, in any document, may in any case be ordered at the discretion of the Presiding Officer.

1.11. Motions.

a. Unless made during a hearing, all motions shall be in writing, contain a short and plain statement of the grounds on which it is based, and set forth the relief sought. Motions may be accompanied by appropriate

supporting material or discussion of the reasons for granting the motion.

b. A statement in opposition to a motion may be filed by any party within ten (10) days after the date of service.

c. Any motion, including motions made during the hearing and except for motions relating to jurisdiction or directed verdict or for a motion for reconsideration of the final decision of the Commissioner, made less than ten (10) days before the commencement of an evidentiary hearing shall contain a showing of good cause for the motion not having been filed prior to the ten (10) day period.

d. Unless ordered by the Presiding Officer, oral argument on motions will not be heard.

1.12. Consolidation of proceedings. The Presiding Officer may at any time order a proceeding described in these rules consolidated with any other such proceeding then pending before the Department, if such a consolidation is, in the opinion of the Presiding Officer, a more efficient and expeditious manner of taking evidence, as long as all parties to the proceeding are afforded due process of law and fair opportunity to present and make a record of evidence.

1.13. Hearings. All hearings shall be conducted by a Presiding Officer in accordance with the provisions of Section 3 of these rules, and all such hearings shall be open to the public.

1.14. Public access to departmental records.

a. Subject to reasonable regulation by the Director, all departmental records relating to the assessment of monetary civil penalties or review proceedings under the coal mine health and safety laws of this State shall be open for public inspection.

b. The Director shall, from time to time, publish a list of final orders entered by the Department. Such list shall include the person against whom a violation was charged and the amount of the penalty paid or assessed or the relief sought and granted, as appropriate.

c. The Director shall make available to public inspection, all final orders, decisions and opinions in the adjudication of cases under the provisions of these rules.

d. Notwithstanding the above provisions, upon the

motion of any party to a proceeding, the Director may take appropriate action to protect as confidential, trade secrets or sensitive information about individuals. However, under no circumstances shall this section be deemed to protect as confidential, proposed orders of assessments, final orders and decisions, or the dates on which meetings and conferences were held and the procedures by which cases were disposed of.

1.15. Time.

a. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday when the offices of the government of this State are closed, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday when the offices of the government of this State are closed.

b. When by these rules or by a notice given thereunder, an act is required or allowed to be done at or within a specified time, the Presiding Officer may extend such time for good cause at the expiration of the prescribed time or at the expiration of any earlier granted extension, upon the showing that the failure to act was for good cause.

c. Whenever any party has the right or is required to do some act or undertake some proceedings within a prescribed period after service of a notice or other document upon him and the notice or document is served upon the party by mail, three (3) days shall be added to the prescribed period.

1.16. Discovery.

a. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a pending proceeding. The party requesting discovery shall have the burden of showing the necessity and relevancy of any materials, answers or testimony desired. All requests for public records directed to the Office of Miners' Health, Safety and Training shall be in accordance with the provisions of Chapter 29B, Article 1, Section 1 et seq. of the Code of West Virginia, 1931, as amended.

b. Discovery shall be completed within sixty (60) days after commencement of a proceeding. For good cause shown, the Presiding Officer may permit the time for discovery to be extended.

c. Parties may obtain discovery of any relevant matter, not privileged, that is admissible evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

d. Upon application by a party or by the person from whom discovery is sought or upon its own motion, the Presiding Officer may, for good cause shown, make any order limiting discovery to prevent undue delay or to protect a party or person from annoyance, oppression, or undue burden or expense.

e. Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories. If the parties are unable to agree thereto, the time, place, and manner of taking depositions shall be governed by the order of the Presiding Officer.

f. Any party may service written interrogatories or requests for admission upon another party. A party served with written interrogatories or a request for admission shall answer such interrogatories or request within fifteen (15) days of service unless the proponent of the interrogatories or request agrees to a longer time, or unless the Presiding Officer by order specifies a different time or excuses the party from answering in good cause shown. Interrogatories shall be answered under oath. For good cause shown, the Presiding Officer may order a party to produce and permit inspection, copying, or photographing of designated documents or objects.

1.17. Ex parte communications.

a. There shall be no ex parte communication with respect to the merits of any case not concluded, between the Presiding Officer and any of the parties or intervenors, representatives, or other interested persons.

b. In the event an ex parte communication in violation of this section occurs, the Director or the Presiding Officer may make such orders or take such action as fairness requires. Upon notice and hearing, the Director or the Presiding Officer may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

c. All ex parte communications in violation of this section shall be placed on the public record of the proceedings.

d. Any inquiries concerning filing requirements, the status of cases before the Presiding Officer, or docket

information shall be directed to the Hearings Clerk at West Virginia Office of Miners' Health, Safety and Training, 1615 Washington Street, E., Charleston, West Virginia 25311. Telephone (304) 558-1425.

56-1-2. Rules Applicable To Proceedings Initiated to Assess Civil Penalties.

2.1. Scope. a. The rules in this Section govern, and are applicable, to proceedings initiated by the Director to assess civil penalties under Section 19, Article 1A, Chapter 22A of the Code. In addition to the rules contained in this Section, the general rules of practice before the Department contained in Section 1 and the rules relating to hearings held by the Department contained in Section 3 are also applicable to such proceedings.

2.2. Assessment officer. a. Within thirty (30) days after the effective date of these regulations, the Director shall designate and appoint the inspectors-at-large and their designees to act as Assessment Officer(s) for the Office of Miners' Health, Safety and Training. It shall be the duty of the Assessment Officer to review withdrawal orders and notices of violation, and prepare Notices of Assessment.

2.3. Assessment review officer. a. Within thirty (30) days after the effective date of these regulations, the Director shall designate and appoint a person or persons to act as Assessment Review Officer(s) for the Office of Miners' Health, Safety and Training It shall be the duty of the Assessment Review Officer, upon request for a prehearing conference by an operator or miner who has been notified of a proposed civil penalty assessment pursuant to Section 19, Article 1A, Chapter 22A of the Code, to review the civil assessments, accept statements and documents from the party requesting the conference, and hold the requested prehearing conference pursuant to Section 2.8 of these rules.

2.4. How initiated: notice of assessment. a. Upon the completion of any inspection of a coal mine, it shall be the duty of each mine inspector, or representative of the Office of Miners' Health, Safety and Training making said inspection, to deliver to the Assessment Officer a copy of each finding, order, or notice issued during said inspection or prior inspections, which has been abated by the operator or individual charged in said finding, order, or notice with a violation, or if not abated by the operator or individual,

then delivery of each finding, order or notice shall be made within a reasonable time after the time for abatement has expired.

b. Within thirty (30) days after receipt of a copy of a notice or order issued by a mine inspector or authorized representative of the Office of Miners' Health, Safety and Training during a mine inspection, the Assessment Officer shall prepare a Notice of Assessment and forward the same to an Assessment Review Officer for service upon the person or persons charged with the violation of the state coal mine health and safety law, in accordance with the provisions of Section 1 of these rules.

c. Each Notice of Assessment shall contain:

1. the name of the operator, miner or other person charged with a violation;

2. the name and address of the mine inspector or representative of the Office of Miners' Health, Safety and Training discovering or witnessing the alleged violation and reporting the same to the Director;

3. the health or safety rule or regulation or law which the Assessment Officer believes has been violated;

4. the time, date, location, and circumstances of the alleged violation;

5. the amount of the proposed penalty;

6. such other information as the Director may require.

Any of the above information may become part of the Notice of Assessment by attaching the same thereto.

2.5. Procedures for assessment of civil penalties. a. Within thirty (30) days after receipt of the Notice of Assessment, an Assessment Review Officer shall review the same and determine whether or not the proposed assessment should be recalculated using the guideline outlined in Section 19(a)(1), Article 1A, Chapter 22A of the Code.

b. The Assessment Review Officer shall, within thirty (30) days after receipt of the Notice of Assessment, by certified mail, return receipt requested, serve upon the operator or miner charged (1) a copy of the Notice of Assessment, (2) a copy of the notice or order which is the basis for the Notice of Assessment, and (3) a written

statement indicating to the person charged with a violation that a civil penalty may only be assessed after the person charged with a violation has been given an opportunity for a public hearing and the manner in which the person charged with a violation may request a hearing.

c. The operator or miner shall have thirty (30) days from receipt of the Notice of Assessment to either (1) pay the penalty, (2) request, in writing, a conference with the Assessment Review Officer to provide information relating to the violation listed in the Notice of Assessment, or (3) request, in writing, a hearing on the violation in question pursuant to Section 3 of these rules. If the operator or miner does not exercise his right under this subsection within thirty (30) days of receipt of the Notice of Assessment, the Notice of Assessment will become a final Order of Assessment which will be due immediately and enforceable under Section 19, Article 1A, Chapter 22A of the Code.

2.6. Payment of assessment. a. Upon receipt of the assessment by certified check or money order by the operator, miner or other person will close the case with respect to any civil penalties.

b. Payment of the assessment should be sent to the Director, Office of Miners' Health, Safety and Training, 1615 Washington Street, E., Charleston, West Virginia 25311. Checks should be made payable to the West Virginia Office of Miners' Health, Safety and Training.

2.7. Conference. a. Upon receipt of a request for a conference, the Assessment Review Officer shall arrange for a timely conference convenient to all parties and the Assessment Review Officer.

b. If the party or parties request a conference with the Assessment Review Officer, he may submit any additional information to the Assessment Review Officer which may be relevant to the fact of the violation or the amount of the penalty. Such information may be submitted prior to the conference and discussed during the conference. To expedite the conference, the Assessment Review Officer may contact the party or parties to discuss the case prior to such conference.

c. At and/or subsequent to the conference, the Assessment Review Officer will consider all relevant information on the violation(s) in question presented by the party or parties and is authorized to decrease, increase or leave the same amount of the assessed penalty on the basis

of any new information presented to him. When the facts warrant a finding that no violation of the coal mine health and safety laws of this State occurred, a penalty will not be assessed and the subject notice of violation or order will be vacated.

d. If the party or parties appear in person and the issues are resolved, they may, at this time, tender payment of the amount agreed upon and thereby dispose of the case, or they may have twenty (20) days within which to submit payment to the Director of the amount agreed upon and thereby dispose of the case. All such agreements must be in writing and signed by both parties. Failure to tender payment of the agreed amount within the twenty (20) day period will result in the agreed amount being entered as the final order of the Director, enforceable under Section 19, Article 1A, Chapter 22A of the Code if the agreed amount is the same or greater than the original assessed amount or if the agreed amount is less than the original amount, the agreed amount will be increased to the original assessed penalty, all at the discretion of the Assessment Review Officer.

e. If all issues cannot be resolved during a conference, the party or parties may tender payment for those violations upon which an assessment amount has been agreed as provided in Section 2.7(d) of these rules. Violations not resolved will be the subject of notice of hearing to assess civil penalty provided for in Section 2.8 of these rules.

2.8. Assessment of civil penalties - How initiated.
a. A proceeding for the assessment of a civil penalty shall be initiated by the Assessment Review Officer by filing a Notice of Assessment Proceeding with the Director and by serving a copy of the notice on the party against whom a penalty is sought. Such notices shall be prepared, filed and served within thirty (30) days, after (1) an operator, miner, person or persons request a hearing after receipt of a Notice of Assessment, or (2) the Assessment Review Officer and a party charged with a violation are unable to resolve all issues concerning such violation during a conference as provided in Section 2.7 of these rules.

b. The Notice of Assessment Proceeding shall include a list of the alleged violations for which a civil penalty is sought to be assessed. In addition, the Notice of Assessment pertaining to each alleged violation contained on such list shall be included with the Notice of Assessment Proceeding.

c. Upon receipt of a Notice of Assessment Proceeding, the Director shall immediately appoint a Presiding Officer for all proceedings relating thereto.

2.9. Answer. a. A party against whom a penalty is sought shall file an answer within twenty (20) days after service of a Notice of Assessment Proceeding with the Director. Notice to the party charged must be given at the time.

2.10. Contents of answer. All answers shall contain:

a. A short and plain statement of the reasons why each of the violations listed in the Notice of Assessment Proceeding are contested, including whether a violation occurred; and

b. A request for a hearing, or an express waiver of the right to a hearing and a request for a formal consideration of the issues by the Presiding Officer.

2.11. Summary disposition. a. Failure to answer. Where the party charged with a violation(s) fails to timely file an answer to the Notice of Assessment Proceeding, such party will be deemed to have waived his right to hearing, and the Notice of Assessment shall be forwarded to the Director for entry as a final order.

b. Failure to appear at hearing. When a person charged with a violation fails to appear at a hearing conducted under Section 3 of these rules, the Director may dispose of the case or otherwise formally consider it in accordance with the provisions contained in Section 3 of these rules.

2.12. Decisions and orders after hearing or formal consideration of the case.

a. After the filing of an answer in a case, the Presiding Officer shall schedule and conduct a hearing regarding the case or otherwise formally consider it in accordance with the provisions contained in Section 3 of these rules.

b. Where, after hearing or after submission of the case and consideration of the record as a whole or in the event a hearing is waived, the Presiding Officer finds that a violation of the coal mine health and safety laws of this State has occurred, he shall determine the amount of the penalty which is warranted in accordance with Section 19, Article 1A, Chapter 22A of the Code, and these rules, and

incorporate in a decision concerning the violation findings of fact, conclusions of law and an order setting forth the amount of any penalty and a requirement that the penalty be paid. Each decision and order against an operator shall contain findings of fact on each of the following criteria: the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the alleged violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the alleged violation.

c. Where, after hearing or after submission of the case and consideration of the record as a whole in the event a hearing is waived, the Presiding Officer determines that no violation occurred, he shall incorporate in a decision concerning the violation findings of fact, conclusions of law and an order vacating the notice of violation or order and dismissing the proceeding to assess civil penalty.

d. In proceedings where the Presiding Officer is not the Director, the record in the case and the decision and order of the Presiding Officer shall be forwarded to the Director for his review. The Director shall approve, alter and approve or reject the decision and order of the Presiding Officer. In the event the Director rejects the decision and order of the Presiding Officer, the Director shall forthwith prepare a final decision and order to replace the decision and order rejected.

e. A copy of all decisions and orders prepared by or approved by the Director shall be served, by certified mail, upon all parties and, unless the decision and/or order otherwise provides, the decision and order so served shall become effective immediately following service unless a party makes application for rehearing or modification in accordance with Section 3.13 of these rules.

56-1-3. Hearings.

3.1. Scope. a. Unless otherwise specified in these or other rules and regulations, the rules in this Section shall govern and apply to hearings conducted by the Director other Presiding Officer or by the Department pursuant to the authority provided in the laws of this State or rules and regulations promulgated pursuant thereto.

3.2. Conduct of hearings. A Presiding Officer shall conduct every hearing.

3.3. Powers of presiding officers. a. The Presiding Officer in connection with conducting a hearing and subject to the rules set forth in this section, may:

1. Administer oaths and affirmations;

2. Issue subpoenas in accordance with the provisions of Section 1, Article 5, Chapter 29A of the Code;

3. Rule upon offers of proof and receive relevant evidence;

4. Permit evidentiary depositions to be taken and read as in civil actions in the circuit courts of this State;

5. Permit discovery depositions;

6. Regulate the course of the hearings;

7. Dispose of procedural requests or similar matters;

8. Hold conferences for the settlement or simplification of the issues with the consent of the parties; and

9. Take any other action in connection with such hearing authorized by law.

b. In any case where the Presiding Officer is not the Director, such Presiding Officer may, on his own motion, and shall, at the request of any party, certify any interlocutory ruling to the Director where he determines (1) that such ruling involves a controlling question of law, and (2) that an immediate decision on the question by the Director may materially advance the ultimate disposition of the matter before him.

c. In no case shall a Presiding Officer other than the Director enter a final order or decision.

3.4. Notice of hearing: contents of notice. a. Unless otherwise specified in these rules, no hearing shall be conducted under these rules or otherwise unless the parties to the proceeding shall have received at least ten (10) days written notice.

b. Each written notice of the hearing shall contain the date, time, and place of the hearing and a short and plain statement of the matters which are to be the subject of or asserted at the hearing. Such notice shall be given in accordance with the provisions of Section 2, Article 7, Chapter 29A of the Code.

3.5. Date, time, and place of hearing. a. The date, time, and place of each hearing shall be determined by the Presiding Officer on the basis of convenience to parties and witnesses. Any request for postponement or relocation of a hearing shall be filed and served on all parties no later than five (5) days prior to the originally scheduled date. Such request may be granted upon showing of good cause.

3.6. Representation at hearings. a. At hearings held pursuant to these rules, any party may represent himself or be represented by an attorney-at-law admitted to practice before the courts of any state or the District of Columbia. In addition, any party which is also an operator may be represented by a full-time employee, and any miner may be represented by the representative of miners.

3.7. Waiver of evidentiary presentation. a. Any party who desires to submit written pleadings, comments or information in lieu of an evidentiary hearing may submit such documents for the Presiding Officer's consideration in the matter in the event hearing is waived as provided in subsection (b) of this section.

b. Parties entitled to an evidentiary hearing may waive such right in writing, but unless all entitled parties file timely waviers, a hearing will be conducted. Such waivers must be unequivocal and request the Presiding Officer to decide the matter at issue on the pleadings and written record of the case, including any stipulations the parties might enter or any documents filed in accordance with subsection (a) of this section.

c. When a hearing is waived under the provisions of this section, the written record in the case shall be submitted to the Presiding Officer for decision.

3.8. Burden of proof. a. In proceedings under the coal mine health and safety laws of this State, the party initiating the proceeding shall have the burden of proving his case by a preponderance of the evidence provided that (a) in a penalty proceeding, the Department shall have the burden of proving its case by a preponderance of the evidence, and (b) whenever the violation of any provisions of the state coal mine health and safety laws is an issue, the Department shall have the burden of proving the violation by a preponderance of the evidence.

3.9. Proposed findings, conclusions and orders. a. The Presiding Officer may request the submission by parties of proposed findings of fact, conclusions of law, and orders, together with a supporting brief. Such proposals

and briefs shall be served upon all parties, and shall contain adequate reference to the record and authorities relied upon.

3.10. Hearings to be public. a. All hearings conducted under these rules shall be open to the public.

3.11. Decisions and orders. a. Within sixty (60) days after conclusion of the hearing or after submission of the case and consideration of the record as a whole in the event a hearing is waived, the Presiding Officer shall render a decision and order which shall be in writing and shall include a statement of (a) findings and conclusions and the reasons or basis therefore on the material issues of fact and law, and (b) the appropriate ruling or order granting in part, or denying the relief sought.

b. In proceedings where the Presiding Officer is not the Director, the Presiding Officer shall issue and serve a copy of the recommended decision upon all parties by certified mail. The record in the case and the original recommended decision shall be forwarded to the Director. Within fifteen (15) days of the service of the recommended decision a party adversely affected or aggrieved by such decision may file with the Director, and serve upon all parties, a petition for rehearing pursuant to Section 3.12(b) of these rules setting out with particularity the grounds for requesting such rehearing. The Director shall approve, alter, remand or reject the recommended decision and order of the Presiding Officer, the Director shall, in accordance with the provisions of Section 3.12(e) of these rules, prepare a final decision and order to replace the recommended decision and order rejected.

c. A copy of all decisions and orders prepared or approved by the Director shall be served, by certified mail, upon all parties and, unless the decision and/or order provides the decision and order so served shall become effective immediately following service.

3.12. Re-opening; re-hearing; modification. a. Applications for re-opening a proceeding after hearing or submission and before decision shall be made by petition filed prior to service of a final decision. Such petition shall state specifically the grounds relied upon and, if it be for the purpose of introducing additional evidence, shall also state the nature and purpose of the evidence to be adduced.

b. Applications for re-hearing or re-argument after decision shall be made by petition filed within fifteen (15) days after service of the recommended or final decision.

Such petition shall state specifically the grounds relied upon and, if any decision and order is sought to be vacated, reversed or modified by reason of (1) matters arising since the decision; (2) consequences which would result from compliance with the decision and order; or (3) facts not in the possession of petitioner prior to decision, such reason shall also be stated.

c. Applications for modification of decisions and orders of the Department, which seek only a change in the date of such decisions and orders shall take effect, shall be made by petition filed within fifteen (15) days after service of the final decision, except that, in the event of an unforeseen emergency satisfactorily shown by the petitioner, such relief may be sought informally by telegram or otherwise, upon notice to all parties or attorneys who appeared in the proceeding.

d. A copy of each petition filed under this section shall be served on all other parties to the original proceeding and each petition shall be accompanied by a certificate showing service upon such parties. Within ten (10) days after such service, an adverse party may file and serve a reply to the petition.

e. Upon the filing of a reply or upon the failure of an adverse party to reply within ten (10) days after service of a copy of the petition of such party, the Director shall consider the petition, the replies thereto, and the record of the proceeding, and, if he or she determines a hearing upon the petition to be necessary, shall, after ten (10) days notice send to all parties to hold such hearing in accordance with the provisions of Section 3 of these rules. Within thirty (30) days after consideration of the petition, the replies thereto and the record of the proceeding, the Director shall issue an order either granting in part or denying the relief requested in the petition.

56-1-4. Rules Applicable to Proceedings for Modification, Extension, Termination or Review of Orders And Notices.

4.1. Scope. a. The rules in this Section govern and are applicable to review proceedings initiated pursuant to Section 15, Article 1A, Chapter 22A of the Code, by operators or representatives of miners in any mine affected by orders and notices of violation issued pursuant to the provisions of Sections 13 and 14, Article 1A, Chapter 22A of the Code. In addition to the rules contained in this Section, the general rules of practice before the Department

contained in Section 1 and the rules relating to hearings held by the Department contained in Section 3 are also applicable to such proceedings.

4.2. By whom modification, extension, termination or review proceedings may be initiated.

a. The following persons may initiate proceedings for modification, termination or review of notices of violation or orders:

1. an operator issued an order pursuant to the provisions of Section 13, Article 1A, Chapter 22A of the Code;

2. any representative of miners in any mine affected by such a withdrawal order or by any modification or termination of such order;

3. an operator issued a notice of violation pursuant to subsection (b), Section 13, Article 1A, Chapter 22A of the Code, if he believes that the time fixed in such notice for the abatement of the violation is unreasonable;

4. any representative of miners in any mine affected by such a notice of violation, if he believes that the time fixed in such notice for abatement of the violations is unreasonable;

5. any operator affected by an order issued under Section 14, Article 1A, Chapter 22A of the Code; or

6. any representative or miners in a mine affected by an order issued under Section 14, Article 1A, Chapter 22A of the Code.

b. For purposes of Section 4 of these regulations the mine "affected" by any order or notice shall be deemed to be the mine at which the violation in question allegedly occurred or at which the imminent danger giving rise to the withdrawal order was allegedly found to exist.

4.3. Initiation of proceedings. a. Proceedings for the review of an order issued pursuant to the provisions of Sections 13 and 14, Article 1A, Chapter 22A of the Code, a modification or termination thereof, a notice of violation issued pursuant to the provisions of Section 13, Article 1A, Chapter 22A of the Code, or a modification or termination thereof, shall be initiated by those parties entitled to seek review as designated in Section 4.2 of these rules, by filing an application for review.

b. An application for review shall be filed with the Director within thirty (30) days of receipt of the applicant for the order or notice of violation sought be reviewed or within thirty (30) days of receipt of any modification or termination of a notice of violation or an order where review of such modification or termination of a notice of violation or an order where review of such modification or termination is sought. A copy of the application for review shall be served upon all other parties by the party making application for review.

c. An operator's failure to file an application for review of an order or notice of violation shall not preclude the operator from challenging the fact of violation or raising any other pertinent matter in a proceeding under Section 2.8 through 2.12 of these rules.

4.4. Answer. a. Any party, other than the Office of Miners' Health, Safety and Training, desiring to participate in the proceeding in opposition to the application for review shall file an answer within fifteen (15) days of service of such application for review.

4.5. Contents of application and answer. a. An application for review and an answer shall comply with applicable general requirements and shall contain:

1. A short and plain statement of (i) such party's position with respect to each issue of law or fact which the party contends is pertinent to the legality or correctness of the order or notice; and (ii) the relief requested by such party;

2. A statement of whether the party submitting the document requests a public hearing or waives it as provided in Section 3.7 of these rules. Where an answer does not include an unequivocal waiver, a party shall be deemed to have requested a hearing and initial decision.

b. A copy of the order or notice sought to be reviewed shall be attached to each application for review.

4.6. Proceedings after application; decision and order.

a. Upon receipt of an application for review the Director shall cause an investigation of the matter to be made as he or she deems appropriate and shall appoint a Presiding Officer for all proceedings relating to such application.

b. In the event the application has requested a

hearing in the application for review, the Presiding Officer shall give notice of and conduct such hearing in accordance with the provisions of Section 3 of these rules. In the event the applicant has waived a hearing in accordance with the provisions of Section 3.7 of these rules, the Presiding Officer shall promptly consider the pleadings and all documents submitted therewith by the parties.

c. Within sixty (60) days after conclusion of the hearing or after consideration of the pleadings and documents filed therewith in the event a hearing is waived, the Presiding Officer shall issue a written decision and order incorporating therein findings of fact and conclusions of law, vacating, affirming, modifying, extending, or terminating the notice of violation, the order or the modification or termination of such notice or order.

d. In proceedings where the Presiding Officer is not the Director, the record in the case and the decision and order of the Presiding Officer shall be forwarded to the Director for his review. The Director shall approve, alter and approve, or reject the decision and order of the Presiding Officer. In the event the Director rejects the decision and order of the Presiding Officer, the Director shall forthwith prepare a decision and order to replace the decision and order rejected.

e. A copy of all decisions and orders prepared or approved by the Director shall be served, by certified mail, upon all parties and each order so served shall become effective upon service.

4.7. Temporary relief; when appropriate. a. As part of an initial application for review, or at any time during which an application for review is pending, an applicant may file a written request for temporary relief from any modification or termination of any order, or from any order issued under Section 13, Article 1A, Chapter 22A of the Code.

b. If the application for temporary relief is incorporated in the application for review, the applicant shall incorporate in such application a detailed statement giving reasons why temporary relief is appropriate under the circumstances.

c. If the application for temporary relief is made at any time after the application for review has been filed, the application for temporary relief shall be in the form provided for in Section 1.8 of these rules and shall specify the status of the review proceeding and the reasons why the application for temporary relief is being made. When an application for temporary relief is made after an applica-

tion for review has been filed, a copy thereof shall be served upon all parties to the proceeding.

d. The Presiding Officer may, upon consideration of the request for temporary relief, grant such relief as he deems appropriate: Provided, that no temporary relief shall be granted unless:

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 final decision and order will be favorable to the applicant; and

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

e. Under no circumstances shall temporary relief be granted in the case of a notice issued under Section 13(b), Article 1A, Chapter 22A of the Code.

f. Any temporary relief granted by a Presiding Officer who is not the Director shall be subject to review by the Director.

4.8. Expedition of proceedings. a. As part of an initial application for review, or at any time after the filing of an application for review, party may move the Presiding Officer to expedite the hearing and decision of the case. Such motion shall be in writing and accompanied by supporting documents that establish the party's claim of exigent circumstances warranting expedition.

b. A copy of all such motions for expedition shall be served upon all other parties by the applicant.

c. The Presiding Officer shall promptly review the motion and may advance the matter on his calendar or expedite the proceedings as he deems appropriate.

d. Where expedited proceedings are requested under this Section, periods of time for filing applications, answers or responses, or for holding hearings, as provided elsewhere in these rules, may be waived by agreement of the parties or altered by order of the Presiding Officer.

e. Any motions granted in this section by a Presiding Officer who is not the Director shall be subject to review by the Director.

56-1-5. Rules Applicable to Proceedings Initiated Upon Petition for Declaratory Ruling.

5.1. Scope. a. The rules in this Section govern and are applicable to proceedings initiated pursuant to Section 1, Article 4, Chapter 29A of the Code on petition of any interested person for a declaratory ruling to be issued by the Office of Miners' Health, Safety and Training with respect to the applicability to any person, property or statement of facts of any rule or statute enforceable by the Office of Miners' Health, Safety and Training. In addition to the rules contained in the Section, the general rules of practice before the Department contained in Section 1 and the rules relating to hearings held by the Department contained in Section 3 are also applicable to such proceedings.

5.2. Scope. a. Any interested person may initiate proceedings for a declaratory ruling by the Department with respect to the applicability to any person, property or statement of facts of any rule or statute enforceable by it.

5.3. Initiation of proceedings. a. Proceedings for a declaratory ruling pursuant to Section 1, Article 4, Chapter 29A of the Code shall be initiated by filing a petition for declaratory ruling with the Office of Miners' Health, Safety and Training.

5.4. Answer. a. Any party, other than the Director, desiring to participate in the proceeding in opposition to the petition for declaratory ruling shall file an answer within fifteen (15) days of service of such petition.

5.5. Contents of petition and answer. a. A petition for declaratory ruling and an answer shall comply with applicable general requirements and shall contain:

1. A short plain statement of

(i) such party's position with respect to each issue of law or fact which the party contends is pertinent to the applicability to a person, property or statement of facts of any rule or statute enforceable by the Department; and

(ii) the construction of the rule or statute advanced by such party.

2. A statement of whether the party submitting the document request a public hearing or waives such hearing as provided in Section 3.7 of these rules. Where a pleading

does not include a request for public hearing, a party shall be deemed to have waived such hearing pursuant to Section 3.7 of these rules.

b. Documents may be attached to pleadings as exhibits.

5.6. Proceedings after petition; decision and order.

a. Upon receipt of a petition for declaratory ruling the Director may cause an investigation of the matter to be made as deemed appropriate and may appoint a Presiding Officer for all proceedings relating to such petition. If the Director declines to issue a declaratory ruling in response to such petition, he shall notify all parties in writing.

b. In the event a party has requested a hearing in the petition or an answer, the Presiding Officer shall give notice of and conduct such hearing in accordance with the provisions of Section 3 of these rules. In the event the party has waived a hearing in accordance with the provisions of Section 5.5 of these rules, the Presiding Officer shall promptly consider the pleadings and all documents submitted therewith by the parties.

c. Within sixty (60) days after conclusion of the hearing or after consideration of the pleadings and documents filed therewith in the event a hearing is waived, the Presiding Officer shall issue a written decision and order incorporating therein findings of fact and conclusions of law stating the applicability to any person, property or statement of facts of the rule or statute enforceable by the Department which is the subject of the petition. Such decision and order shall state whether or not such ruling is binding between the Department and the petitioner. Such ruling shall not be binding upon any person other than the petitioner.

d. In proceedings where the Presiding Officer is not the Director, the record in the case and the decision and order of the Presiding Officer shall be forwarded to the Director for his review. The Director shall approve, alter and approve or reject the decision and order of the Presiding Officer. In the event the Director rejects the decision and order of the Presiding Officer, the Director shall forthwith prepare a decision and order to replace the decision and order rejected.

e. A copy of all decisions and orders prepared or approved by the Director shall be served, by certified mail, upon all parties and each order so served shall become effective upon service.