



**RULES GOVERNING THE SAFETY OF THOSE EMPLOYED
IN AND AROUND QUARRIES IN WEST VIRGINIA**

2015 REFERENCE MANUAL



**STATE OF WEST VIRGINIA
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
EUGENE WHITE, DIRECTOR**



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PREFACE

EDITOR'S NOTE: Whenever these rules and regulations refer to "Director of the Department of Energy" or "Director of the Department of Mines," it should be referenced to "Director of the Office of Miner's Health, Safety and Training," effective October 16, 1991.

DISCLAIMER

The Office of Miners' Health, Safety and Training has created this publication to provide you with a convenient compilation of West Virginia mine laws. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Although every attempt was made to insure accuracy, the Office of Miners' Health, Safety and Training makes no guarantees that any of the text contained herein is accurate and up to date. You should consult the official West Virginia Code and the West Virginia Code of State Regulations as well. The Office of Miners' Health, Safety and Training is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

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TABLE OF CONTENTS

TITLE 56	
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING	
SERIES 20	
Rules Governing the Safety of Those Employed in and Around Quarries in West Virginia..	1
 CHAPTER 22A	
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING	
ARTICLE 1	
Administration; Enforcement..	45
ARTICLE 2	
Underground Mines.	52
ARTICLE 3	
Underground Clay Mine.	55
ARTICLE 4	
Open-Pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines.	55
ARTICLE 5	
Board of Appeals.	56
 TITLE 36	
BOARD OF COAL MINE HEALTH AND SAFETY	
SERIES 19	
Written Reports of Accidents.	56
 TITLE 37	
MINE BOARD OF APPEALS	
SERIES 1	
Procedures and Practice before the Board of Appeals.....	58
 TITLE 56	
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING	
SERIES 1	
Procedures and Practice Before the Department of Energy.....	66
SERIES 2	
Safety Provisions for Clearing Crews.	77
SERIES 3	
Safety of Those Employed in and Around Surface Mines.	85
SERIES 8	
Comprehensive Mine Safety Program.	85

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

**SERIES 20
RULES GOVERNING THE SAFETY OF THOSE
EMPLOYED IN AND AROUND QUARRIES IN WEST VIRGINIA**

§56-20-1. General.

- 1.1. Scope. – These rules govern the safety of employees in and around quarries.
- 1.2. Authority. – West Virginia Code § 22A-4-3.
- 1.3. Filing Date. – April 20, 2015
- 1.4. Effective Date. – July 1, 2015
- 1.5. Applicability. – These rules shall extend to all quarry operations. These rules shall not apply to any utility or railroad having facilities in the vicinity of quarry operations unless such utility or railroad is also the operator of such mining operations.
- 1.6. Other law applicable. – The provisions of West Virginia Code, 1931, as amended, §§ 22A-1-3, -4, -5, -7, -14, -15, -16, -17, -18, -19, -20, -22, -23, -31, -36; §§ 22A-2-70, -71, -71a, -79; § 22A-3; § 22A-4; § 22A-5-1 *et seq.*; Title 36 CSR Series 19; Title 37 CSR Series 1; Title 56 CSR Series 1, -2, -8; and Title 56 CSR Series 3.46 and 3.52, are applicable to quarries regulated by the West Virginia Office of Miners' Health, Safety and Training, except where the content and purpose of a specific provision would render its applicability inappropriate to quarries.

§56-20-2. Effect of Rule. These rules 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 22A of the West Virginia Code are applicable to these rules.

§56-20-3. Definitions.

- 3.1. The term "agent" means any person charged with the responsibility for the operations of all or a part of a quarry or the supervision of the miners on a quarry.
- 3.2. The term "approved" means in strict compliance with quarry law or, in the absence of law, accepted by a recognized body or organization whose approval is generally recognized as authoritative on the subject.
- 3.3. The term "barricade" means to obstruct passage of vehicles or equipment and warn or obstruct passage of persons.
- 3.4. The term "barrier" means material objects that separate, keep apart or demarcate, in a conspicuous manner, such as cones, stakes and warning tape, used in conjunction with warning signs.
- 3.5. The term "bench" means:
 - 3.5.a. A ledge, which, in open-pit mines and quarries, forms a single level of operation above which mineral or waste materials are excavated from a contiguous bank or bench face. The mineral or waste is removed in successive layers, each of which is a bench, several of which may be in operation simultaneously in different parts, and at different elevations, in an open-pit mine or quarry.
 - 3.5.b. A working level or step in a cut which is made in several layers.
- 3.6. The term "berm" means a pile or mound of material or equivalent capable of restraining a vehicle.
- 3.7. The term "blast controller" means a firing device for electronic detonator circuits which may have functions (such as programming, communication, circuit diagnostics, etc.) in addition to charging and transmission of the firing command.
- 3.8. The term "blast site" means the area where explosive material is handled during loading of blast holes, including fifty (50) feet in all directions from the perimeter formed by loaded holes.
- 3.9. The term "blasting accessories" means non-explosive devices and materials used in blasting, such as, but not limited to, cap crimpers, tamping bags, blasting machines, blasting galvanometers, and cartridge punches.
- 3.10. The term "blasting agent" means explosive material which meets prescribed criteria for insensitivity to initiation. For storage, the Code of Federal Regulations (C.F.R.) defines a blasting agent as any material or mixture, consisting of fuel and oxidizer intended for blasting, not otherwise defined as an explosive: Provided, That the finished product, as mixed for use or shipment, cannot be detonated by means of a No. 8 test blasting cap (detonator) when unconfined (ATF Regulation). For transportation, the C.F.R. defines Class 1, Division 1.5 (blasting agent) as a substance which has mass explosion hazard, but is so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions in transport and passes all United States Department of Transportation (DOT) tests defining blasting agent, including insensitivity to a No. 8 blasting cap in accordance with the C.F.R.
- 3.11. The term "blasting area" means the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury.
- 3.12. The term "borehole" means a hole drilled in the material to be blasted for the purpose of containing an explosive charge, also called blast hole or drill hole.

3.13. With respect to brake systems:

3.13.a. The term “service brakes” or “service braking system” means the primary brake system used for stopping a vehicle.

3.13.b. The term “emergency braking system” means the system used for stopping a vehicle in the event of any single failure in the service brake system.

3.13.c. The term “parking brakes” means a system to hold a stopped vehicle in a stationary position.

3.14. The term “branch circuit” means any circuit, alternating current or direct current connected to and leading from the main power lines.

3.15. The term “burden” means material in surface mining.

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

3.17. The term “circuit breaker” means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

3.18. The term “competent person” means a person designated by the quarry operator or independent contractor who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees and who has authorization to take prompt corrective measures to eliminate them.

3.19. The term “Department” means the West Virginia Office of Miners’ Health, Safety and Training provided for in Section 1, Article 1 of Chapter 22A of the West Virginia Code.

3.20. The term “(derived) neutral” means a neutral point or connection established by the addition of a “zigzag” or grounding transformer to a normally ungrounded power system.

3.21. The term “detonator” means blasting caps.

3.22. The term “detonating cord” means a flexible cord containing a center core of high explosives to detonate other explosives with which it comes in contact.

3.23. The term “Director” means the Director of the West Virginia Office of Miners’ Health, Safety and Training.

3.24. The term “downline” means the line extending down the borehole used to carry energy to the detonating cap.

3.25. The term “effectively grounded” is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that ground faults which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

3.26. The term “electric blasting caps” means instantaneous electric blasting caps and all types of delay electric blasting caps.

3.27. The term “electrical storm” means an atmospheric disturbance characterized by intense electrical activity producing lightning strikes and strong electric and magnetic fields. Synonymous with a thunderstorm and a lightning storm.

3.28. The term “electrical work” means work consisting primarily of electrical construction, installation, testing, inspection, maintenance, and repair tasks on electrical equipment, apparatus, circuits and/or distribution circuits rated fifty (50) volts and above. Note: Examples not considered electrical work:

3.28.a. Normal operation of electrical equipment; and

3.28.b. Normal operation of controls, switches, disconnect switches or circuit breakers provided that no energized parts or conductors are exposed.

3.29. The term “electronic detonator” means a detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

3.30. The term “emulsion” means an explosive material containing substantial amounts of oxidizer dissolved in water droplets, surrounded by an immiscible fuel or droplets of an immiscible fuel, surrounded by water containing substantial amounts of oxidizer.

3.31. The term “extraneous electricity” means electrical energy, other than actual firing current or the test current from a blasting galvanometer, that is present at a blast site and that could enter an electric blasting circuit. It includes stray current, static electricity, radio frequency (electromagnetic) waves and time varying electric and magnetic fields.

3.32. The term “extreme slope” is any slope greater than a 1.5 (horizontal) to 1 (vertical).

3.33. The term “explosives” means any or all of the following, but is not limited to: water gel slurries, dynamites, permissibles, pellet powder, blasting caps, electric blasting caps, non-electrical delay blasting caps, electronic computer chip blasting caps, cast primer and boosters, detonating cord and detonating cord delay connections.

3.34. The term “firing/blasting device” means a device capable of charging and transmitting a fire command to an electronic, electric or non-electric detonator circuit.

3.35. The term “firing/lead line” means the wires connecting electric or electronic blasting circuit(s) to the electrical power source/blast controller. In cases of non-electrical initiation systems, the line that connects the blasting circuit(s) to the blasting initiating device.

3.36. The term “FOPS” means Falling Object Protection System.

3.37. The term “foreperson” means the person whom the employer or superintendent shall place in charge of the workings of the quarry and of the persons employed thereon.

3.38. The term “grounding conductor” means a conductor used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

3.39. The term “high voltage” means voltages of more than one thousand (1,000) volts.

3.40. The term “highwall” means the unexcavated face of exposed overburden in an opencast quarry or the face or banks on the uphill side of a contour quarry.

3.41. The term “imminent danger” means the existence of any condition or practice at a quarry which could be expected to cause death or serious physical harm before such condition or practice can be abated.

3.42. The term “independent contractor” means any firm, corporation, partnership or individual that contracts to perform services or construction at a quarry, excluding quarry vendors, office equipment suppliers, service or delivery personnel.

3.43. The term “inspector” means mine inspector employed by the West Virginia Office of Miners’ Health, Safety and Training as provided in Chapter 22A, Article 1 of the West Virginia Code.

3.44. The term “Institute of Makers of Explosives (IME)” means a non-profit safety-oriented trade association representing producers of commercial explosive materials in the United States and Canada and dedicated to safety in the manufacture, transportation, storage, handling and use of explosive materials.

3.45. The term “interested persons” includes the operator, members of any quarry safety committee at the quarry affected and other duly authorized representative of the quarry workers and the West Virginia Office of Miners’ Health, Safety and Training.

3.46. The term “lightning arrester” means a protective device for limiting surge voltage from electrical storms on equipment.

3.47. The term “loaded hole” means a borehole containing explosive material(s).

3.48. The term “loading” means placing explosive material in a borehole or against material to be blasted.

3.49. The term “low voltage” means up to and including six hundred sixty (660) volts.

3.50. The term “medium voltage” means voltages from six hundred sixty-one (661) to one thousand (1,000) volts.

3.51. The term “miner” means any individual working in a quarry.

3.52. The term “misfire” means a blast or specific borehole that failed to detonate as planned. Also, the explosive materials that failed to detonate as planned.

3.53. The term “neutral point” means 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 a wye-connected AC power system.

3.54. The term “Notice of Violation” means a notice issued pursuant to the provisions of Section 15, Article 1, Chapter 22A of the West Virginia Code.

3.55. The term “operator” means any firm, corporation, partnership, or individual operating any quarry or part thereof, or engaged in the construction of any facility associated with a quarry, and shall include any independent contractor at a quarry.

3.56. The term “overburden” means material of any nature lying on top of a deposit of a mineral which is to be mined.

3.57. The term “person” means any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

3.58. The term “portable trailing cable” means a flexible cable or cord used for connecting mobile, portable or stationary equipment to a source of electrical energy where permanent wiring is prohibited or is impracticable.

3.59. The term “power center or distribution center” means a combined transformer or distribution unit, complete within a metal enclosure from which one (1) or more low voltage power circuits are taken.

3.60. The term “primer” means 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.

3.61. The term “production operator” means any owner, lessee, or other person who operates, controls or supervises a quarry.

3.62. The term “qualified electrician” will be as follows after the effective date of this rule: “Qualified electrician” means one who, by possession of a recognized degree, certificate, license, or professional standing, or who by extensive knowledge, training and experience, has successfully demonstrated his/her ability to solve or resolve problems relating to electrical work and has passed a test administered by a recognized governing body, such as West Virginia Office of Miners’ Health, Safety and Training, West Virginia State Fire Marshal or the Mine Safety and Health Administration (MSHA). This does not exclude other

recognized governing bodies. Any participating organizations in training and testing must be approved by the Director of the West Virginia Office of Miners' Health, Safety and Training or his authorized representative. "Qualified electricians" already acting in quarry mines prior to the effective date of this rule may continue to act as a qualified electrician: Provided, That the operator has a written record of one (1) year employment documented as an electrician which is kept on file at the quarry and provided to West Virginia Office of Miners' Health, Safety and Training. Electricians that are already acting as qualified electricians before the effective date of this rule and do not have one (1) year experience may be allowed to continue training under a qualified electrician until one (1) year is obtained. In no case after the effective date of this rule will a person start training as an electrician without approval from the West Virginia Office of Miners' Health, Safety and Training. A training plan shall be developed by the quarry operator and approved by the Office of Miners, Health, Safety and Training prior to new electricians being trained.

3.63. The term "quarry" means all areas being surface mined or being underground mined, as well as adjacent areas ancillary to the operations, together with preparation of processing plants, storage areas and haulage ways, roads, shops and trails.

3.64. The term "radio equipment" means an electronic transmitting device which radiates radio frequency waves. The transmitting device may be fixed (stationary) or mobile, and includes car telephones, citizens band radios, AM and FM radio transmitters, television transmitters, radar transmitters and any other wireless transmitting device.

3.65. The term "radio frequency transmissions" means the energy radiated as electromagnetic waves in the radio frequency spectrum.

3.66. The term "ROPS" means Roll Over Protection Structure.

3.67. The term "safety fuse" means 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.

3.68. The term "shot or round" means a group of loaded boreholes fired, or intended to be fired, in a continuous sequence with the application of initiating energy.

3.69. The term "static electricity" means an electric charge at rest on a person or object. It is most often produced by the contact and separation of dissimilar insulating materials.

3.70. The term "stored energy" means the energy that has not been used or dissipated.

3.71. The term "stray current" means a flow of electricity outside an insulated conductor system.

3.72. The term "suitable" means that which fits and has the qualities or qualifications to meet a given purpose, occasion, condition, function or circumstances.

3.73. The term "superintendent" means the person who shall have, on behalf of the operator, immediate supervision of one (1) or more quarries.

3.74. The term "supervisor" means a superintendent, foreperson, or any person specifically designated by the employer to supervise work of employees and who is acting pursuant to such specific designation and instructions.

3.75. The term "working place" means all areas in or about a quarry where persons are working.

3.76. The term "wye-connected" means a power system connection in which one (1) end of each phase windings or transformers or AC 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.

3.77. The term "zigzag transformer (grounding transformer)" means a transformer intended primarily to provide a neutral point for grounding purposes.

§56-20-4. Quarry Foreperson and Competent Person; Daily Inspection of Working Places; Records.

4.1. Pre-shift examination.

4.1.a. Within three (3) hours prior to the beginning of any shift the quarry foreperson or competent person shall visit and carefully examine all active working places of the quarry.

4.1.b. Upon completion of the examination, the foreperson or competent person shall record the results in a book approved by the Director of the West Virginia Office of Miners' Health, Safety and Training at the designated station at the quarry before persons enter the working area of the quarry. Before the beginning of any shift upon which they shall perform supervisory duties, the quarry foreperson or competent person shall review carefully and countersign all books and records of the prior shift reflecting the conditions under their supervision, exclusive of equipment logs, which the operator is required to keep.

4.1.c. The operator shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the quarry and rules applicable thereto. A record of the topic of the weekly safety meetings shall be kept and signed by all people in attendance. This record shall be kept for one (1) year and made available to a representative of the Director upon request.

4.2. On-Shift Examination. The quarry foreperson or competent person shall examine all working places at the quarry under supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. Upon completion of the examination(s), the foreperson or competent

person shall record the results and time(s) in a book approved by the Director. The quarry foreperson or competent person shall also, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book by the quarry foreperson or competent person on the prior shift.

4.3. Records of Examinations. 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 in ink or indelible pencil in a book approved by the Director of the West Virginia Office of Miners' Health, Safety and Training, and kept at the quarry office for a period of one (1) year.

4.4. Dangerous conditions. Should the quarry foreperson or competent person find a place to be in a dangerous condition, he/she 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/she shall also record any dangerous conditions and practices found during his/her examination in a book provided for that purpose. The quarry foreperson shall give prompt attention to the removal of all dangers reported to him/her by his/her assistants or any other person working in the quarry.

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

4.6. Instructions. The quarry foreperson shall see that every person employed to work at such quarry shall, before beginning work therein, be instructed in the particular dangers incident to the work in such quarry. A record of such instructions shall be kept and made available upon request by an authorized representative of the Director.

4.7. Upon the operator's written request and the Director's written approval, a pre-shift inspection of designated areas of operations may be excluded or modified.

§56-20-5. Duty of Quarry Foreperson to Notify Operator When Unable to Comply with Law; Duty of Operator. The quarry foreperson shall notify, in writing, the operator or superintendent of the quarry and the Director of the West Virginia Office of Miners' Health, Safety and Training of his/her 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 quarry foreperson so as to enable him/her to comply with the provisions hereof. Every operator of a quarry shall furnish all supplies necessary for the quarry foreperson to comply with the requirements of this law after being requested to do so in writing by the quarry foreperson.

§56-20-6. Ground Control.

6.1. Loose material removal. Loose hazardous material shall be stripped for a safe distance, except where vegetation is required to support the slope from the top of pit or high walls, 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.

6.2. 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.

6.3. Highwall and burden bank work areas.

6.3.a. The highwall shall be sloped or benched to prevent or minimize the danger of a slide. All overhanging ledges and loose material shall be scaled from the highwall. When scaling of a highwall is necessary to correct conditions, a safe means shall be provided to perform such work.

6.3.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. Any highwall failure that affects the safe working conditions of the quarry shall be reported to the West Virginia Office of Miners' Health, Safety and Training within twenty-four (24) hours of the time of discovery of the failure.

6.3.c. Trees endangering workmen along highwalls shall be removed. Trees that cannot be safely removed shall be barricaded and no work shall be done in the area. Such work shall be completed during daylight hours.

6.3.d. Burden banks shall be placed an adequate distance from the pit to prevent any material from rolling back and endangering the works. Burden shall be kept free of bodies of water which would be hazardous in active work areas. Burden 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.

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

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

6.4. Scaling and Support. Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry.

6.5. Scaling tools. Where manual scaling is performed, a scaling bar shall be provided. This bar shall be of a length and design that will allow the removal of loose material without exposing the person performing the work to injury.

6.6. Rock fixtures.

6.6.a. When rock bolts and accessories addressed in the American Society for Testing and Materials (ASTM) F432-83, "Standard Specification for Roof and Rock Bolts and Accessories," are used for ground support, the mine operator shall:

6.6.a.1. Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432-83; and

6.6.a.2. Make this certification available to an authorized representative of the Director.

6.6.b. Fixtures and accessories not addressed in ASTM F432-83 may be used for ground support provided they:

6.6.b.1. Have been successful in supporting the ground in an area with similar strata, opening dimensions and ground stresses in any mine; or

6.6.b.2. Have been tested and shown to be effective in supporting ground in an area of the affected mine which has similar strata, opening dimensions, and ground stresses as the area where the fixtures are expected to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

6.6.c. Bearing plates shall be used with fixtures when necessary for effective ground support.

6.6.d. The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used. When separate finishing bits are used, they shall be distinguishable from other bits.

6.6.e. Damaged or deteriorated cartridges of grouting material shall not be used.

6.6.f. When rock bolts tensioned by torqueing are used as a means of ground support, selected tension level shall be:

6.6.f.1. At least fifty percent (50%) of either the yield point of the bolt or anchorage capacity of the rock, whichever is less; and

6.6.f.2. No greater than the yield point of the bolt or anchorage capacity of the rock.

6.6.f.3. The torque of the first bolt, every tenth bolt, and the last bolt installed in each work area during the shift shall be accurately determined immediately after installation. If the torque of any fixture tested does not fall within the installation torque range, corrective action shall be taken.

6.6.g. When grouted fixtures can be tested by applying torque, the first fixture installed in each work place shall be tested to withstand one hundred fifty (150) foot-pounds of torque. Should it rotate in the hole, a second fixture shall be tested in the same manner. If the second fixture also turns, corrective action shall be taken.

6.6.h. When other tensioned and non-tensioned fixtures are used, test methods shall be established and used to verify their effectiveness.

6.6.i. The mine operator shall certify that tests were conducted and make the certification available to an authorized representative of the Director.

6.7. Ground support use. Ground support shall be used where ground conditions, or mining experience in similar ground conditions in the mine, indicate that it is necessary. When ground support is necessary, the support system shall be designed, installed, and maintained to control the ground in places where persons work or travel in performing their assigned tasks. Damaged, loosened, or dislodged timber used for ground support which creates a hazard to persons shall be repaired or replaced prior to any work or travel in the affected area.

6.8. Examinations. Should a slide occur, a foreperson 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.

6.9. Repairs in excavation areas.

6.9.a. Special safety precautions shall be taken when persons are required to perform repair work between immobilized equipment and within a safe distance from the highwall or burden bank where such equipment may hinder escape from falls or slides. A competent person shall be designated to observe the highwall or burden bank. When equipment is mobile, it shall be moved to a safe location away from dangerous banks or highwalls.

6.9.b. Persons shall not perform maintenance work between machinery, equipment, and the face or ribs unless the area has been tested and, when necessary, secured. When equipment is mobile, it shall be moved to a safe location.

6.10. Tree removal. When miners are in the area, suitable warning shall be given before equipment shoves over or uproots trees, and workers shall be removed from the immediate vicinity.

6.11. Night work. When quarrying is performed at night, the pits, highwalls, and dump areas in the vicinity of the work shall be adequately illuminated.

6.12. Dump areas.

6.12.a. Safety berms shall be provided at the edge of all fill areas to prevent over-travel or overturning. The berm will consist of material end dumped and/or pushed by the fill dozer to create an adequate berm. The minimum height of the berm will be axle height of the largest rubber tire equipment working on the fill. Safety berms shall not be damaged by, or used as a stop block, by haulage equipment.

6.12.b. Should the outer slope of the fill become steeper than the safe angle of repose, short-dumping procedures shall be initiated. Equipment operators and truck drivers operating on the fill will be informed of the steep slope condition and will be required to dump a minimum of one (1) truck length from the edge of the fill. Short dumping shall continue until a safe angle of repose is established.

6.12.c. In the event tension cracks appear near the outer edge of the fill, short dumping will be initiated. Equipment operators and truck drivers working on the fill will be informed of the tension cracks and will be required to dump a minimum of one (1) truck length from the tension cracks.

6.12.d. In the event of tension cracks developing in a fill, the following procedures shall be initiated:

6.12.d.1. The dozer shall begin a cut a safe distance back from tension crack. The cut will extend forward to the edge of the fill.

6.12.d.2. The dozer operator will take special precautions to prevent over-travel at the edge of the fill. This procedure will be utilized until the tension crack is removed.

6.12.d.3. Material will be dumped at the back edge of the cut and pushed in place by the dozer to reestablish the safe working elevation. Should additional tension cracks occur, these procedures will be repeated.

6.12.e. The surface of the fill shall be graded/sloped to prevent water from impounding near the edge of the fill.

6.13. Ground Control Plan. A copy of the current adopted Ground Control Plan shall be posted at the mine and a copy given to the State Mine Inspector.

§56-20-7. Drilling.

7.1. Inspection. All drilling equipment shall be provided with restraining devices installed properly to prohibit the free fall of drill steels which may break or become unthreaded at the point of the adaptor.

7.2. Horizontal drill.

7.2.a. When horizontal drills are used, the operator shall not leave the controls while the drill stems are in operation.

7.2.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.

7.2.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.

7.3. Vertical drilling.

7.3.a. When vertical drilling operations are being performed, the drill machine shall be continuously attended.

7.3.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.

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

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

7.3.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.

7.3.f. Threads on all drill steels and related components shall be maintained in a safe working condition.

7.4. Drilling position.

7.4.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.

7.4.b. Miners shall not hand grasp the drill steel while collaring holes or place their hands on the chuck or centralizer while drilling.

7.4.c. Miners 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.

7.4.d. Drills shall not be positioned near the edge of the bench where safe egress from the operator's cab cannot be maintained.

7.4.e. When drilling near a highwall, the drill shall be positioned so the operator's cab is on the side of the drill away from the highwall. If this cannot be accomplished due to extenuating circumstances, a spotter shall be provided.

7.5. Movement of drills.

7.5.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.

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

7.5.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.

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

§56-20-8. Explosives and Blasting.

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

8.1.a. Possess two (2) portable fire extinguishers, either 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 and one-half (2-1/2) gallons of foam-producing liquid and enough expellant to supply foam. Only fire extinguishers approved by the Underwriters Laboratories (UL), carrying appropriate labels as to type and purpose, shall be used.

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

8.1.c. Chassis, engine, pan and bottom of vehicle body shall be reasonably clean and free of oil and grease. Cargo bins shall be cleaned as often as necessary to prevent the accumulation of ammonium nitrate or emulsion on or atop the bins.

8.1.d. Fuel tanks and lines shall have no leaks.

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

8.1.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 non-sparking material.

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

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

8.1.i. Handrails or fall protection devices shall be provided when persons are required to work atop the cargo bin of the bulk explosives truck.

8.1.j. Proper maintenance and examinations shall be performed to prevent overheating of the emulsion pump and a record of the examinations shall be kept at the quarry for one (1) year and made available to a representative of the Director upon request.

8.2. Transportation of explosives. – Precautions.

8.2.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. Explosives and/or detonators shall not be transported in the cab of the vehicle.

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

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

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

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

8.2.f. Vehicles containing explosives and/or detonators shall not be left unattended unless the vehicle and all compartments containing explosives and/or detonators are properly locked to prevent unauthorized access.

8.2.g. Safe roads shall be maintained for access and exit to all blast areas where boreholes are loaded or being prepared to be loaded.

8.3. General requirements. – Explosives.

8.3.a. The West Virginia Department of Environmental Protection shall be responsible for the examination and certification of persons engaging in or directly responsible for blasting or use of explosives in quarrying operations.

8.3.b. After the effective date of the certified blasters rules, all handling and transporting of explosives shall be under the direct supervision of a certified blaster (only applicable to a surface quarry).

8.3.c. The transportation, storage, handling and use of explosive materials and blasting accessories shall be in accordance with the current Institute of Makers of Explosives Warnings and Instructions. A copy of the current Institute of Makers of Explosives Warnings and Instructions shall be available to miners upon request. All persons involved in the blasting procedure shall be properly trained and familiar with these Warnings and Instructions and a record kept of this training for one (1) year and made available to a representative of the Director upon request.

8.3.d. Open fires and flames are prohibited within fifty (50) feet of the area where explosives are being stored, handled or used.

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

8.3.f. During the approach and progress of an electrical storm:

8.3.f.1. Surface blasting operations shall be suspended and persons withdrawn from the blast area or to a safe location.

8.3.f.1.A. When drills are located on a bench with loaded holes, or holes being loaded, masts shall be lowered upon the approach of an electrical storm when practical.

8.3.f.2. Underground electrical blasting operations that are capable of being initiated by lightning shall be suspended and all persons withdrawn from the blast area or to a safe location.

8.3.g. All runways, chutes and conveyors used for unloading of explosives shall have no exposed sparking metal parts.

8.3.h. Explosives and detonators shall be kept at a safe location.

8.3.i. Driving vehicles or dragging boxes over firing lines, detonator wires, explosives, blasting agents, and detonators shall be prohibited. Traveling over loaded holes shall be prohibited.

8.3.j. Previously frozen explosives of nitroglycerin base shall not be used. Deteriorated or damaged explosives and detonators shall be destroyed by an authorized representative of the manufacturing company.

8.3.k. Explosives and/or detonators shall not be transported in a bucket or a dragline or like equipment.

8.3.l. Defective or damaged blasting equipment or accessories shall not be used.

8.3.m. No shots shall be fired in any place where gas is detected with an air quality testing device.

8.4. Shooting preparation.

8.4.a. Primers shall not be made up until ready to be inserted in the hole.

8.4.b. Two-way radio equipment shall be turned off prior to the handling and use of electric detonators for the proposed shot. This rule does not apply to radios operating beyond the distances shown on Table 1 found at the end of this rule. Adequate warning signs shall be located on all travel roads at a distance of not less than one hundred (100) feet from the minimum transmitting distance. When using electronic detonators, the detonators shall be protected from electromagnetic, radio frequency transmissions, or other electrical interference sources in accordance with the manufacturer's recommendations.

8.4.c. Only equipment necessary for preparing and loading holes shall be permitted to work within fifty (50) feet of loaded holes or holes being loaded. This distance of fifty (50) feet shall include the entire column of the loaded hole when equipment is excavating on the same bench level as loaded holes. In cases of emergency, in which the equipment indicated above has malfunctioned and cannot be removed from the area, the blaster and foreperson shall direct the use of maintenance equipment if required to safely repair and/or remove the disabled equipment from the area. Adequate precautions shall be taken to prevent extraneous electricity from entering an electrical blasting circuit. Electrically-powered equipment and trailing cables shall be prohibited from being within one hundred (100) feet of loaded holes or holes being loaded. When a potential source of extraneous electricity is present in the general area and electrical detonators are to be used, a stray current test shall be made on the bench prior to commencing loading holes; if current is detected, the source of the extraneous electricity shall be neutralized before loading may begin.

8.4.d. Holes shall not be drilled if there is danger of intersecting a loaded or a misfired hole. When drill(s) are being operated on a bench being loaded, a minimum of one (1) hole around the perimeter of the drill shall remain unprimed and unloaded.

8.4.e. Only wooden or other approved non-sparking implements shall be used to punch holes in an explosive cartridge.

8.4.f. Tamping poles shall be blunt and squared at the end and made of wood or other, non-sparking, approved material.

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

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

8.4.i. Misfires shall be handled only by or under the direction of a certified blaster and foreperson.

8.4.j. In order for the blaster to maintain control of the shot, up to the point of detonation, no type of safety fuse detonators shall be used.

8.4.k. No detonators, detonating cord, igniter cord, or any explosives shall be used if they have been water soaked.

8.4.l. Electric blasting caps shall be fired with an approved blasting device.

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

8.4.n. Ample warning shall be given by an audible warning device before blasts are fired. All persons shall be removed from the blasting area.

8.4.o. Detonating caps taken into a pit prior to being used shall be kept in an approved suitable container.

8.4.p. 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.

8.4.q. When loading beneath highwalls, the highwall shall be carefully inspected by the blaster in charge before beginning the loading process. Persons shall not load boreholes in areas where the highwall is unstable.

8.4.r. Boreholes shall not be located near the outer edge of highwalls/benches where such location could create a danger of falling over the highwall by persons loading boreholes. Boreholes located dangerously close to the outer edge of the highwall/bench shall not be loaded. Persons loading boreholes shall not work within six (6) feet of the outer edge of the highwall/bench unless adequate fall protection is provided.

8.5. Firing/lead lines.

8.5.a. Firing/lead lines 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.

8.5.b. Firing/lead lines shall be kept away from power wires and all other sources of electric current.

8.5.c. The firing/lead lines shall be of sufficient length to assure the safe location of persons participating in the blasting.

8.5.d. When using electric caps, the firing/lead line shall be kept shunted until connected to the approved blasting device.

8.5.e. Except when being tested with a blasting galvanometer, or other approved device, electric detonators shall be kept shunted until they are connected to the firing/lead line or wired into a blasting round.

8.5.f. A wired round shall be kept shunted until connected to the firing/lead line when using electric caps.

8.5.g. The blast area shall be cleared of personnel, vehicles, and equipment prior to connecting the firing/lead line to the firing device or blast controller or, in the case of remote-controlled detonation systems, prior to arming the firing device.

8.5.h. Remote control detonation systems shall be used in accordance with manufacturer's instructions. A copy of these instructions shall be available to miners upon request. All persons involved with the blasting procedure shall be properly trained and familiar with the manufacturer's instructions. A record of such training shall be kept for one (1) year and made available to a representative of the Director upon request.

8.5.i. When using electric or electronic detonators, adequate precautions shall be provided to prevent accidental electrical shock to the person(s) detonating the blast.

8.6. Blasting.

8.6.a. Any area in which holes are being loaded shall be guarded by danger signs located fifty (50) feet beyond the perimeter of loaded holes or by a person physically present to prevent unauthorized entry.

8.6.b. The blaster shall make sure that all persons are in a safe place before firing a shot. Additional personnel and radio communication, if needed to assure security of the blast area, shall be utilized. Radio silence shall be observed by all persons except those involved in the blasting procedure.

8.6.b.1. *For surface areas*, an approved audible warning device shall give ample warning before blasts are fired. The pre-blast warning signal shall be sounded three (3) minutes prior to the detonation of the blast and this signal shall consist of three short warning signals with five (5) second intervals between these signals. The post-blast signal that the blast area is clear shall consist of a twenty (20) second in duration signal. The warning shall be audible for a distance of at least one-half (½) mile.

8.6.b.2. *For underground areas*, ample warning shall be given to allow all persons to be evacuated.

8.6.c. The blaster shall assure that all components are properly connected to assure proper detonation of the blast.

8.6.d. All holes or series of holes containing detonators shall be fired immediately upon completion of loading. The blaster shall notify the supervisor in charge of workers in the area before commencing to connect loaded holes. Once beginning to connect loaded holes, this shall proceed without delay until all holes are connected. All persons within a three hundred (300) foot radius of the blast area shall be removed by the time all holes are connected and work shall not commence again until the holes have been fired. However, after connecting the loaded holes, if for any reason the holes cannot be fired immediately, work shall not commence again until the holes have been fired or all holes disconnected.

8.6.e. *For Surface only*. The firing of holes shall be conducted during daylight hours.

8.6.f. Every reasonable effort shall be made to fire loaded holes on the shift they are loaded. However, if loaded holes must be left overnight, the following safeguards shall be utilized:

8.6.f.1. As a practice, connected holes shall not be left overnight unless emergency conditions exist (example: electrical storms) that do not allow the shot to be detonated. No persons shall be permitted within three hundred (300) feet of the blast area where connected loaded holes could not be detonated as planned.

8.6.f.2. The blaster, in conjunction with the foreperson, shall properly designate the area affected by unfired holes (connected/unconnected). Barriers (cones and flagging) and signs, or a person physically present, shall prevent personnel and/or equipment from entering the affected area.

8.6.f.3. The location of the unfired loaded holes shall be documented in the pre-shift/on-shift examination book.

8.6.f.4. All personnel on affected shifts shall know the route in which to travel to a safe location in the event unforeseen circumstances (electrical storms, unstable highwalls, etc.) arise while working in the area of unfired loaded holes.

8.6.g. When loading boreholes containing water, or if loaded holes are to be left for an extended period of time, sufficient slack in downlines shall be provided to prevent stretching and possible damage to downlines due to settling of material in the borehole.

8.6.h. When drilling and blasting in areas where underlying coal seam(s) are burning, or suspected of burning, a plan outlining safeguards to be provided for the protection of workers shall be submitted for approval to the West Virginia Office of Miners' Health, Safety and Training. Such drilling and blasting shall not commence until approval is granted.

8.7. Post firing.

8.7.a. The firing lines/lead lines shall be disconnected from the electrical power source immediately after each blast when electric or electronic detonators are used.

8.7.b. No persons shall return to the area where blasting has been performed until the dust, smoke and fumes have cleared.

8.7.c. After a blast:

8.7.c.1. *Surface*—the blaster shall examine the area and pronounce it safe before others enter the blast area.

8.7.c.2. *Underground*—a competent person shall examine the area and pronounce it safe before others enter the blast area.

8.8. Misfires.

8.8.a. When a misfire is detected, no persons shall return to the misfired holes for at least fifteen (15) minutes. Misfires shall be handled only by:

8.8.a.1. *Surface*—a certified blaster in the presence of the foreperson.

8.8.a.2. *Underground*—the foreperson and/or competent person.

8.8.b. When a shot has misfired, extra precaution shall be taken in the handling of the misfire. If a misfire is detected:

8.8.b.1. *Surface*—the blaster and the foreperson in charge shall determine the necessary action to be taken to safely correct the situation.

8.8.b.2. *Underground*—a competent person shall determine the necessary action to be taken to safely correct the situation.

8.8.c. When a misfire/unfired explosive exists, or is suspected to exist, all persons working in the area shall be notified and given instructions on proper handling of possible undetonated explosives. The location of these holes shall be recorded in the pre-shift/on-shift book.

8.8.d. Immediately after firing a misfired shot, the firing/lead lines shall be disconnected from the firing device or blast controller when electric or electronic detonators are used. When using electric detonators, the ends of the firing/lead lines shall also be shunted.

8.8.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.

8.9. Storage of explosives.

8.9.a. After loading boreholes, all unused explosives shall be returned to the proper explosive storage magazine.

8.9.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 inch (1/4") steel plate lined with a two inch (2") 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.

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

8.9.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.

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

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

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

8.9.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 current 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.

8.10. Storage of underground explosives in main facilities.

8.10.a. Main facilities used to store explosive material underground shall be located:

8.10.a.1. In stable or supported ground;

8.10.a.2. So that a fire or explosion in the storage facilities will not prevent escape from the mine or cause detonation of the contents of another storage facility;

8.10.a.3. Out of the line of blasts, and protected from vehicular traffic, except that accessing the facility;

8.10.a.4. At least two hundred (200) feet from work places or shafts;

8.10.a.5. At least fifty (50) feet from electric substations;

8.10.a.6. A safe distance from trolley wires; and

8.10.a.7. At least twenty-five (25) feet from detonator storage facilities.

8.10.b. Main facilities used to store explosive material underground shall be:

8.10.b.1. Posted with warning signs that indicate the contents and are visible from any approach;

8.10.b.2. Used exclusively for the storage of explosive material and necessary equipment associated with explosive material storage and delivery;

8.10.b.2.A. Portions of the facility used for the storage of explosives shall only contain non-sparking material or equipment.

8.10.b.2.B. The blasting agent portion of the facility may be used for the storage of other necessary equipment.

8.10.b.3. Kept clean, suitably dry, and orderly;

8.10.b.4. Provided with unobstructed ventilation openings;

8.10.b.5. Kept securely locked unless all access to the mine is either locked or attended; and

8.10.b.6. Unlighted or lighted only with devices that do not create a fire or explosion hazard and which are specifically designed for use in magazines.

8.10.b.7. Electrical switches and outlets shall be located outside the facility.

8.11. Auxiliary facilities.

8.11.a. Auxiliary facilities used to store explosive material near work places shall be wooden, box-type containers equipped with covers or doors, or facilities constructed or mined-out to provide equivalent impact resistance and confinement.

8.11.b. The auxiliary facilities shall be:

8.11.b.1. Constructed of non-sparking material on the inside when used for the storage of explosives;

8.11.b.2. Kept clean, suitably dry, and orderly;

8.11.b.3. Kept in repair;

8.11.b.4. Located out of the line of blasts so they will not be subjected to damaging shock or flyrock;

8.11.b.5. Identified with warning signs or coded to indicate the contents with markings visible from any approach;

8.11.b.6. Located at least fifteen (15) feet from all haulage ways and electrical equipment, or placed entirely within a mined-out recess in the rib used exclusively for explosive material;

8.11.b.7. Filled with no more than a one (1) week supply of explosive material;

8.11.b.8. Separated by at least twenty-five (25) feet from other facilities used to store detonators; and

8.11.b.9. Kept securely locked unless all access to the mine is either locked or attended.

8.12. Bulk delivery vehicles.

8.12.a. No welding or cutting shall be performed on a bulk delivery vehicle until the vehicle has been washed down and all explosive material has been removed. Before welding or cutting on a hollow shaft, the shaft shall be thoroughly cleaned inside and out and vented with a minimum one-half (1/2) inch diameter opening to allow for sufficient ventilation.

§56-20-9. Underground Workings.

9.1. Mine workings.

9.1.a. The operator shall refrain from quarrying within five hundred (500) feet of any active or abandoned underground quarry or mine in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the Director shall permit an operator to quarry near, through or partially through an abandoned underground mine/quarry or closer to an active underground mine/quarry if:

9.1.a.1. The nature, timing and sequencing of the approximate coincidence of specific quarry activities with specific underground mine/quarry activities are coordinated jointly by the operators involved and approved by the Director of the West Virginia Office of Miners' Health, Safety and Training, and

9.1.a.2. 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 of an underground quarry or mine which does occur shall be sealed.

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

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

9.1.d. All cut-throughs into underground mine/quarry workings shall be closed immediately.

9.1.e. Access to unattended mine openings shall be restricted by gates or doors, or the openings shall be fenced and posted.

9.1.f. Upon abandonment of a mine, the owner or operator shall effectively close or fence off all surface openings down which persons could fall or through which persons could fall or through which persons could enter. Upon or near all such safeguards, trespass warnings and appropriate danger notices shall be posted.

9.2. Ventilation.

9.2.a. Ventilation plan. A plan of the mine ventilation system shall be set out by the operator in written form. Revisions of the system shall be noted and updated at least annually. The ventilation plan or revisions thereto shall be submitted to the Director of the West Virginia Office Miners' Health, Safety and Training or his authorized representative for review and comments upon his written request. The plan shall, where applicable, contain the following:

9.2.a.1. The mine name;

9.2.a.2. The current mine map or schematic or series of mine maps or schematics of an appropriate scale, not greater than five hundred (500) feet to the inch, showing:

9.2.a.2.A. Direction and quantity of principal air flows;

9.2.a.2.B. Locations of seals used to isolate abandoned workings;

9.2.a.2.C. Locations of areas withdrawn from the ventilation system;

9.2.a.2.D. Locations of all main, booster and auxiliary fans;

9.2.a.2.E. Locations of air regulators and stoppings and ventilation doors;

9.2.a.2.F. Locations of overcasts, undercasts and other airway crossover devices;

9.2.a.2.G. Locations of known oil or gas wells;

9.2.a.2.H. Locations of known underground mine openings adjacent to the mine;

9.2.a.2.I. Locations of permanent underground shops, diesel fuel storage depots, oil fuel storage depots, hoist rooms, compressors, battery charging stations, electrical distribution networks and explosive storage facilities. Permanent facilities are those intended to exist for one (1) year or more;

9.2.a.2.J. Significant changes in the ventilation system projected for one (1) year;

9.2.a.2.K. Mine fan data for all active main and booster fans including manufacturer's name, type, size, fan speed, blade setting, approximate pressure at present operating point, and motor brake horsepower rating;

9.2.a.2.L. Diagrams, descriptions or sketches showing how ventilation is accomplished in each typical type of working place including the approximate quantity of air provided, and typical size and type of auxiliary fans used;

9.2.a.2.M. The number and type of internal combustion engine units used underground, including make and model of unit, type of engine, make and model of engine, brake horsepower rating of engine, and approval number;

9.2.a.2.N. Unventilated areas. Unventilated areas shall be sealed or barricaded and posted against entry;

9.2.a.2.O. Auxiliary fan systems. When auxiliary fan systems are used, such systems shall minimize recirculation and be maintained to provide ventilation air that effectively sweeps the working places;

9.2.a.2.P. Construction and maintenance of ventilation doors;

9.2.a.2.Q. Ventilation doors shall be:

9.2.a.2.Q.1. Substantially constructed;

9.2.a.2.Q.2. Covered with fire-retardant material, if constructed of wood;

- 9.2.a.2.Q.3. Maintained in good condition;
- 9.2.a.2.Q.4. Self-closing, if manually operated; and
- 9.2.a.2.Q.5. Equipped with audible or visual warning devices, if mechanically operated.

9.2.a.2.R. Opening and closing of ventilation doors. When ventilation control doors are opened as a part of the normal mining cycle, they shall be closed as soon as possible to re-establish normal ventilation to working places.

9.2.a.2.S. Seals. Seals shall be provided with a means for checking the quality of air behind the seal and a means to prevent a water head from developing unless the seal is designed to impound water.

§56-20-10. Escapeways and Refuges.

10.1. Escapeways. – Underground Only.

10.1.a. Every mine shall have two (2) or more separate, properly maintained escapeways to the surface. A method of refuge shall be provided while a second opening to the surface is being developed. A second escapeway is recommended, but not required, during the exploration or development of an ore body.

10.1.b. In addition to separate escapeways, a method of refuge shall be provided for every employee who cannot reach the surface from his working place through at least two (2) separate escapeways within a time limit of one (1) hour when using the normal exit method. These refuges must be positioned so that the employee can reach one of them within thirty (30) minutes from the time he/she leaves his/her workplace.

10.1.c. Communication with refuge chambers. Telephone or other voice communication shall be provided between the surface and refuge chambers and such systems shall be independent of the mine power supply.

10.1.d. Escapeways.

10.1.d.1. Escape routes shall be:

10.1.d.1.A. Inspected at regular intervals and maintained in a safe, travelable condition;

10.1.d.1.B. Marked with conspicuous and easily read direction signs that clearly indicate the ways of escape.

10.1.e. Escape and evacuation plans. A specific escape and evacuation plan and revisions thereof suitable to the conditions and mining system of the mine and showing assigned responsibilities of all key personnel in the event of an emergency shall be developed by the operator and set out in written form. Within forty-five (45) calendar days after promulgation of this rule, a copy of the plan and revisions thereof shall be available to an authorized representative of the Director. Also, copies of the plan and revisions thereof shall be posted at locations convenient to all persons on the surface and underground. Such a plan shall be updated as necessary and reviewed with employees.

10.1.e.1. The plan shall include:

10.1.e.1.A. Mine maps or diagrams showing directions of principal air flow, location of escape routes and locations of existing telephones, primary fans, primary fan controls, fire doors, ventilation doors, and refuge chambers. Appropriate portions of such maps or diagrams shall be posted at all shaft stations and in underground shops, lunchrooms, and elsewhere in working areas where persons congregate;

10.1.e.1.B. Procedures to show how the miners will be notified of emergency;

10.1.e.1.C. An escape plan for each working area in the mine to include instructions showing how each working area should be evacuated. Each such plan shall be posted at appropriate shaft stations and elsewhere in working areas where persons congregate;

10.1.e.1.D. A fire fighting plan;

10.1.e.1.E. Surface procedure to follow in an emergency, including the notification of proper authorities, preparing rescue equipment, and other equipment which may be used in rescue and recovery operations; and

10.1.e.1.F. A statement of the availability of emergency communication and transportation facilities, emergency power and ventilation and location of rescue personnel and equipment.

10.1.f. Check-in, check-out system.

10.1.f.1. Each operator of an underground mine shall establish a check-in and check-out system which shall provide an accurate record of persons in the mine. These records shall be kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazards. Every person underground shall carry a positive means of being identified.

10.1.g. Provisions and maintenance of self-rescue devices.

10.1.g.1. A one-hour self-rescue device approved by MSHA and the National Institute for Occupational Safety and Health (NIOSH) shall be made available by the operator to all personnel underground. Each operator shall maintain self-rescue devices in good condition.

10.1.h. Location of self-rescue devices.

10.1.h.1. Self-rescue devices shall be worn or carried by all persons underground except:

10.1.h.1.A. Where the wearing or carrying of self-rescue devices is hazardous to a person, such self-rescue devices shall be located at a distance no greater than twenty-five (25) feet from such person.

10.1.h.1.B. Where a person works on or around mobile equipment, self-rescue devices may be placed in a readily accessible location on such equipment.

10.1.i. Two-way communication equipment for underground operations.

10.1.i.1. Telephones or other two-way communication equipment with instructions for their use shall be provided for communication from underground operations to the surface.

§56-20-11. Haulage.

11.1. Roads. – Traffic directions and warning signs.

11.1.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.

11.1.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.

11.1.c. Traffic rules, signals, and warning signs shall be standardized at each quarry.

11.1.d. Where side or overhead clearances on haulage roads or loading or dumping locations are hazardous to quarry workers, such areas shall be conspicuously marked and warning devices shall be installed when necessary to insure the safety of the workers.

11.1.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.

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

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

11.1.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.)

11.1.i. All signs and marking shall be displayed and utilized so as to be effective as possible.

11.1.j. 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.)

11.2. Haulage Roads. – Construction and maintenance.

11.2.a. Haulage roads shall be located an adequate distance from highwalls/benches and burden banks to minimize the danger of falling material onto personnel and equipment.

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

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

11.2.d. Berms or guards shall be provided on elevated roadways.

11.2.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.

11.2.f. Haulage roads shall be constructed of sufficient width to permit the driver to maneuver his/her vehicle to avoid striking unexpected obstacles on the roadway where reclamation regulations permit.

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

11.2.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 material or supplies, shall be of sufficient width and be maintained in good condition.

11.2.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.

11.2.j. When required by the Director or his authorized representative, approved runaway roads or suitable equivalent shall be provided on all haulage roads on which material is first hauled from such quarry.

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

11.3. Haulage equipment.—Construction and maintenance.

11.3.a. Haulage trucks shall not be operated with dirty windshields, cracked, dirty, or broken rearview mirrors.

11.3.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.

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

11.3.d. Where required by the Director, trucks used for haulage of materials, persons or supplies shall be equipped with two-way communication instruments.

11.3.e. All haulage vehicles placed into service shall be equipped with an approved supplemental emergency braking system.

11.4. Haulage equipment. – Operation.

11.4.a. Haulage truck operators shall make sure his/her truck path is unobstructed, especially when starting or moving the trucks forward or backward.

11.4.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.

11.4.c. Vehicles shall follow at a safe distance. Passing shall be limited to areas of adequate clearance and visibility.

11.4.d. No persons shall work or pass under the buckets or booms of equipment.

11.4.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.

11.4.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.

11.4.g. Haulage trucks shall maintain a safe distance between the trucks 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.

11.4.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.

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

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

11.5. Parked vehicles.

11.5.a. Lights, flares, or other approved warning devices shall be adequately located when parked equipment creates a hazard to vehicular traffic.

11.5.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.

11.6. Employee parking and mantrips.

11.6.a. On all active quarries, a designated area shall be provided for parking of employees' vehicles. All employees shall park their personal vehicles at the designated parking area. Sufficient illumination shall be provided at all parking areas and parking areas shall be maintained in good condition.

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

11.6.b.1. All mantrips shall have, at a minimum, a "ten (10) unit" first aid kit, two-way communication, audible warning devices, and be equipped with strobe lights and/or whip antenna with florescent flag or equivalent.

11.7. Loading and hauling large rocks. Large rocks shall be broken before loading if they could endanger persons or affect the stability of mobile equipment. Mobile equipment used for haulage of mined material shall be loaded to minimize spillage where a hazard to persons could be created.

11.8. Loading, hauling and unloading of equipment or supplies. Equipment and supplies shall be loaded, transported, and unloaded in a manner which does not create a hazard to persons from falling or shifting equipment or supplies.

11.9. Supplies, materials and tools on mantrips. Supplies, materials, and tools, other than small items that can be carried by hand, shall not be transported underground with persons in mantrips.

11.10. Travelways. Safe means of access shall be provided and maintained to all working places.

§56-20-12. General Provisions.

12.1. 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.

12.2. Alcohol and drugs. Persons under the influence of alcohol or drugs shall not be permitted on a quarry or attendant facility. An authorized representative of the Director may cause any miner to be withdrawn from the quarry and request the quarry operator to search and/or test the miner for alcohol, drugs or drug paraphernalia.

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

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

12.4.a. Within fifty (50) feet of the area where explosives are being stored, handled, or used;

12.4.b. Within one hundred fifty (150) feet of flammable liquid storage areas;

12.4.c. Within one hundred fifty (150) feet of liquefied and non-liquefied gas storage areas;

12.4.d. Within one hundred fifty (150) feet of the proximity of auger holes; and

12.4.e. Within one hundred fifty (150) feet of highwall miner openings.

12.5. Compressed air or gases.

12.5.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.

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

12.5.c. Except where automatic shutoff valves are used, safety chains or other suitable locking devices shall be used at connections to machines of high-pressure hose lines of three-fourths (3/4) inch inside diameter or larger, and between high-pressure hose lines of three-fourths (3/4) inch inside diameter or larger, where a connection failure would create a hazard.

12.5.d. At no time shall compressed air be directed toward a person. When compressed air is used, all necessary precautions shall be taken to protect persons from injury.

12.6. 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/her safety unless he/she can communicate with others, can be heard, or can be seen.

12.7. Stockpiles. Material shall not be stockpiled at or near exposed or buried gas lines.

12.8. 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/her to a hazard.

12.9. Toilet facilities. Each operator of a quarry shall provide at least one sanitary toilet in a location convenient to each surface work site. All sanitary toilets shall be regularly maintained in a clean and sanitary condition. Where ten (10) or more employees use such facilities, sufficient toilets shall be furnished to provide approximately one (1) sanitary toilet for each ten (10) employees. Separate toilet facilities shall be provided for each sex except where toilet rooms will be occupied by no more than one (1) person at a time and can be locked from the inside.

12.10. Drinking water. An adequate supply of potable water shall be provided for drinking purposes in each worksite of the quarry. Water transported to all work sites shall be carried, stored and otherwise protected in sanitary containers.

12.11. Persons entering a quarry. Only authorized persons shall be permitted to enter a quarry. The quarry operator shall develop a plan to account for those authorized persons while at the quarry. The plan shall be available to a representative of the Director upon request.

§56-20-13. Electricity.

13.1. Performance of electrical work.

13.1.a. No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified electrician or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified electrician. Disconnecting devices shall be locked out and suitably tagged by the person(s) 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(s). They shall be removed only by the person(s) who installed them or if such person(s) is unavailable, by a qualified person authorized by the operator or his/her 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 and date of the person(s) who installed the tag. Keys used to lock out switches shall be kept only on the person(s) who is performing the work on the equipment. Such locks shall be provided by the operator.

13.1.b. All power circuits and electrical equipment shall be de-energized before work is performed on such circuits and equipment, except when necessary for troubleshooting or testing.

13.1.c. All wiring and equipment installed shall meet the requirements of the National Electric Code (NEC) at the time installed. After the effective date of this rule, documentation is to be maintained to establish dates of new installations.

13.2. Transformers.

13.2.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, and the gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

13.2.b. Transformers shall be provided with adequate overload protection.

13.2.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.

13.3. Electrical equipment generally.

13.3.a. Capacitors used for power factor connections shall have suitable drain off resistors or other means to protect workers against electrical shock following removal of power.

13.3.b. Dry wooden platforms, insulating mats, or other electrical nonconductive materials shall be kept in place at all switchboards and power-control switches where shock hazards exist. However, metal plates on which a person normally would stand and which are kept at the same potential as the grounded, metal, non-current-carrying parts of the power switches to be operated may be used.

13.3.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.

13.3.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.

13.3.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.

13.3.f. High-potential electrical conductors shall be covered, insulated, or placed to prevent contact with low potential conductors.

13.3.g. All electrical equipment that is provided with switches or controls shall be safely designed, constructed, and installed.

13.3.h. Single phase loads shall be connected phase-to-phase when connected to resistance grounded systems.

13.3.i. Each ungrounded conductor or telephone wire that leads underground and is directly exposed to lightning shall be equipped with suitable lightning arrestors of approved type within one hundred (100) feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low resistance grounding medium on the surface and shall be separated from neutral grounds by a distance of not less than twenty-five (25) feet. Cables in rigid conduit or shielded are not considered directly exposed.

13.4. Testing maintenance and repair of electrical equipment.

13.4.a. All electrical equipment, except circuit breakers, shall be examined daily by a competent person to assure safe operating condition.

13.4.a.1. All electrical equipment shall be examined monthly, tested and properly maintained by a qualified electrician. All systems and controls for the emergency shutdown of equipment shall be tested at least monthly. When a potential dangerous condition is found on electrical equipment, such equipment shall be removed from service until the condition is corrected by a qualified electrician. A record of such examination and the action taken when the potentially dangerous condition is found shall be kept and made available to an authorized representative of the Director of the West Virginia Office of Miners' Health, Safety and Training and to all miners at such quarry.

13.4.b. Circuit breakers equipped with auxiliary tripping devices shall be tested and examined at least once each month by a qualified electrician and a record of such examination shall be kept for one (1) year and made available to an authorized representative of the Director and to the miners at such quarry. Circuit breaker tests shall include:

13.4.b.1. Breaking continuity of the ground check conductor where ground check monitoring is used;

13.4.b.2. Actuating all of the auxiliary protective relays; and

13.4.b.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.

13.4.c. Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification, and annually thereafter. A record of the resistance measured during the most recent test shall be made available upon request by the Director or his duly authorized representative.

13.5. Circuit breakers.

13.5.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 de-energize 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.

13.5.b. Electric equipment shall be provided with devices that will permit the equipment to be de-energized quickly in the event of an emergency.

13.5.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.

13.5.d. All circuits used to power portable or mobile equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from the circuit, except that the Director or his authorized representative may permit underground low and medium voltage circuits to be used underground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to twenty-five (25) amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

13.5.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.

13.5.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 de-energized when the switches are open.

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

13.5.h. Stationary and/or temporary electrical equipment shall not be moved while energized unless written approval is given by the Director.

13.6. Cables.

13.6.a. Cables and power wires including, but not limited to, telephone, communication and control wires, shall be insulated adequately and fully protected from physical damage. No cable will be hung in a manner which will damage the insulation or conductors.

13.6.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.

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

13.6.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.

13.6.e. Cable/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 and shall not be coupled or broken under load.

13.6.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 circuit breaker.

13.6.g. One temporary splice may be made in any portable trailing cable. Such trailing cable may only be used for the next twenty-four (24) hour period. 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.

13.6.h. When permanent splices in trailing cables are made, they shall be:

13.6.h.1. Mechanically strong with adequate electrical conductivity and flexibility;

13.6.h.2. Effectively insulated and sealed so as to exclude moisture;

13.6.h.3. Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket; and

13.6.h.4. Made in accordance with the manufacturer's specifications.

13.6.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.

13.6.j. Telephone and low-potential signal wire shall be protected, by isolation or suitable insulation, or both, from contacting energized power conductors or any other power source.

13.7. Grounding.

13.7.a. All metallic shields, armors and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded.

13.7.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.

13.7.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. Resistance Grounded Systems shall have a ground monitoring system to monitor continuously the grounding circuit to assure continuity. The ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken. Other, no less effective devices, may be approved by the Director or his authorized electrical representative, to assure such continuity.

13.7.d. In instances where single phase 110/220-volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings or other enclosures of such equipment to a separate grounding conductor which establishes a continuous connection to a grounded center tap of the transformer. In the case of 120-volt single winding transformers used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings and other enclosures of such equipment to a separate grounding conductor which establishes a continuous connection to a grounded center tap or a grounded leg of the transformer.

13.7.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.

13.7.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.

13.7.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.

13.7.h. All 120/240 volt AC circuits used to power electrical devices used in wet locations shall be protected with ground fault circuit interrupting devices.

13.8. Energized lines generally.

13.8.a. All guy wires shall be marked or flagged when equipment is working in the area.

13.8.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.

13.8.c. All equipment near energized power lines with the following voltages shall maintain the following clearances: 10 to 69,000—10 feet; 69,000 to 114,000—12 feet; 115,000 to 229,000—15 feet; 230,000 to 344,000—20 feet; 345,000 to 499,000—25 feet; 500,000 or more—35 feet.

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

13.8.e. A person shall be designated to observe clearance of the equipment and give timely warning for all operations where it is difficult for the operator to maintain the desired clearance by visual means.

13.8.f. Movement of equipment; minimum distance for high voltage lines. When any part of any equipment operated on the surface of any quarry is required to pass under or by any energized high-voltage powerline and the clearance between such equipment and powerline is less than that specified above, such powerlines shall be de-energized or other precautions shall be taken to prevent contact with the powerlines.

13.8.g. De-energization of powerlines. Any overhead wire shall be considered to be an energized line unless and until the person owning such line or electrical utility authorities verifies that it is not an energized line and it has been visibly grounded.

13.8.h. If equipment comes in contact with an energized line, the operator shall stay in the equipment until notified by a qualified electrician or foreperson that the line is de-energized.

13.9. High voltage.

13.9.a. High voltage lines on the surface shall be de-energized, locked out, tagged out, and grounded as near the work area as possible before work is performed on them. Repairs may be permitted to energized surface high voltage lines, if such repairs are made by a qualified electrician in accordance with the procedures and safeguards including, but not limited to, a requirement that the operator of such quarry provide tests of, and maintain, protective devices used 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 de-energized and grounded.

13.9.b. No high voltage line shall be regarded as de-energized for the purpose of performing work on it until it has been determined by a qualified electrician that such high voltage line has been de-energized and grounded. Such qualified electrician 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.

13.9.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 de-energized 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/herself and other interested persons assigned to perform such repairs from the hazards of said repairs, he/she 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 electricians assigned to make such repairs was conducted informing them of the general plan, their individual assignments, and the dangers inherent in such assignments; and (4) a list of proper protective equipment and clothing that will be provided, and (5) 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.

13.9.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.

13.9.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/she leaves the ground until he/she returns to the ground and if such devices are employed for extended periods, such persons shall visually inspect the equipment assigned him/her for defects before each use and in no case, less than twice each day.

13.9.f. All protective equipment used for work on energized high voltage surface lines that are required to be tested by the ASTM standards shall be electrically tested in accordance with ASTM standards.

13.9.g. Disconnecting or cutout switches on energized high voltage lines shall be operated only with insulated sticks, fuse tongs or pullers which are adequately insulated, maintained and tested to protect the operator from the voltage to which he/she is exposed. When such switches are operated, the person operating such devices shall wear protective rubber gloves.

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

13.9.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.

13.9.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 receive power from that circuit. The grounding resistor shall be of the proper resistance 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.

13.9.k. High voltage resistant grounded system serving portable or mobile equipment shall include a failsafe 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 representative to assure such continuity.

13.9.l. High voltage multi-conductor 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 A.W.G. for the ground continuity check circuit.

13.10. Movement of electrical equipment.

13.10.a. Power centers, portable transformers, cable couplings and enclosures shall be de-energized before they are moved from one 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 electrician, 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 for one (1) year and made available to a representative of the Director upon request.

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

13.10.c. Quarry operators shall require all people handling high-voltage energized portable trailing cables to wear approved and tested insulated workmen's gloves. All such protective equipment shall be furnished by the operator. Rated gloves used when handling energized portable trailing cables shall be electrically tested every thirty (30) days and a record of that test shall be kept for one (1) year and made available to a representative of the Director upon request. If straps or hooks are used, those straps and hooks shall be non-conductive and designed for that purpose.

13.10.d. Cables energized to potentials in excess of one hundred fifty (150) volts, phase-to-ground, shall not be moved with equipment unless sleds or slings, insulated from such equipment, are used. When such energized cables are moved manually, insulated hooks, tongs, ropes, or slings shall be used unless suitable protection for persons is provided by other means. This does not prohibit pulling or dragging of cable by the equipment it powers when the cable is physically attached to the equipment by suitable mechanical devices and the cable is insulated from the equipment in conformance with other standards in this part.

13.11. Other electrical apparatus or areas.

13.11.a. Ladders for electrical work shall be of nonmetal type.

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

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

13.11.d. Employees performing energized electrical work shall be provided with suitable personal protective equipment. All such protective equipment shall be furnished by the operator.

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

13.11.f. All lights with less than eight (8) feet overhead clearance shall be guarded. Lamp sockets shall be of a weatherproof type where they are exposed to weather or wet conditions that may interfere with illumination or create a shock hazard.

13.11.g. 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.

13.11.h. A ten (10) pound fire extinguisher shall be provided for each electrical installation.

13.11.i. Combustible materials shall not be stored in electrical rooms and transformer substations.

§56-20-14. Compressed Gases and Welding.

14.1. Handling and use of welding or cutting equipment generally.

14.1.a. The clothing of any person using any welding or cutting equipment in or about a quarry shall be reasonably free of petroleum products. When handling oxygen cylinders or apparatus, the use of oily hands or gloves is prohibited.

14.1.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.

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

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

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

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

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

14.2. Storage and use of compressed gas cylinders.

14.2.a. Cylinders shall be secured in an upright position while stored or in use (except as necessary for a short period of time while cylinders are being hoisted or carried). Valve protection caps shall be hand tight when cylinders are stored. The storage area shall be well ventilated, protected and at least twenty (20) feet from highly combustible materials such as oil or other flammables.

14.2.b. Signs at storage areas of cylinders shall be conspicuously posted, "Danger No Smoking, Matches or Open Flame", or similar type warning.

14.2.c. When storing oxygen cylinders and acetylene or other fuel gas cylinders, 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.

14.3. Transportation of compressed gas cylinders.

14.3.a. When transporting cylinders, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced except in conformance with the following provisions:

14.3.a.1. Cylinders shall remain in a substantially constructed compartment while the gauges are attached and shall be secured against movement.

14.3.a.2. The substantially constructed compartment shall be designed specifically for the maintenance vehicles carrying it; the cylinders shall be secured against movement and be placed at no greater than a forty-five (45) degree angle.

14.3.a.3. The cylinder regulators, if not in enclosed compartments, shall be adequately covered to provide protection when regulators are left attached to cylinders.

14.3.a.4. The substantially constructed compartments shall be secured to the maintenance vehicle in such a manner to prevent the entire compartment from overturning at any time.

14.3.a.5. If the cylinders are being transported in closed compartments, the compartments shall be adequately ventilated, and all doors on the substantially constructed compartments shall be closed and secured when not in use.

14.3.a.6. Cylinders, gauges, hoses, connectors, valve stems and torches shall be checked for damage and proper fit immediately following transportation and prior to use.

14.3.a.7. The cylinder valves shall be in a shut-off position, and the hoses relieved of pressure when not in use and when being transported.

14.3.a.8. All substantially constructed compartments shall be approved by the Director or his authorized representative prior to initial use.

14.3.b. Gas cylinders shall not be transported on vehicles used to transport employees unless separate approved compartments are provided.

14.4. Welding preparations.

14.4.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.

14.4.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.

14.4.c. Prior to welding, cutting, heating, brazing or soldering in areas likely to contain methane, an examination shall be made with an approved device. Examinations for methane shall be made immediately before and periodically during welding, cutting, heating, brazing or soldering and such work shall not commence or continue in air which contains one percent (1%) or more methane.

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

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

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

14.5. Acetylene welding.

14.5.a. Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, back flow check valves and gas cylinders shall be used.

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

14.5.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.

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

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

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

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

14.5.h. Empty cylinders shall be marked as such and removed from the work area.

14.5.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.

14.6. Electrical welding.

14.6.a. All connections at the welding machine shall be checked before starting such operations.

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

14.6.c. Magnetic work clamps shall be free of adherent metal particles or splatter on contact surfaces.

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

14.6.e. The welding machine frame shall be grounded as specified by the current NEC.

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

14.6.g. Proper switches shall be provided for de-energizing the welding machine.

14.6.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.

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

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

14.6.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.

14.6.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.

14.6.m. Any exposed wiring in the welding cable shall be reinsulated to the same degree as the original welding cable.

14.7. Safety hazards.

14.7.a. Welding, cutting, and burning shall be prohibited in areas containing combustible dust.

14.7.b. After welding operations, unattended areas shall be posted with warning signs to prevent workers from coming into contact with hot metals.

14.7.c. Welders shall report any equipment defect or safety hazard to his/her supervisor and discontinue welding until safety has been assured.

14.7.d. When welding machines are used to provide an external power source, the welding machine's 120/240 volt AC receptacles shall be provided with ground fault circuit interrupting protection.

14.8. Maintenance and repairs.

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

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

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

§56-20-15. Equipment.

15.1. Mobile equipment.

15.1.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 foreperson in charge of the operation daily for safety defects. The person performing such examination shall record his/her findings in ink or indelible pencil on a form approved by the Director; such form shall be given to the foreperson or his/her 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 foreperson 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 quarry.

15.1.b. Immediately prior to the beginning of each working shift, equipment operated by independent contractors in a quarry shall be examined by the equipment operator for safety defects, other than light duty vehicles subject to state inspection. The person performing such examination shall record his/her 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.

15.1.c. Imminent danger equipment defects shall be reported immediately to the foreperson and tagged out and corrected before the equipment is put into operation. The foreperson shall record the defect in the pre-shift book.

15.1.d. All mobile equipment shall be operated and maintained according to the manufacturer's instructions.

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

15.2.a. No person(s) shall enter the work area of any mobile equipment until first making positive contact either audible or visual with the equipment operator(s). Equipment operators shall cease operating their equipment when any person is within such proximity as to be endangered.

15.2.b. At startup or anytime mobile equipment is stopped, other than during the normal work cycle, operators 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.

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

15.2.d. When the equipment operator is present, he/she shall be notified before anyone else attempts to mount or dismount the equipment.

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

15.2.f. Walkways and platforms on equipment shall be maintained in a safe condition and shall be equipped with safe handrails.

15.2.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.

15.2.h. 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.

15.2.i. 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.

15.2.j. 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.

15.2.k. Riding a dipper or bucket shall be prohibited.

15.3. Maintenance and repairs.

15.3.a. All safety equipment on all machinery shall be maintained in a safe working condition.

15.3.b. Mobile and stationary equipment shall be maintained in a safe operating condition. Equipment in unsafe condition shall be removed from service immediately. Mine operators shall maintain equipment in a safe operating condition. Equipment operators shall exercise reasonable care in the operation of the equipment entrusted to them and shall promptly report defects known to them: Provided, if equipment has been taken out of service by being

properly tagged out, the operator shall not be issued a violation under the provision of this section: Provided, however, such tag placed on such equipment shall indicate the date and time such equipment was removed from service. The person removing the equipment from service and tagging such equipment shall place his/her signature upon the tag.

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

15.3.d. No persons shall work on a piece of mobile equipment in a raised position until it has been securely blocked in place.

15.3.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.

15.3.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 workers shall use personal fall protection equipment. This does not apply on shovels, draglines, or backhoes that are equipped with safe handrails or ladders.

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

15.3.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.

15.4. Warning devices, lights, brakes.

15.4.a. All mobile equipment shall be equipped with an approved automatic warning device which shall give a clearly distinguishable alarm when such equipment is in reverse. Any motor vehicle having an obstructed rear view shall have a reverse signal alarm audible above the surrounding noise level or the vehicle is backed up only when an observer signals that it is safe to do so.

15.4.b. Equipment such as forklifts, front-end loaders, tractors, dozers, and graders shall be provided with an approved audible warning device that can be controlled manually by the operator.

15.4.c. Lights shall be provided on both ends of equipment when equipment is being worked other than during daylight hours. Lights provided on equipment by manufacturers of said equipment shall be deemed adequate and in compliance with the rules. Also, lights shall be provided under other conditions such as fog, etc.

15.4.d. All braking systems installed on the equipment shall be maintained in functional condition. Service brakes shall be able to stop the equipment on the maximum grade the equipment travels. Parking brakes shall be able to hold the equipment stationary on the maximum grade the equipment travels. The service braking system using stored energy shall be equipped with a warning device that activates when the system energy drops below the manufacturer's specified minimum operating energy level.

15.5. Dump trucks and dumping.

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

15.5.b. No person shall be permitted in or on the cargo space of dump trucks while being loaded.

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

15.5.d. Truck cabs where rear vision is impaired shall be equipped with adequate rearview mirrors on both sides.

15.5.e. The bucket of an excavator, loader or shovel shall not be swung over the cab of a truck.

15.6. Equipment generally.

15.6.a. No equipment or machinery shall be altered or modified in a manner that reduces the level of safety.

15.6.b. Road maintenance equipment such as graders or other equipment normally used shall be equipped with readily visible flashing light(s).

15.6.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. Safety bar levers for automatic transmissions shall be in working condition.

15.6.d. All steps, handrails, walkways and platforms on mining equipment shall be maintained in a safe condition.

15.6.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.

15.6.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.

15.6.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.

15.6.h. The grader shall travel in the direction of normal traffic except during grading operations in a local area.

15.6.i. Emergency stop switches shall be provided and maintained to quickly de-energize electrically powered mobile equipment engines in the event of an emergency. The switches shall be located in the operator's cab and also at a location accessible from ground level.

15.6.j. Electrical compartments in use on electrically powered mobile equipment shall be maintained free of dust, water, and oil accumulations. Electrical compartment panel doors shall be secured in a manner to prohibit unauthorized access.

15.6.k. Wheel covers (hubcaps) shall be provided for electric wheel motors, shall be maintained in good condition, and shall be adequately secured.

15.6.l. Steering apparatuses of all mobile equipment shall be maintained in a safe operating condition according to manufacturers' specification.

15.6.m. Each employee working in a quarry shall be required to wear seat belts in a vehicle where there is a danger of overturning and where roll protection is provided. Seat belts shall be worn by all drivers of trucks, 5-ton or greater, while operating their trucks at a quarry.

15.6.n. Machines with movable parts used at quarries which are capable of coming into contact with its operating controls or are capable of pinning the operator between the movable part and its controls shall be equipped with a panic bar or suitable mechanical means to prevent such contact or pinning of the operator.

15.7. Glass, doors and mirrors.

15.7.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.

15.7.b. All mobile equipment provided with a windshield shall be provided with windshield wipers, and such wipers shall be maintained in good operating condition.

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

15.7.d. Adequate mirrors shall be maintained on all mobile equipment. Mirror(s) provided on equipment by manufacturers of said equipment shall be deemed adequate and in compliance with the rules.

15.8. Guards.

15.8.a. Fan blades, shafts, gears, flywheels, coupling, and similarly exposed moving machine parts which may be contacted by persons shall be adequately guarded.

15.8.b. Guards installed on equipment to prevent accidental contact with moving parts shall:

15.8.b.1. Be of substantial construction;

15.8.b.2. Not have openings large enough to admit a person's hand;

15.8.b.3. Be firmly bolted or otherwise installed in a stationary position; and

15.8.b.4. Be of sufficient dimensions to exclude the possibility of bodily contact while in motion.

15.8.c. All floor boards shall be kept secured in place.

15.9. Operation of mobile equipment.

15.9.a. Mobile equipment operators shall have full control of the equipment while in motion and shall operate such mobile equipment safely.

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

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

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

15.9.e. Cabs of mobile equipment shall be kept free of extraneous materials and adequately ventilated by mechanical means.

15.9.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 quarries shall be provided with substantial falling object protective structures.

15.9.g. 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.

15.9.h. Equipment shall be operated only by persons trained in the use of and authorized to operate such equipment.

15.9.i. Operators of all equipment shall keep a reasonable safe distance from the edge of all vertical or abrupt excavations or fills.

15.10. Loads.

15.10.a. Equipment which is to be hauled shall be secured.

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

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

15.10.d. No one shall be permitted to ride in or on equipment while it is being hauled.

15.11. Machinery.

15.11.a. All drive belts shall be adequately guarded if the whipping action from a broken belt could come into contact with a person.

15.11.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.

15.11.c. Walkways adjacent to conveyor belts not covered or equipped with protective railing shall be equipped with emergency stop switches or pull cords along the affected area.

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

15.12.a. Condition of tools. All tools, power tools and similar equipment shall be maintained in a safe condition.

15.12.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 a friction clutch or other equivalent safety device.

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

15.12.d. Impact tools such as drift pins, wedges, and chisels shall be kept free of mushroomed heads.

15.12.e. The wooden handles of tools shall be kept tight and free of splinters or cracks and shall be kept tight in the tool.

15.12.f. Electric power operated tools shall be approved double-insulated or grounded type.

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

15.12.h. Pneumatic power tools shall be secured to the hose by some positive means to prevent the tools from becoming accidentally disconnected.

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

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

15.12.k. All fuel powered tool engines shall cease operations while being refueled, serviced, or maintained.

15.12.l. 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.

15.12.m. Only approved fuel containers shall be used, and such containers shall be safely stored.

15.12.n. All hand-held tools, power tools and safety devices shall be used in accordance with manufacturers' specifications.

15.13. Jacks.

15.13.a. The manufacturer's rated capacity shall be legibly marked on all lifting jacks and shall not be exceeded. All jacks shall be maintained and used in accordance with the manufacturers' specifications.

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

15.13.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.

15.14. Stationary grinding machines, protective devices.

15.14.a. Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods or approved eye shields. Approved face shields shall be provided and located at the grinding location and shall be worn by persons when using the machine. 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.

15.14.b. Adjustable tool rests shall be set as close as required to manufacturers' specifications.

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

15.15. Tires and repairs.

15.15.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. Different types and sizes of wheel rims in the same location shall be stored separately from each other.

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

15.15.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. Safe means shall be provided for removing rocks or other hazardous material caught between the dual tires.

15.15.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.

15.15.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.

15.15.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 the inflation gauge.

15.15.g. All tires shall be maintained in a safe condition according to manufacturers' specifications. Any tire with a defect which could be a hazard to the safe operation of a vehicle or to other persons shall be replaced immediately.

15.16. Operating equipment on extreme slopes.

15.16.a. Prior to any equipment operating on an extreme slope, a meeting shall be conducted with the quarry operator, all persons involved in working on the extreme slope and a representative of the Director to develop a plan as to how the equipment operators shall work on the extreme slope safely.

15.16.b. When cable winching is utilized as the safeguard for operating equipment on extreme slopes, the operator shall follow the manufacturer's specifications and limitations of the mobile equipment, wire ropes, and all attachments.

15.16.c. When cable winching, the following requirements must be met:

15.16.c.1. The equipment being used to assist a dozer, or other equipment working on slopes, shall be of proper size and strength to provide adequate anchorage. The equipment providing anchorage shall be positioned to provide maximum stability.

15.16.c.2. The winch line assembly shall be of proper size and strength and properly maintained to provide safety for all equipment.

15.16.c.3. Winch cables used by equipment working on slopes shall be of proper size according to manufacturers' specifications.

15.16.c.4. Winch cables shall be secured to the winch assembly drum according to the manufacturers' specifications.

15.16.c.5. A minimum of three (3) wraps of winch cable shall remain on the drum at all times.

15.16.c.6. The live-end connection device used to secure the two (2) pieces of equipment together shall be of a design that minimizes the possibility of accidental disconnection. The connection device shall be of the proper strength for the duties performed and maintained in safe condition according to manufacturer's specifications.

15.16.c.7. All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps or properly wedged according to the manufacturer's specifications.

15.16.c.8. All components of the winch line assembly shall be inspected by the equipment operator periodically during daily operations.

15.16.d. Constant communications either audible or visual shall be maintained between equipment operators while working on extreme slopes. No one shall work on an extreme slope alone.

§56-20-16. Installations.

16.1. Installations generally.

16.1.a. All quarry structures, enclosures, and other facilities shall be maintained in good condition.

16.1.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.

16.1.c. Openings in installations through which persons or material may fall shall be protected by railings, barriers, covers or other protective devices.

16.1.d. Illumination sufficient to provide safe working conditions shall be provided in and on all structures, paths, walkways, switch panels, loading and dumping sites, working areas and parking areas.

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

16.1.f. Good housekeeping shall be practiced in and around all 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.

16.1.g. Adequate ventilation shall be provided.

16.1.h. A person entering a bin, tank or other dangerous area shall wear a full body harness that is tethered to a lifeline. A person shall continuously tend the lifeline from outside the bin, tank or other dangerous area.

16.1.i. When entering such areas, a competent person will determine if the need for atmospheric monitoring is necessary.

16.2. Machinery guards.

16.2.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.

- 16.2.b. Except when testing is necessary, machinery guards shall be secured in place while being operated.
- 16.2.c. Belt rollers shall not be cleaned while belts are in motion.
- 16.3. Ramps and dumping.
 - 16.3.a. Both sides of any dumping ramp shall be provided with adequate berms or barriers.
 - 16.3.b. Adequate berms or barriers shall be installed at all dumping points, excluding stockpiles.
 - 16.3.c. Adequate protection, including but not limited to signage, barricades or warning devices, shall be provided at dumping locations where persons may be endangered by falling material. Operator stations and workers shall be protected from hazards by distance, guarding, location, construction, etc.
 - 16.3.d. Dust control measures shall be taken where dust significantly reduces visibility of equipment operators.
 - 16.3.e. All power lines in dumping areas shall be maintained at least a minimum of twelve (12) feet above the largest piece of equipment used at such facility, including a dump truck in a raised position.
 - 16.3.f. All dumping ramps shall be of sufficient width to insure safe operation of vehicles used thereon.
 - 16.3.g. At no time shall any person be permitted to enter into any crusher, bin, screen or hopper unless the equipment has been tagged out, de-energized, and locked out with a key or other approved adequate safeguards approved by the Director. Workers shall not dislodge material from operating crushers, except with aggregate or rock breakers of an approved design.
 - 16.3.h. No person shall be permitted to perform any work within the confines of the cargo space of a crusher, feeder, or rotary breaker unless such equipment has been de-energized and locked out.
 - 16.3.i. 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.
- 16.4. Repairs of machinery.
 - 16.4.a. Machinery shall not be lubricated while in motion, except where safe remote lubricating devices are used. Machinery that must be shut down for repairs or lubrication shall be locked out and tagged out to prevent accidental starting, and stored energy will be discharged, etc. Machinery shall not be re-started until the persons lubricating or repairing it have removed the lock and tag and all personnel are clear of the machinery.
 - 16.4.b. Where repairs are made, proper scaffolding and proper overhead protection shall be provided for workers when necessary.
 - 16.4.c. Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.
- 16.5. Stairs, platforms, etc.
 - 16.5.a. Stairways, elevated platforms and runways shall be equipped with handrails.
 - 16.5.b. Elevated platforms shall be provided with toe boards. They shall be kept clear of refuse and ice and maintained in good condition.
 - 16.5.c. Vertical clearance above stair steps shall be a minimum of seven (7) feet or suitable warning signs or similar devices shall be provided to indicate an impaired clearance.
- 16.6. Drive belts, etc.
 - 16.6.a. Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters.
 - 16.6.b. Belt dressing shall not be applied while in motion.
 - 16.6.c. Belts, 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.
- 16.7. Conveyors, crossovers and crossunders.
 - 16.7.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.
 - 16.7.b. Crossovers and crossunders shall be provided where necessary to cross conveyors. All crossovers and elevated crossunders shall be of substantial construction with rails and maintained in good condition. Moving conveyors shall be crossed only at designated crossover and crossunder points.
 - 16.7.c. Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation.
 - 16.7.d. Guards, nets, or other suitable protection shall be provided where falling material from conveyor belts presents a risk of injury.
 - 16.7.e. Where it is required to cross under a belt, guarding shall be installed to prohibit a person from making contact with a moving part. Guards shall not be required where the exposed moving parts are at least seven (7) feet away from walking or working surfaces.
 - 16.7.f. Conveyors shall be locked out and tagged out before any work is performed within the confines of the belt. Conveyors shall not be re-started until locks and tags are removed.

16.8. Travelways.

16.8.a. Safe means of access shall be provided and maintained to all working places.

16.8.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.

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

16.8.d. Regularly used travelways shall be salted, sanded or cleared of snow and ice as soon as practical.

16.9. Ladders.

16.9.a. All ladders shall be secured against movement.

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

16.9.c. Wooden ladders shall not be painted.

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

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

Permanent ladders more than ten (10) feet in height shall be provided with backguards.

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

16.9.g. No person shall be permitted to work off of the top step of any ladder.

16.9.h. Metal ladders shall not be used with electrical work or where there is danger of the ladder coming into contact with power lines or an electrical conductor.

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

16.10. Hoisting.

16.10.a. All persons shall remain a safe distance from any supplies or materials while being raised, lowered or in transit by a forklift, crane, or other equipment: Provided, That whenever it is necessary to have persons other than the equipment operator in the immediate vicinity of any such supplies, the loads shall be securely fastened by a chain or other device to the equipment handling the load in order to prevent the load from slipping or falling off the equipment.

16.10.b. Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted.

16.10.c. Persons shall stay clear of hoisted loads.

16.10.d. Tag lines shall be attached to hoisted materials that require steadying or guidance. A hoist shall not lift loads greater than the rated capacity of the hoist being used.

16.11. Drawoff tunnels.

16.11.a. After the effective date of this article, all tunnels constructed shall include at least two (2) safe travelways to egress the tunnel. The safe travelways shall be at least thirty (30) inches in diameter or equivalent.

16.11.b. Tunnels located below stockpiles and storage silos shall be adequately ventilated by natural or mechanical means.

16.11.c. Communications or some other means of signaling shall be provided near the entrance to the escapeways in drawoff tunnels.

16.11.d. Tunnels shall be inspected on a regular basis for structural integrity. Tunnels found not structurally sound shall be removed from service until such time as the structural integrity has been restored.

16.12. Ventilation and methane where coal is stored and used.

16.12.a. Tests for methane in structures, enclosures, or other facilities where coal is stored shall be conducted with an approved methane detector or device at least once during each operating shift.

16.12.b. Methane content in surface structures. If, at any time, the air in any enclosure contains one percent (1.0%) or more of methane, changes or adjustments in the ventilation of such installation shall be made at once so that the air shall contain less than one percent (1.0%) methane.

16.12.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.

16.13. Railroad equipment.

16.13.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 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 time with one (1) brake.

16.13.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.

16.13.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.

16.13.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 get on or off a moving car only in case of an emergency.

16.13.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.

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

16.13.g. A minimum of thirty (30) inches continuous clearance from the furthest 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.

16.13.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.

16.13.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.

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

16.13.k. Where necessary, bumper blocks or the equivalent shall be provided at all track deadends.

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

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

16.13.n. Fall protection shall be worn and properly attached by all car droppers handling railroad cars.

16.14. Railroad track construction and maintenance.

16.14.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.

16.14.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 maintained so as to prevent high and low joints.

16.14.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.

16.14.d. Severely worn or damaged rails and ties shall be replaced immediately.

§56-20-17. Facilities Using Coal Storage Bins; Recovery Tunnels; Coal Storage Piles.

17.1. Coal storage bins hereafter constructed with vertical sides fifty (50) feet or over in height shall be provided with ventilators or louvers or both to provide adequate ventilation. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

17.2. Where cutting or welding is performed at any location where coal is stored, means of prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and/or rock dusted.

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

§56-20-18. Fire Protection.

18.1. Fire extinguishers.

18.1.a. A portable fire extinguisher containing a nominal weight of at least five (5) pounds shall be kept on each piece of mobile equipment. This requirement is also applicable to mobile equipment equipped with fire suppression systems.

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

18.2. Flammable liquids.

18.2.a. Flammable liquids, such as oil, grease, gasoline and such other like materials, shall be stored in buildings, compartments or closed containers used for this purpose only.

18.2.b. The storage of 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.

18.2.c. Flammable liquids shall not be used to clean machinery.

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

18.2.e. Waste or rags containing flammable or combustible liquids that could create a fire hazard shall be placed in the following containers until disposed of properly:

18.2.e.1. *Surface*—covered metal containers or equivalent containers with flame containment characteristics.

18.2.e.2. *Underground*—covered metal containers.

18.2.f. Solvents shall not be used near an open flame or other ignition source, near any source of heat, or in an atmosphere that can elevate the temperature of the solvent above the flash point.

18.2.g. Small quantities of flammable liquids drawn from storage shall be kept in safety cans labeled to indicate the contents.

18.3. Fueling and storage.

18.3.a. Internal combustion engines, except diesels, shall be shut off and stopped before being fueled.

18.3.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.

18.3.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.

18.3.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.

18.4. Maintenance of firefighting equipment. Firefighting equipment shall be continuously maintained in a usable and operative condition. Fire extinguishers shall be examined at least once every month. The date of such examination shall be recorded on a permanent tag attached to the extinguisher.

18.5. 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.

18.6. Drills. Fire drills with various types of available fire-fighting equipment shall be held for employees at least once every six (6) months. A record of such fire drills shall be recorded and kept for a period of one (1) year.

18.7. Surface fan installations and mine openings.

18.7.a. On the surface, no more than one day's supply of combustible materials shall be stored within one hundred (100) feet of mine openings or within one hundred (100) feet of fan installations used for underground ventilation.

18.7.b. The one-day supply shall be kept at least twenty-five (25) feet away from any mine opening except during transit into the mine.

18.7.c. Dry vegetation shall not be permitted within twenty-five (25) feet of mine openings.

18.8. Use of fire underground. Fires shall not be lit underground, except for open-flame torches. Torches shall be attended at all times while lit.

18.9. Underground belt conveyors. Fire protection shall be provided at the head, tail, drive, and take-up pulleys of underground belt conveyors. Provisions shall be made for extinguishing fires along the beltline. Fire protection shall be of a type, size, and quantity that can extinguish fires of any class in their early stages which could occur as a result of the fire hazards present.

18.10. Firefighting, evacuation, and rescue procedures.

18.10.a. Firefighting procedures/alarms/drills.

18.10.a.1. Underground alarm systems.

18.10.a.1.A. Fire alarm systems capable of promptly warning every person underground, except as provided in subparagraph 18.10.a.1.B, shall be provided and maintained in operating condition.

18.10.a.1.B. If persons are assigned to work areas beyond the warning capabilities of the system, provisions shall be made to alert them in a manner to provide for their safe evacuation in the event of a fire.

18.10.a.2. Underground evacuation drills.

18.10.a.2.A. At least once every six (6) months, mine evacuation drills shall be held to assess the ability of all persons underground to reach the surface or other designated points of safety within the time limits of the self-rescue devices that would be used during an actual emergency.

18.10.a.2.A.1. The evacuation drills shall:

18.10.a.2.A.1.(a). Be held for each shift at some time other than a shift change and involve all persons underground;

18.10.a.2.A.1.(b). Involve activation of the fire alarm system (if installed); and

18.10.a.2.A.1(c). Include evacuation of all persons from their work areas to the surface or to designated central evacuation points.

18.10.b. At the completion of each drill, the mine operator shall record the date and the time the evacuation began and ended. Records shall be retained for at least one (1) year after each drill and made available to an authorized representative of the Director.

18.11. Underground rescue and firefighting operations. Following evacuation of a mine in a fire emergency, only persons wearing and trained in the use of mine rescue apparatus shall participate in rescue and firefighting operations in advance of the fresh air base.

18.12. Underground evacuation instruction.

18.12.a. At least once every twelve (12) months, all persons who work underground shall be instructed in the escape and evacuation plans and procedures and fire warning signals in effect at the mine.

18.12.b. Whenever a change is made in escape and evacuation plans and procedures for any area of the mine, all persons affected shall be instructed in the new plans or procedures.

18.12.c. Whenever persons are assigned to work in areas other than their regularly assigned areas, they shall be instructed about the escape way for that area at the time of such assignment. However, persons who normally work in more than one (1) area of the mine shall be instructed at least once every twelve (12) months about the location of escape ways for all areas of the mine in which they normally work or travel.

18.12.d. At the completion of any instruction given under this rule, the mine operator shall record the date that the instruction was given. Records shall be retained for at least one (1) year and made available to an authorized representative of the Director.

18.13. Battery-charging stations.

18.13.a. Battery-charging stations shall be ventilated with a sufficient volume of air to prevent the accumulation of hydrogen gas.

18.13.b. Smoking, use of open flames, or other activities that could create an ignition source shall be prohibited at the battery charging station.

18.13.c. Readily visible signs prohibiting smoking or open flames shall be posted at battery-charging stations.

18.14. Conveyor belt slippage.

18.14.a. Surface belt conveyors within confined areas where evacuation would be restricted in the event of a fire resulting from belt-slippage shall be equipped with a detection system capable of automatically stopping the drive pulley.

18.14.b. Underground belt conveyors shall be equipped with a detection system capable of automatically stopping the drive pulley if slippage could cause ignition of the belt.

18.14.c. A person shall attend the belt at the drive pulley when it is necessary to operate the conveyor while temporarily bypassing the automatic function.

18.15. Mine opening vicinity.

18.15.a. Surface buildings or other similar structures within one hundred (100) feet of mine openings used for intake air or within one hundred (100) feet of mine openings that are designated escape ways in exhaust air shall be:

18.15.a.1. Constructed of noncombustible materials; or

18.15.a.2. Constructed to meet a fire resistance rating of no less than one (1) hour; or

18.15.a.3. Provided with an automatic fire suppression system; or

18.15.a.4. Covered on all combustible interior and exterior structural surfaces with noncombustible material or limited combustible material, such as five-eighth (5/8) inch, type "X", gypsum wallboard.

18.16. Stationary diesel equipment underground. Stationary diesel equipment underground shall be:

18.16.a. Supported on a noncombustible base; and

18.16.b. Provided with a thermal sensor that automatically stops the engine if overheating occurs.

18.17. Preparation of pipelines or containers. Before welding, cutting, or applying heat with an open flame to pipelines or containers that have contained flammable or combustible liquids, flammable gases, or explosive solids, the pipelines or containers shall be:

18.17.a. Drained, ventilated, and thoroughly cleaned of any residue;

18.17.b. Vented to prevent pressure build-up during the application of heat; and

18.17.c. Filled with an inert gas or water, where compatible; or

18.17.d. Determined to be free of flammable gases by a flammable gas detection device prior to and at frequent intervals during the application of heat.

18.18. Underground shops.

18.18.a. To confine or prevent the spread of toxic gases from a fire originating in an underground shop where maintenance work is routinely done on mobile equipment, one of the following measures shall be taken: use of control doors or bulkheads, routing of the mine shop air directly to an exhaust system, reversal of mechanical ventilation, or use of an automatic fire suppression system in conjunction with an alternate escape route. The alternative used shall at all times provide at least the same degree of safety as control doors or bulkheads.

18.18.a.1. Control doors or bulkheads. If used as an alternative, control doors or bulkheads shall meet the following requirements:

18.18.a.1.A. Each control door or bulkhead shall be constructed to serve as a barrier to fire, the effects of fire, and air leakage at each opening to the shop.

18.18.a.1.B. Each control door shall be:

18.18.a.1.B.1. Constructed so that, once closed, it will not reopen as a result of a differential in air pressure;

18.18.a.1.B.2. Constructed so that it can be opened from either side by one person or be provided with a personnel door that can be opened from either side;

18.18.a.1.B.3. Clear of obstructions; and

18.18.a.1.B.4. Provided with a means of remote or automatic closure unless a person specifically designated to close the door in the event of a fire can reach the door within three (3) minutes.

18.18.a.1.C. If located twenty (20) feet or more from exposed timber or other combustible material, the control doors or bulkheads shall provide protection at least equivalent to a door constructed of no less than one-quarter (1/4) inch of plate steel with channel or angle-iron reinforcement to minimize warpage. The framework assembly of the door and the surrounding bulkhead, if any, shall be at least equivalent to the door in fire and air-leakage resistance and in physical strength.

18.18.a.1.D. If located less than twenty (20) feet from exposed timber or other combustibles, the control door or bulkhead shall provide protection at least equivalent to a door constructed of two (2) layers of wood, each a minimum of three-quarters (3/4) inch in thickness. The wood-grain of one (1) layer shall be perpendicular to the wood-grain of the other layer. The wood construction shall be covered on all sides and edges with no less than 24-gauge sheet steel. The framework assembly of the door and the surrounding bulkhead, if any, shall be at least equivalent to the door in fire and air-leakage resistance and in physical strength. Roll-down steel doors with a fire-resistance rating of one and one-half (1-1/2) hours or greater, but without an insulation core, are acceptable: Provided, That an automatic sprinkler or deluge system is installed that provides even coverage of the door on both sides.

18.18.b.1. Routing air to exhaust system. If used as an alternative, routing the mine shop exhaust air directly to an exhaust system shall be done so that no person would be exposed to toxic gases in the event of a shop fire.

18.18.c.1. Mechanical ventilation reversal. If used as an alternative, reversal of mechanical ventilation shall:

18.18.c.1.A. Be accomplished by a main fan. If the main fan is located underground:

18.18.c.1.A.1. The cable or conductors supplying power to the fan shall be routed through areas free of fire hazards; or

18.18.c.1.A.2. The main fan shall be equipped with a second, independent power cable or set of conductors from the surface. The power cable or conductors shall be located so that an underground fire disrupting power in one (1) cable or set of conductors will not affect the other; or

18.18.c.1.A.3. A second fan capable of accomplishing ventilation reversal shall be available for use in the event of failure of the main fan.

18.18.c.1.B. Provide rapid air reversal that allows persons underground time to exit in fresh air by the second escapeway or find a place of refuge; and

18.18.c.1.C. Be done according to predetermined conditions and procedures.

18.18.d.1. Automatic fire suppression system and escape route. If used as an alternative, the automatic fire suppression system and alternate escape route shall meet the following requirements:

18.18.d.1.A. The suppression system shall be:

18.18.d.1.A.1. Located in the shop area;

18.18.d.1.A.2. The appropriate size and type for the particular fire hazards involved; and

18.18.d.1.A.3. Inspected at weekly intervals and properly maintained.

18.18.d.1.B. The escape route shall bypass the shop area so that the route will not be affected by a fire in the shop area.

18.19. Installations.

18.19.a. Fire protection.

18.19.a.1. Where cutting or welding is performed at any location, means of prompt extinguishment of any fire accidentally started shall be provided.

18.19.a.2. Adequate fire-fighting equipment, required by the West Virginia Office of Miners' Health, Safety and Training, shall be provided where fire hazard exists. At least two (2) exits shall be provided for every enclosed floor of plants constructed after the effective date of these rules.

18.19.a.3. Signs warning against smoking and open flames shall be posted so they can be readily seen in areas or places where fire or explosion hazards exist.

18.19.a.4. Smoking or open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

18.19.a.5. In structures where compressed gases are piped through permanently installed fixtures, such fixtures shall be examined daily for leaks and damage. If leaks or damage to the fixtures are discovered, repairs shall be made immediately.

18.19.a.6. Open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.

§56-20-19. Protective Equipment and Clothing.

19.1. Eye and face protection.

19.1.a. Welders and helpers shall use adequate shields or goggles to protect their eyes and face.

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

19.1.c. All eye and face protection in this section shall meet the standards of the American Standards Institute (ANSI) Z87.1-1968.

19.1.d. Suitable eye protection and cleaning materials shall be made available at each site.

19.2. Clothing.

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

19.2.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.

19.3. Hard hats and safety toed shoes.

19.3.a. Hard hats and safety toed shoes shall be worn by all persons while in or around a quarry.

19.3.b. All employees shall be required to wear hard hats, except in the following instances:

19.3.b.1. When operating mobile equipment with an enclosed cab, FOPS or ROPS.

19.3.b.2. When inside an enclosed structure, unless there is a possibility of head injury.

19.3.c. The hard hats required hereunder shall meet the specifications for such helmets as prescribed by ANSI Z89.1-1969.

19.3.d. Within ninety (90) days of the effective date of this rule, all hard hats shall be equipped with a minimum of twelve (12) square inches of reflective material.

19.4. Working around water.

19.4.a. A United States Coast Guard approved life jacket shall be worn where there is a danger of drowning.

19.4.b. A ring buoy with ninety (90) feet of rope attached shall be available where there is a danger of drowning.

19.5. Fall protection and fall arrest.

19.5.a. Fall protection or arrest systems shall be used when there is a danger of falling from a height of six (6) feet or greater.

19.5.a.1. Personal fall protection.

19.5.a.1.A. Personal fall protection shall consist of a full body harness; a safety belt is not permitted.

19.5.a.1.B. A shock absorbing lanyard, personal fall limiter or self-retracting lanyard shall be used.

19.5.a.1.C. Anchorage points shall be capable of withstanding five thousand (5000) pounds of force per worker.

19.5.a.1.D. Anchorage points shall be utilized as to limit the fall distance to less than six (6) feet or contact with a lower level.

19.5.a.1.E. All personal fall arrest equipment shall be utilized, maintained and inspected as per the manufacturer's specifications.

19.5.b. All other fall protection. Other fall protection and arrest systems may be utilized with approval of the Director.

19.6. Hearing protection. Hearing protection shall be provided by the operator.

19.7. Respiratory equipment; control of dust.

19.7.a. Miners exposed to hazardous gas, dust, fume, and mist inhalation shall wear permissible respiratory equipment.

19.7.b. Dust shall be controlled by the use of permissible dust collectors or other approved methods.

§56-20-20. First Aid Requirements – Quarries.

20.1. First aid stations and equipment.

20.1.a. Each operator of a quarry shall maintain a supply of first aid equipment which shall be available to workers at all times. First aid equipment shall be stored at a central location convenient for quick response to emergencies. Advanced first aid-training will consist of hands-on training and demonstration in the use, care, and maintenance of the first aid equipment stored at the quarry.

20.1.b. First aid equipment shall contain the following:

20.1.b.1. One (1) stretcher;

20.1.b.2. One (1) broken-back board, or approved combination stretcher;

20.1.b.3. Twenty-four (24) triangular bandages;

20.1.b.4. Eight (8) four-inch (4") bandage compresses;

- 20.1.b.5. Sixteen (16) two-inch (2") bandage compresses;
- 20.1.b.6. Twelve (12) one-inch (1") adhesive compresses;
- 20.1.b.7. Two (2) approved blankets;
- 20.1.b.8. Sterile sheets, disposable for burns;
- 20.1.b.9. Two (2) tourniquets;
- 20.1.b.10. Two (2) inflatable plastic leg splints;
- 20.1.b.11. Two (2) inflatable plastic arm splints;
- 20.1.b.12. Two (2) cold packs;
- 20.1.b.13. One (1) sterile water (1,000 ml);
- 20.1.b.14. Automatic External Defibrillator (AED);
- 20.1.b.15. Two (2) mask/face shields or masks and goggles combination meeting blood borne pathogen requirements;
- 20.1.b.16. Six (6) pairs of examination gloves;
- 20.1.b.17. Two (2) barrier devices with one-way valve for performing artificial ventilation and/or cardiopulmonary resuscitation (AV/CPR);
- 20.1.b.18. One (1) first aid book or manual that reflects the current recommended policies and procedures for dealing with emergencies which require first aid.

20.2. 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 workers.

20.3. Emergency arrangements.

20.3.a. Each operator shall maintain a list that contains emergency telephone numbers along with the addresses of the local emergency services and any hospital that may provide service to the quarry.

20.3.b. Each operator shall have prior 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 while people are actually employed at the operation.

20.3.c. Mine rescue teams for underground quarries. After the effective date of this rule, underground quarry operations within the quarry industry shall conform to 30 C.F.R. Part 49 or Title 48 Series 4 of the West Virginia Mining Laws, Rules and Regulations.

20.4. Emergency communications.

20.4.a. Each operator shall provide two-way communication at all times miners are present between all work sites at the quarry and an emergency communication center which may be at the quarry office or elsewhere at the quarry.

20.4.b. Each operator shall establish and maintain a direct two-way communication system from such emergency communication center at the quarry 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 quarry, 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.

§56-20-21. First Aid Training.

21.1. At least seventy-five percent (75%) of employees per shift shall receive advanced first aid training. This training will be administered by an organization or individual recognized by the Director. This training shall include, but not be limited to: patient assessment, artificial respiration, CPR, control bleeding, and treat shock, wounds, burns and musculo-skeletal injuries. Existing employees will be trained within one (1) year of the effective date of this rule and retrained as required by the organization or individual that is conducting the training. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first aid training.

21.2. If a licensed Emergency Medical Technician (EMT) or equivalent (such as a paramedic or physician's assistant) is employed, then the EMT shall be recognized as meeting the requirements of subsection 21.1 and no other employee on that shift will be required to receive advanced first aid training. If more than seventy (70) employees are employed per shift, then the requirements of subsection 20.1 will be enforced unless an additional EMT is added. When the EMT option is utilized by the operator, EMT qualifications and supplies will be accepted as currently recommended by the Regional Education Service Agencies (RESA).

§56-20-22. Training.

22.1. Training will be provided in accordance with 30 C.F.R. Part 46 to include new miner training, newly hired experienced miner training, task training and annual refresher training. Training will be documented on a MSHA 5000-23 form or equivalent. This form shall be available to representatives of the Director upon request.

22.2. Job assignments to any miner. When a job assignment is given to any miner that he/she has not performed in the recent past, such inexperienced person, in the particular job assignment, shall be instructed in the hazards incident thereto and the law and rules 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. Instructions shall be given by a person(s) competent in the operation of the equipment as well as the hazards associated with quarry mining and shall include the proper use, function, testing, and maintenance of all safety features of the equipment. When the job assignment is related to a plan in effect at the quarry, the relevant portions of the plan shall be reviewed. A record shall be kept of such instruction and made available to a representative of the Director upon request.

§56-20-23. Quarry Map.

23.1. The operator shall maintain an updated quarry map and provide a copy to the West Virginia Office of Miners' Health, Safety and Training on or before the first day of March of each year. The map shall be an accurate and up-to-date map of the quarry, on a scale of not less than one hundred (100) nor more than five hundred (500) feet to the inch, at or near the quarry, in an area chosen by the operator, with a duplicate copy on file at a separate and distinct location, to minimize the danger of destruction by fire or other hazard. The map shall show:

23.1.a. Name and address of the quarry;

23.1.b. The property or boundary lines of the active areas of the quarry;

23.1.c. Contour lines passing through whole number elevations of the mineral being quarried. The spacing of such lines shall not exceed twenty-five (25) foot elevation levels, except that a broader spacing of contour lines may be approved by an authorized representative of the Director for steeply pitching minerals. Contour lines may be placed on overlays or tracings attached to quarry maps.

23.1.d. The general elevation of the mineral being mined and the general elevation of the surface;

23.1.e. Either producing or abandoned oil and gas wells and lines located on the quarry property;

23.1.f. The location and elevation of any body of water dammed or held back in any portion of the quarry: Provided, however, such bodies of water may be shown on overlays or tracings attached to the quarry maps;

23.1.g. All prospect drill holes that penetrate the mineral being mined on the quarry property;

23.1.h. All worked out and abandoned areas;

23.1.i. The location of railroad tracks and public highways leading to the quarry and quarry buildings of a permanent nature with identifying names shown;

23.1.j. Underground quarry workings underlying and within one thousand (1,000) feet of the active areas of the quarry;

23.1.k. The location and description of at least two (2) permanent base line points, and the location and description of at least two (2) permanent elevation bench marks used in connection with establishing or referencing quarry elevation surveys; and

23.1.l. The scale of the map.

23.2. Certification of quarry maps. Quarry maps shall be made or certified by an engineer or surveyor registered in the State of West Virginia.

23.3. Availability of quarry map.

23.3.a. The quarry map maintained in accordance with the provisions of Section 3, Article 26, Chapter 56 of the West Virginia Code shall be available for inspection by an authorized representative of the Director.

23.3.b. Surface quarries shall provide a copy of the annual map submitted to the West Virginia Department of Environmental Protection to the West Virginia Office of Miners' Health, Safety and Training.

§56-20-24. Air Quality.

24.1. Persons whose duties require them to use air quality testing devices shall be trained by the operator to assure their competence and a record that such training was given shall be kept on file by the operator for a period of one (1) year.

24.2. Each operator shall provide for the proper maintenance and care of the approved testing device(s) by a person trained in such maintenance, and before each shift, care shall be taken to insure that such device(s) are maintained according to manufacturers' recommendations. Air quality testing devices shall be calibrated according to manufacturers' recommendations and a record kept and made available to interested persons for a period of one (1) year.

24.3. Air quality.

24.3.a. Exposure monitoring. Dust, gas, mist, and fume surveys shall be conducted as frequently as necessary to determine the adequacy of control measures.

24.3.b. Oxygen deficiency. Air in all active workings shall contain at least 19.5 volume percent oxygen.

§56-20-25. Diesel Particulate Matter.

25.1. Limits on exposure.

25.1.a. A miner's personal exposure to diesel particulate matter (DPM) in an underground mine must not exceed an average eight-hour equivalent full shift airborne concentration of 160 micrograms of total carbon per cubic meter of air (160TC_{μg}/m³).

25.1.a.1. If a mine requires additional time to come into compliance with the final DPM limit established in the rules due to technological or economic constraints, the operator of the mine may file an application with the Director for a special extension.

25.1.a.2. The mine operator must certify on the application that the operator has posted one (1) copy of the application at the mine site for at least thirty (30) days prior to the date of application and has provided another copy to the authorized representative of the miners.

25.1.a.3. No approval of a special extension shall exceed a period of one (1) year from the date of approval. Mine operators may file for additional special extensions provided each extension does not exceed a period of one (1) year. An application must include the following information:

25.1.a.3.A. Documentation supporting that controls are technologically or economically infeasible at this time to reduce the miner's exposure to the final DPM limit;

25.1.a.3.B. The most recent DPM monitoring results; and

25.1.a.3.C. The actions the operator will take during the extension to minimize exposure of miners to DPM.

25.1.a.4. A mine operator must comply with the terms of any approved application for a special extension, post a copy of the approved application for a special extension at the mine site for the duration of the special extension period and provide another copy to the authorized representative of the miners.

25.1.a.5. The mine operator must install, use, and maintain feasible engineering and administrative controls to reduce a miner's exposure to or below the DPM limit established in this section. When controls do not reduce a miner's DPM exposure to the limit, controls are infeasible, or controls do not produce significant reductions in DPM exposures, controls must be used to reduce the miner's exposure to as low a level as feasible and must be supplemented with respiratory protection.

25.1.a.5.A. Air purifying respirators must be equipped with the following:

25.1.a.5.A.1. Filters certified by NIOSH as a high efficiency particulate air (HEPA) filter;

25.1.a.5.A.2. Filters certified by as 99.97% efficient; or

25.1.a.5.A.3. Filters certified by NIOSH for DPM.

25.1.a.5.B. Non-powered, negative-pressure, air purifying, particulate-filter respirators shall use an R- or P-series filter or any filter certified by NIOSH for DPM. An R-series filter shall not be used for longer than one (1) work shift.

25.1.a.6. Rotation of miners shall not be considered an acceptable administrative control used for compliance with the DPM standard.

25.1.a.7. The mine operator must provide a confidential medical evaluation by a physician or other licensed health care professional (PLHCP), at no cost to the miner, to determine the miner's ability to use a respirator before the miner is required to be fit tested or to use a respirator at the mine. If the PLHCP determines that the miner cannot wear a negative pressure respirator, the mine operator must make certain that the PLHCP evaluates the miner's ability to wear a powered air purifying respirator (PAPR).

25.1.a.7.A. The mine operator must provide the miner with an opportunity to discuss his/her evaluation results with the PLHCP before the PLHCP submits the written determination to the mine operator regarding the miner's ability to wear a respirator. If the miner disagrees with the evaluation results of the PLHCP, the miner may submit within thirty (30) days additional evidence of his/her medical condition to the PLHCP.

25.1.a.7.B. The mine operator must obtain a written determination from the PLHCP regarding the miner's ability to wear a respirator, and the mine operator must assure that the PLHCP provides a copy of the determination to the miner.

25.1.a.7.C. The miner must be reevaluated when the mine operator has reason to believe that conditions have changed which could adversely affect the miner's ability to wear the respirator.

25.1.a.7.D. Upon written notification that the PLHCP has determined that the miner is unable to wear a respirator, including a PAPR, the miner must be transferred to work in an existing position in an area of the same mine where respiratory protection is not required. The miner must be transferred within thirty (30) days of the final determination by the PLHCP.

25.1.a.7.D.1. The miner must continue to receive compensation at no less than the regular rate of pay in the classification held by that miner immediately prior to the transfer.

25.1.a.7.D.2. Increases in wages of the transferred miner must be based upon the new work classification.

25.1.a.7.D.3. The mine operator must maintain a record of the identity of the PLHCP and the most recent written determination of each miner's ability to wear a respirator for the duration of the miner's employment plus six (6) months.

25.2. Test for compliance.

25.2.a. The operator will make records showing compliance with MSHA regulations in regard to this section available to the Director or authorized representative.

25.2.a.1. Diesel fuel.

25.2.a.1.A. Diesel fuel used to power equipment in underground areas must not have a sulfur content greater than 0.05 percent. The operator must retain purchase records that demonstrate compliance with this requirement for one (1) year after the date of purchase.

25.2.a.1.B. The operator must only use fuel additives registered by the United States Environmental Protection Agency in diesel powered equipment operated in underground areas.

25.2.b.1. Maintenance.

25.2.b.1.A. Any diesel powered equipment operated at any time in underground areas must meet the following maintenance standards:

25.2.b.1.A.1. The operator must maintain any approved engine in approved condition;

25.2.b.1.A.2. The operator must maintain the emission related components of any non-approved engine to manufacturer specifications; and

25.2.b.1.A.3. The operator must maintain any emission or particulate control device installed on the equipment in effective operating condition.

25.2.b.1.B. A mine operator must authorize each miner operating diesel-powered equipment underground to affix a visible and dated tag to the equipment when the miner notes evidence that the equipment may require maintenance in order to comply with the maintenance standards. The term "evidence" means visible smoke or odor that is unusual for that piece of equipment under normal operating procedures or obvious or visible defects in the exhaust emissions control system or in the engine affecting emissions.

25.2.b.1.C. A mine operator must ensure that any equipment tagged pursuant to this section is promptly examined by a person authorized to maintain diesel equipment, and that the affixed tag not be removed until the examination has been completed. The term "promptly" means before the end of the next shift during which a qualified mechanic is scheduled to work.

25.2.b.1.D. A mine operator must retain a log of any equipment tagged pursuant to this section. The log must include the date the equipment is tagged, the date the equipment is examined, the name of the person examining the equipment, and any action taken as a result of the examination. The operator must retain the information in the log for one (1) year after the date the tagged equipment was examined.

25.2.b.1.E. Persons authorized by a mine operator to maintain diesel equipment must be qualified, by virtue of training or experience, to ensure that the maintenance standards are observed. An operator must retain appropriate evidence of the competence of any person to perform specific maintenance tasks in compliance with those standards for one (1) year after the date of any maintenance, and upon request must provide the documentation to the authorized representative of the Director.

25.3. Engines.

25.3.a. Any diesel engine introduced into an underground area of a mine covered by this part after July 5, 2001, other than an engine in an ambulance or fire fighting equipment which is utilized in accordance with mine fire fighting and evacuation plans, must either:

25.3.a.1. Have affixed a plate evidencing approval of the engine pursuant to 30 C.F.R.; or

25.3.a.2. Meet or exceed the applicable particulate matter emission requirements of the United States Environmental Protection Agency.

25.3.b. For purposes of subdivision 26.3.a.:

25.3.b.1. The term "introduced" means any engine added to the underground inventory of engines of the mine in question, including:

25.3.b.1.A. An engine in newly purchased equipment;

25.3.b.1.B. An engine in used equipment brought into the mine; and

25.3.b.1.C. A replacement engine that has a different serial number than the engine it is replacing;

but

25.3.b.2. The term "introduced" does not include engines that were previously part of the mine inventory and rebuilt.

25.3.b.3. The term "introduced" does not include the transfer of engines or equipment from the inventory of one underground mine to another underground mine operated by the same mine operator.

25.4. Training.

25.4.a. Mine operators must provide annual training to all miners at a mine covered by this section who can reasonably be expected to be exposed to diesel emissions on that property. The training must include:

25.4.a.1. The health risks associated with exposure to diesel particulate matter;

25.4.a.2. The methods used in the mine to control diesel particulate matter concentrations;

25.4.a.3. Identification of the personnel responsible for maintaining those controls; and

25.4.a.4. Actions miners must take to ensure the controls operate as intended.

25.4.b. An operator must retain a record at the mine site of the training required by this section for one (1) year after completion of the training.

25.5. Exposure monitoring.

25.5.a. Mine operators must monitor as often as necessary to effectively determine, under conditions that can be reasonably anticipated in the mine, whether the average personal full-shift airborne exposure to DPM exceeds the DPM limit specified in the MSHA standard.

25.5.b. The mine operator must provide affected miners with an opportunity to observe exposure monitoring required by this section. Mine operators must give prior notice to affected miners of the date and time of intended monitoring.

25.5.c. If any monitoring performed under this section indicates that a miner's exposure to diesel particulate matter exceeds the DPM limit specified in the current MSHA standard, the operator must promptly post notice of the corrective action being taken on the mine bulletin board, initiate corrective action by the next work shift, and promptly complete such corrective action.

25.5.d. Documentation.

25.5.d.1. The results of monitoring for diesel particulate matter, including any results received by a mine operator from sampling performed by MSHA or the West Virginia Office of Miners' Health, Safety and Training, must be posted on the mine bulletin board within fifteen (15) days of receipt and must remain posted for thirty (30) days. The operator must provide a copy of the results to the authorized representative of the miners.

25.5.d.2. The mine operator must retain for five (5) years (from the date of sampling) the results of any samples the operator collected as a result of monitoring under this section and information about the sampling method used for obtaining the samples.

25.5.e. Records and Retention. The operator must make available to the Director or authorized representative any records required to be retained by MSHA under the DPM standard.

§56-20-26. Independent Contractor Register.

26.1. All independent contractors as defined in subsection 3.42 of these rules shall register with the West Virginia Office of Miners' Health, Safety and Training within sixty (60) days of the effective date of these rules and receive a contractor identification number before performing services or construction work at quarries in this state. A one-time fee of fifty dollars (\$50.00) will be required to register.

26.2. In the event the quarry-only independent contractor ceases working on quarry mine property, they shall notify the Director in writing within sixty (60) days.

26.3. The quarry-only independent contractor permit is for work performed at quarries only and does not include working on coal mine property.

26.4. To register, all independent contractors shall provide the West Virginia Office of Miners' Health, Safety and Training the following information on forms provided by the West Virginia Office of Miners' Health, Safety and Training:

26.4.a. The independent contractor's trade name, business address, and business telephone;

26.4.b. A general description of the nature of the work to be performed by the independent contractor; and

26.4.c. The independent contractor's address of record for service of citations or other documents involving the independent contractor.

26.5. If any of the above information changes, the independent contractor shall advise the West Virginia Office of Miners' Health, Safety and Training of such change within thirty (30) days.

26.6. Upon receipt of the above information, the West Virginia Office of Miners' Health, Safety and Training shall issue a contractor identification number. Prompt issuance of the contractor identification number shall not be unreasonably withheld.

26.7. Prior to performing work at the quarry, each independent contractor shall provide the production operator the information contained in subsection 26.4, along with his West Virginia Office of Miners' Health, Safety and Training contractor identification number.

26.8. Each production operator shall maintain in writing at the quarry the information required by subsection 26.7 for each independent contractor at the quarry. The production operator shall provide the above information to an authorized representative of the Director upon the beginning of any inspection.

§56-20-27. Service of Documents; Independent Contractors. Service of notices, orders, and other documents upon independent contractors shall be completed upon delivery to the independent contractor at the work site and mailed to the independent contractor's address of record. A copy of all notices, orders, and other required documents shall be posted on a conspicuous bulletin board at the work site.

§56-20-28. Address of Record and Telephone Number; Independent Contractors. The address and telephone number required under this section shall be the independent contractor's official address and telephone number for purposes of Chapter 22A of the West Virginia Code and these rules. Service of documents upon independent contractors may be proved by a certified mail return receipt showing that the documents were delivered to the address of record, or showing that the independent contractor is no longer at that address and has established no forwarding address because delivery was not accepted at that address, or that no such address exists. Independent contractors may request service by delivery to another appropriate address of record provided by the independent contractor.

§56-20-29. Enforcement of Citations and Orders.

29.1. These rules shall not be construed to limit the basic compliance responsibilities of production operators. Overall compliance responsibility of production operators shall include assuring compliance with the West Virginia Code provisions and rules which apply to the work being performed by independent contractors at the quarry.

29.2. It is the general enforcement policy of the West Virginia Office of Miners' Health, Safety and Training that the independent contractor will be held responsible for violations committed by the independent contractor or its employees where the production operator has complied with section 26 of these rules.

29.3. Enforcement action against production operators for violations which involve independent contractors may be taken by the West Virginia Miners' Health, Safety and Training where the production operator has contributed to the existence of a violation, or the production operator's miners are exposed to the hazard, or the production operator has control over the existence of the hazard.

29.4. A production operator may be properly cited for a violation of the rules involving an independent contractor where:

29.4.a. The production operator has contributed by either an act or an omission to the occurrence of a violation in the course of an independent contractor's work, or

29.4.b. The production operator has contributed by either an act or omission to the continued existence of a violation committed by an independent contractor, or

29.4.c. The production operator's miners are exposed to the hazard, or

29.4.d. The production operator has control over the condition that needs abatement.

29.5. In addition to the provisions of section 29.4 of these rules, the production operator may also be required to assure continued compliance with the West Virginia Code and rules applicable to an independent contractor at the quarry until the contractor is fully able to assume compliance responsibility.

29.6. Whenever a mine inspector finds a violation or imminent danger in an area where an independent contractor is operating, such inspector shall make a determination whether to issue the appropriate Notice of Violation or order to either the production operator or the independent contractor, or both, based upon the criteria set out in sections 29.2 and 29.3 of these rules.

29.7. In instances where the work performed will last five (5) days or less at quarry operations, an independent contractor's identification number will not be required. No more than five (5) days work in a calendar year will be allowed without obtaining a contractor identification number issued by the West Virginia Office of Miners' Health, Safety & Training.

29.8. Independent contractors working at quarries shall comply with Title 56, Series 8 of the West Virginia Administrative Rules.

§56-20-30. Construction. After the effective date of this rule, construction operations within the quarry industry shall conform to Occupational Safety and Health Administration (OSHA) regulations (29 C.F.R. Part 1926) in effect at the time of construction.

§56-20-31. Assessment of Quarry-Related Violations.

31.1. The procedures found in Title 56, Series 1 shall govern the assessment of quarry-related violations.

31.2. All civil monetary penalties assessed by the Director, pursuant to Section 21, Article 1, Chapter 22A of the West Virginia Code, for quarry-related violations shall be not less than twenty-five percent (25%) nor greater than fifty percent (50%) of the value assessed against coal mines.

31.3. The civil monetary penalty for individual personal assessments shall not be more than two hundred fifty dollars (\$250.00) for each occurrence of the violation.

TABLE 1

(See page 19, Subdivision 9.4.b.)

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

APPLICABLE LAW

CHAPTER 22A, ARTICLE 1
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
ADMINISTRATION; ENFORCEMENT

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

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

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

(c) The director shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the Governor.

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

(e) The director shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of his or her official duties, the director shall take the oath required of public officials prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars. The executed oath and bond shall be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from office funds.

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

(a) The Director of the Office of Miners' Health, Safety and Training is hereby empowered and it is his or her duty to administer and enforce the provisions of this chapter relating to health and safety inspections and enforcement and training in coal mines, underground clay mines, open pit mines, cement manufacturing plants and underground limestone and sandstone mines.

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

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

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

(3) Assign mine inspectors to divisions or districts in accordance with the provisions of section eight of this article as may be necessary to fully and effectively carry out the provisions of this law, including the training of inspectors for the specialized requirements of surface mining, shaft and slope sinking and surface installations and to supervise and direct the mine inspectors in the performance of their duties.

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

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

(6) Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of this article.

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

(8) Make annually a full and complete written report of the administration of the office to the Governor and the Legislature of the state for the year ending June 30. The report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of individuals employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the office from all sources identifying each source of the funds, the expenditures of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the office, the number of inspections made by each inspector, the number and type of violations found by each inspector. However, no inspector may be identified by name in this report. Such reports shall be filed with the Governor and the Legislature on or before December 31 of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(9) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records or other documents relevant or material to any hearing, investigation or examination of any mine permitted by this chapter. Any witness so called or subpoenaed shall receive \$40 per diem and shall receive mileage at the rate of \$.15 for each mile actually traveled, which shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by the witness.

(10) Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or the operator's agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his or her representative.

(11) Beginning January 1, 2013, the director shall share information regarding suspension or revocation of a certificate of a certified person, as defined in this article for violation of the substance abuse provisions of article one-a of this chapter with other states that subject similar persons to disciplinary action for violation of a substance abuse policy.

(12) The director shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code, a rule establishing a program for the sharing of information between employers who employ certified persons regarding the discharge of persons in safety sensitive positions as defined in section one, article one-a of this chapter for violation of an employer's substance abuse policy.

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

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

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

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

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

(c) The Director of the Office of Miners' Health, Safety and Training, or his or her designee, upon receipt of the list of approved innovative mine safety technologies from the Mine Safety Technology Task Force, has thirty days to approve or amend the list as provided in section four, article thirteen-bb, chapter eleven of this code. At the expiration of the time period, the director shall publish the list of approved innovative mine safety technologies as provided in section four, article thirteen-bb, chapter eleven of this code.

§22A-1-5. Offices continued in the office of miners' health, safety and training

(a) There are hereby continued in the office of miners' health, safety and training the following offices:

(1) The board of coal mine health and safety established pursuant to article six of this chapter;

(2) The coal mine safety and technical review committee established pursuant to article six of this chapter;

(3) The board of miner training, education and certification established pursuant to article seven of this chapter;

(4) The mine inspectors' examining board established pursuant to article nine of this chapter; and

(5) The board of appeals provided for pursuant to the provisions of article five of this chapter.

(b) Nothing in this article may authorize the director or the secretary of the department of commerce, labor and environmental resources to alter, discontinue or abolish any office, board or commission or the functions thereof, which are established by statute.

§22A-1-7. Savings provisions

All orders, determinations, rules, permits, grants, contracts, certificates, licenses and privileges which have been issued, made, granted, or allowed to become effective by the governor, any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which were transferred from the division of energy to the secretary of the department of commerce, labor and environmental resources, to the director, or to the office, and which were in effect on the date such transfer occurred, shall continue in effect according to their terms until

modified, terminated, superseded, set aside or revoked in accordance with law by the governor, the secretary, the director, or other authorized official, a court of competent jurisdiction or by operation of law.

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

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

(b) If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.

(c) Mine inspectors shall devote their full-time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in the mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in the mine. No other person shall, with the intent of undermining the integrity of an unannounced mine inspection, provide advance notice of any inspection or of an inspector's presence at a mine to any person at that mine. Any person who, with the requisite intent, knowingly causes or conspires to provide advance notice of any inspection or of an inspector's presence at a mine is guilty of a felony and, upon conviction thereof, shall be fined not more than \$15,000 or imprisoned in a state correctional facility not less than one year and not more than five years, or both fined and imprisoned.

(d) In addition to the other duties imposed by this article and article two of this chapter, it is the duty of each inspector to note each violation he or she finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.

(e) On or after July 1, 2012, an inspector shall require the operator or other employer to investigate all complaints received by the Office of Miners' Health, Safety and Training involving a certified person's substance abuse or alcohol related impairment at a mine. Within thirty days following notification by the Office of Miners' Health, Safety and Training to the operator or other employer of the complaint, the operator or other employer shall file with the Director a summary of its investigation into the alleged substance abuse or alcohol related impairment of a certified person.

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

(g) At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine at the time of the inspection shall be given an opportunity to accompany the authorized representative of the director on the inspection.

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

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

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

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

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

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

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

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

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

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

(F) The number of employees at the mine, the size, layout and physical features of the mine and the length of time the mine has been in operation; and

(G) Any mitigating circumstances.

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

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of the shift.

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

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

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

(3) Any representative of the miners in the mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in the area is necessary for the investigation of the conditions described in the order; and

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

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

(g) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or the operator's agent by an authorized representative of the director issuing the notice or order and all the notices and orders shall be in writing and shall be signed by the representative and posted on the bulletin board at the mine.

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

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

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

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

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

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

In order that the electrical inspector may properly perform the duties required of him or her, he or she shall devote his or her whole time and attention to the duties of the office, and the inspector has the right to enter any coal mine for the purpose of inspecting electrical equipment, and if he or she finds during an inspection any defects in the electrical equipment which are covered by law and may be detrimental to the lives or health of the workmen, the inspector has

the authority to order the operator, in writing, to remedy such defects within a prescribed time, and to prohibit the continued operation of such electrical equipment after such time, unless such defects have been corrected.

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

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

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

(a)(1) An operator, issued an order pursuant to the provisions of section fifteen of this article, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the director for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator, issued a notice pursuant to subsection (b), section fifteen of this article, or any representative of miners in any mine affected by such notice, may, if the operator believes that the period of the time fixed in such notice for the abatement of the violation is unreasonable, apply to the director for review of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the director shall cause such investigation to be made as the director deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this law does not operate as a stay of any order or notice.

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

(b) Upon receiving the report of such investigation, the director shall make findings of fact, and issue a written decision, incorporating therein an order vacating, affirming, modifying or terminating the order, or the modification or termination of such order, or the notice complained of and incorporate findings therein.

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

(d) Pending completion of the investigation required by this section, the applicant may file with the director a written request that the director grant temporary relief from any modification or termination of any order, or from any order issued under section fifteen of this article, except an order issued under section sixteen of this article, together with a detailed statement giving reasons for granting such relief. The director may grant such relief, under such conditions as he or she may prescribe, if:

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

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

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

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

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

(a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of the mine, and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices, orders and decisions required by this law or rule to be posted on the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice, order or decision required by this law to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or the operator's agent.

(b) The director shall cause a copy of any notice, order or decision required by this law to be given to an operator to be mailed immediately to a representative of the miners. Such notice, order or decision shall be available for public inspection.

(c) In order to ensure prompt compliance with any notice, order or decision issued under this law, the authorized representative of the director may deliver such notice, order or decision to an agent of the operator and such agent shall immediately take appropriate measures to ensure compliance with such notice, order or decision.

(d) Each operator of a coal mine shall file with the director the name and address of such mine and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the director. Each operator of a coal mine shall designate a responsible official at such mine as the principal

officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order or decision issued under this law affecting such mine. In any case, where the coal mine is subject to the control of any person not directly involved in the daily operations of the coal mine, there shall be filed with the director the name and address of such person and the name and address of a principal official of such person who has overall responsibility for the conduct of an effective health and safety program at any coal mine subject to the control of such person and such official shall receive a copy of any notice, order or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection does not make such official subject to any penalty under this law.

§22A-1-19. Judicial review

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

(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the director shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.

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

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

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

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

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

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.

(f) Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any proceeding instituted under this section.

§22A-1-20. Injunctions

The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located or the circuit court of Kanawha County, whenever the operator or the operator's agent (a) violates or fails or refuses to comply with any order or decision issued under this law, or (b) interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this law, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of this law, or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. Each court shall have jurisdiction to provide such relief as may be appropriate. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this law, unless, prior thereto, the circuit court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the director after a public hearing, the findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

§22A-1-22. Discrimination

(a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that the person believes or knows that such miner or representative (1) has notified the director, his or her authorized representative, or an operator, directly or indirectly, of any alleged violation or danger, (2) has filed, instituted or caused to be filed or instituted any proceeding under this law, (3) has testified or is about to testify in any proceeding resulting from the administration or

enforcement of the provisions of this law. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done (1), (2) or (3) above.

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

(c) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

§22A-1-23. Records and reports

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

§22A-1-31. Withdrawal of certification

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

(b) Evaluation of charge by board of appeals. – Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the director's receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected and to any interested person of record. Thereafter the board shall

maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) Hearing. – The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

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

(e) Penalties. – The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

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

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

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

(a) The director, in consultation with the state board of coal mine health and safety, shall promulgate rules in accordance with chapter twenty-nine-a of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in subsection (b) of this section. The rules may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine or any other factor deemed relevant by the director.

(b) Within six months of the date when the rules required in subsection (a), above, become final, each operator shall develop and submit to the director a comprehensive mine safety program for each mine, in accordance with such rules. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director regarding the modification or revision of such program, prior to submission of such program to the director. Upon submission of such program the director has ninety days to approve, reject or modify such program. If the program is rejected, the director shall give the operator a reasonable time to correct and resubmit such program. Each program which is approved shall be reviewed, at least annually, by the director. An up-to-date copy of each program shall be placed on file in the office and further copies shall be made available to the miners of each mine and their representatives. Each operator shall undertake all efforts necessary to assure total compliance with the appropriate safety program at each mine and shall fully implement all portions of such program.

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

CHAPTER 22A, ARTICLE 2 UNDERGROUND MINES

§22A-2-70. Shafts and slopes.

(a) When mine examiner to be employed; qualifications. – During the sinking of a shaft or the driving of a slope to a coal bed or while engaged in underground construction work, or relating thereto, the operator shall assign a mine examiner to such project areas. Such mine examiner shall have a certificate of competency valid only for the type of work stipulated thereon and issued to him or her by the office of miners' health, safety and training after he or she has passed an examination given by the office of miners' health, safety and training. He or she shall, at the time he or she

takes the examination, have a minimum of five years' experience in shaft sinking, slope driving and underground construction; moreover, he or she shall be able to detect methane with a flame safety lamp and have a thorough knowledge of the ventilation of shafts, slopes, and mines, and the machinery connected therewith, and finally, he or she shall be a person of good moral character with temperate habits.

(b) Mine examiner or certified person acting as such; duties generally; records open for inspection. -- In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified foreman or mine examiner, designated by the operator of such shaft or slope to do so, shall make an examination of such areas. Each person designated to make such examinations shall make tests with a permissible flame safety lamp for accumulations of methane and oxygen deficiency, and examine sides of shafts and ribs and roof of all slopes. Should he or she find a condition which he or she considers dangerous to persons, he or she shall place a conspicuous danger sign at all entrances to such places. He or she shall record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept at a place on the surface designated by mine management. All records as prescribed herein shall be open for inspection by interested persons.

(c) Approvals and permits. -- An approval shall be obtained from the office before work is started. A permit shall be obtained from the office (1) to stop fan when miners are in shafts or slopes; (2) to use electrical machinery in shafts or slopes; (3) to use electric lights in shafts or slopes; (4) to use welders, torches and like equipment in shafts or slopes; (5) to hoist more than four miners at one time in buckets or cars; (6) to shoot more than fifteen shots in one series.

(d) Records. -- The foreman in charge on each shift shall keep a daily report of conditions and practices. The foreman in charge on each shift shall read and countersign the reports of the previous shift. Unsatisfactory conditions and practices reported shall be repeated on daily reports until corrected. Hoists, buckets, cars, ropes and appliances thereto shall be examined by a qualified person before the start of each shift and a written record kept. Deaths from accidents or previous injuries shall be reported immediately by wire to the office of the director and to the district mine inspector or the inspector-at-large. A written report of all injuries and deaths shall be mailed to the office of miners' health, safety and training and district mine inspector promptly. Immediate notice shall be given the office of the director, the district mine inspector and the inspector-at-large in the event of an ignition of gas, or serious accident to miners or equipment. All permits and approvals must be available for inspection by all interested persons.

(e) General. -- The foreman on shift shall have at least five years' experience in shafts or slopes. New employees shall be instructed in the dangers and rules incident to their work. Conspicuous bulletin boards and warning signs shall be maintained. Unauthorized persons shall not be permitted around shafts or slopes. First-aid material shall be maintained at the operation as required by section fifty-nine of this article. The scene of a fatal accident shall be left unchanged until an investigation is made by all interested persons. All employees and others around the operation shall wear hard-toe shoes and hard-top hats. Goggles or other eye protection shall be worn when cutting, welding or striking where particles may fly. Gears, belts and revolving parts of machinery shall be properly guarded. Hand tools shall be in good condition. Sides of shafts, ribs and roof of all slopes shall be closely observed for loose and dangerous conditions. Loose brows, ribs and top in slopes shall be taken down or supported; loose ribs in shafts shall be scaled. Miners shall be hoisted and lowered under power in shafts and slopes. All hoists must have two positive breaking devices. At least three wraps of rope shall remain on the hoist drum at all times. Wire ropes shall not be less than three-fourths inches in diameter, and of a design to prevent excessive spinning or turning when hoisting.

When heavy materials are hoisted, a large rope shall be used if necessary. A hoisting engineer shall be in constant attendance while men are in shaft. Head frames shall be constructed substantially. Noise from machinery shall not interfere with signals. The standard signal code, whistle or bell shall be used for hoisting:

One signal	Hoist
One signal	Stop
Two signals	Lower
Three signals	Man cage
One signal from hoisting engineer	Miners board cage

Hoist signals shall be posted in front of the hoisting engineer. The shaft opening shall be enclosed by a fence five feet high. Buckets shall not be loaded within six inches of the top rim. Buckets shall have a positive lock on the handle or bale to prevent bucket from crumpling while being hoisted. Positive coupling devices shall be used on buckets or cars (hooks with safety catches or threaded clevis). Emergency devices for escape shall be provided while shafts are under construction. Miners shall not ride on or work from rims of buckets. Buckets or cars shall not be lowered without a signal from working area. Only sober and competent engineers shall be permitted to operate hoists. No intoxicating liquors or intoxicated persons shall be permitted in or around any shaft, slope or machinery. Lattice type platforms shall be used.

(f) Explosives. -- Explosives and blasting caps being taken into or removed from the operation shall be transported and kept in approved nonconducting receptacles (unopened cartons or cases are permissible). Explosives shall not be primed until ready to be inserted into holes. Handling of explosives and loading of holes shall be under the strict supervision of a qualified person or shotfirer. No more explosives or caps than are required to shoot one round shall

be taken into shafts. Adobe, mudcapped or unconfined shots shall not be fired. Holes shall be stemmed tightly and full into the mouth. Blasting caps shall be inserted in line with the explosive. Leg wires of blasting caps and buss wires shall be kept shunted until connected. Shooting cables shall be shunted at firing devices and before connecting to leg wires. Only approved shooting devices shall be used. Shots shall be fired promptly after the round of holes are charged. Warnings shall be given before shots are fired by shouting "Fire" three times slowly after those notified have withdrawn. The blasting circuit shall be wired in series or parallel series. All shooting circuits shall be tested with a galvanometer by a qualified person before shooting. A careful examination for misfires shall be made after each shot. Persons shall not return to the face until smoke and dust have cleared away. The shooting cable shall be adequately insulated and have a substantial covering; be connected by the person firing the shot; and be kept away from power circuits. Misfires shall be removed by firing separate holes or by washing; shall not be drilled out; and shall be removed under supervision of a foreman or qualified person. Separate magazines for the storage of explosives and detonators shall be located not less than three hundred feet from openings or other structures. Magazines for the storage of explosives and detonators shall be separated at least fifty feet. Magazines shall be located behind barricades. The outside of magazines shall be constructed of incombustible material. Rubbish and combustible material shall not be permitted to accumulate around or in magazine. Warning signs, to be seen in all directions, shall be posted near magazines.

(g) Electrical. -- Power cables installed in slopes shall be placed in conduit away from the belt as far as possible. Surface transformers shall be elevated at least eight feet from the ground or enclosed by a fence six feet high, grounded if metal; shall be properly grounded; shall be installed so that they will not present a fire hazard; and shall be guarded by sufficient danger signs.

Electric equipment shall be in good condition, clean and orderly; shall be equipped with guards around moving parts; and shall be grounded with effective frame grounds on motors and control boxes.

All electric wires shall be installed and supported on insulators. All electric equipment shall be protected by dual element fuse or circuit breakers.

(h) Ventilation. -- Ventilating fans shall be offset from portal at least fifteen feet; shall be installed so that the ventilating current is not contaminated by dust, smoke or gases; shall be effectively frame grounded; and shall be provided with fire extinguishers.

All shafts and slopes shall be ventilated adequately and continuously with fresh air. Air tubing shall deliver not less than nine thousand feet per minute at the working area or as much more as the inspector may require.

(i) Gases. -- A foreman shall be in attendance at all times in shafts and slopes who has passed an examination given by the office as to his or her competency in the use of flame safety lamps.

An examination shall be made before and after shooting by the foreman on shift. The foreman shall have no superior in the performance of his or her duties. A lighted flame safety lamp or other approved detector shall be carried at all times by the foreman when in the working area and weekly gas analysis made. In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified mine foreman or mine examiner designated by the operator of such shaft or slope to do so, shall make an examination of such area. Evidence of official examination shall be left at the face by marking date and initials.

Gases should be removed under the supervision of the foreman in charge. Smoking shall not be permitted inside of shafts or slopes.

(j) Drilling. -- Dust allaying or dust collecting devices shall be used while drilling.

(k) Lights to be used in shafts. -- Only approved electric cap lights shall be used in shafts. Other lights shall be of explosive-proof type. Lights shall be suspended in shafts by cable or chain other than the power conductor. In slopes, lights must be substantially installed. Power cables shall be of an approved type. Power cables shall not be taut from shaft collar to light. Power cables shall be in good condition and free of improper splices. Lights shall be suspended not less than twenty feet above where miners are working. Lights shall be removed from shaft and power cut off when shooting. In slopes, lights must be removed a safe distance when shots are fired. Lights shall not be replaced in shafts or slopes until examination has been made for gas by the mine examiner and found clear. Front of light shall be protected by a substantial metal type guard. Lights shall be protected from falling objects from above by a metal hood. The lighting circuit shall be properly fused. Electric lights shall not be used in gaseous atmospheres. A lighted flame safety lamp or approved detector shall be kept for use at the face while miners are at work.

§22A-2-71. Right of miner to refuse to operate unsafe equipment; procedure; discrimination.

No miner shall be required to operate unsafe equipment. On or before the first day of January, one thousand nine hundred eighty-one, the board of coal mine health and safety shall by rule or regulation establish a procedure for resolving disputes arising out of the refusal by a miner to operate such alleged unsafe equipment. No action shall be taken against a miner by an operator unless such miner is found to have acted in bad faith and without good cause by the director or his authorized representative.

§22A-2-71a. Right of miner to refuse to work in an unsafe area or unsafe manner.

Any miner has the right to refuse to work in an area or under conditions which he believes to be unsafe.

22A-2-79. Provisions of article severable.

The various provisions of this article shall be construed as separable and severable, and should any of the provisions, sentences, clauses, or parts thereof be construed or held unconstitutional or for any reason be invalid, the remaining provisions of this article shall not be thereby affected.

**CHAPTER 22A, ARTICLE 3
UNDERGROUND CLAY MINE**

§22A-3-1. Definition

In this article the term "mine" includes the shafts, slopes, drifts or inclines connected with excavations penetrating clay seams or strata, which excavations are ventilated by one general air current or division thereof, and the surface structures or equipment connected therewith which contribute directly or indirectly to the underground mining of clay.

§22A-3-2. Clay mine foreman; when to be employed; qualifications; assistants

In every underground clay mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ a mine foreman who shall be a competent and practical person holding a certificate of competence for said position issued to him or her by the office of miners' health, safety and training after an examination by such office. In order to receive a certificate of competence qualifying a foreman in an underground clay mine, the applicant shall take an examination prescribed by the director of the office of miners' health, safety and training, be a citizen of this state, of good moral character and temperate habits, having had at least three years' experience in the underground working of clay mines.

§22A-3-3. Rules for protection of health and safety of employees

The director of the office of miners' health, safety and training may from time to time promulgate reasonable rules for the protection of the health and safety of the persons working in or about underground clay mines, to the extent the same are not more onerous or restrictive than the laws of this state intended to safeguard the life and health of persons working in underground coal mines contained in article two of this chapter.

**CHAPTER 22A, ARTICLE 4
OPEN-PIT MINES, CEMENT MANUFACTURING PLANTS AND
UNDERGROUND LIMESTONE AND SANDSTONE MINES**

§22A-4-1. Definitions

Unless the context in which used clearly requires a different meaning as used in this article:

- (a) "Open-pit mine" means an excavation worked from the surface and open to daylight.
- (b) "Underground mine" means subterranean workings for the purpose of obtaining a desired material or materials.
- (c) "Sand" means waterworn sandstone fragments transported and deposited by water.
- (d) "Gravel" means an occurrence of waterworn pebbles.
- (e) "Sandstone" means a compacted or cemented sediment composed chiefly of quartz grains.
- (f) "Limestone" means a sedimentary rock composed mostly of calcium carbonate.
- (g) "Clay" means a natural material of mostly small fragments of hydrous aluminum silicates and possessing plastic properties.
- (h) "Shale" means a laminated sedimentary rock composed chiefly of small particles of a clay grade.
- (i) "Iron ore" means a mineral or minerals, and gangue which when treated will yield iron at a profit.
- (j) "Manganese ore" means a metalliferous mineral which when treated will yield manganese at a profit.

§22A-4-2. Applicability of mining laws

All provisions of the mining laws of this state intended for the protection of the health and safety of persons employed within or at any coal mine and for the protection of any coal mining property extend to all open-pit mines and any property used in connection therewith for the mining of underground limestone and sandstone mines, insofar as such laws are applicable thereto.

§22A-4-3. Rules

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

§22A-4-4. Monthly report by operator

The operator of such mine shall, on or before the end of each calendar month, file with the director of the office of miners' health, safety and training a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.

§22A-4-5. 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 who at the time of 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 (e), section twelve, article one 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-4-6. Penalties

Any person who fails or refuses to discharge any provision of this article, rule promulgated or order issued pursuant to the provisions of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both.

CHAPTER 22A, ARTICLE 5 BOARD OF APPEALS

§22A-5-1. Board of appeals

There is hereby continued a board of appeals, consisting of three members. Two members of the board shall be appointed by the governor, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third person, who is chair of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, is selected by the two members appointed by the governor. The term of office of members of the board is five years.

The function and duties of the board is to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.

The chair of the board has the power to administer oaths and subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the appeal inquiry.

The chair shall subpoena any witness requested by a party to a hearing to testify or produce books, records or documents. Any witness responding to a subpoena so issued shall receive a daily witness fee to be paid out of the state treasury upon a requisition of the state auditor equivalent to the rate of pay under the wage agreement currently in effect plus all reasonable expenses for meals, lodging and travel at the rate applicable to state employees. Any full payments as hereinbefore specified shall be in full and exclusive payment for meals, lodging, actual travel and similar expenses and shall be made in lieu of any lost wages occasioned by such appearance in connection with any hearing conducted by the board.

Each member of the board shall be paid the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. No reimbursement for expenses shall be made except upon an itemized account, properly certified by such members of the board. All reimbursement for expenses shall be paid out of the state treasury upon a requisition upon the state auditor.

Board members, before performing any duty, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia.

TITLE 36, SERIES 19 WRITTEN REPORTS OF ACCIDENTS

§36-19-1. General

- 1.1. Scope. – Rules and regulations governing written reports of accidents.
- 1.2. Authority. – W.Va. Code §22-6-4.
- 1.3. Filing Date. – April 22, 1996.
- 1.4. Effective Date. – June 1, 1996.

§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 same effect as law. All provisions of W. Va. Code §22A-1A 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 W. Va. Code §22A-1A-1.

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 a 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;

3.3. Serious Personal Injury - 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.

3.4. 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. If an accident as defined in 3.2 or a serious personal injury as defined in 3.3. occurs an operator shall immediately contact the district inspector or the regional inspector at large from the regional Office of Miners' Health, Safety and Training for the area where the mine is located.

4.2. 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 within twenty-four (24) hours report the same in writing to the director of the Office of Miners' Health, Safety and Training.

4.3. 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 or injury with a reasonable potential to cause 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 of an injury, treatment of bruise by the drainage of blood, surgical removal of dead or damaged skin (debridement), amputation or permanent loss of use 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. After notification of an accident by an operator, the MHS&T inspector at large will promptly decide whether to conduct an accident investigation and will promptly inform the operator of his decision. If MHS&T decides to investigate an accident it will initiate the investigation within 24 hours of notification. The investigating 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 3.4. However, the operator shall investigate each occupational injury that requires hospitalization within ten (10) days of occurrence.

§36-19-7. Preservation of Evidence Following Accident.

7.1. Unless granted permission by the Office of Miners' Health, Safety and Training, no operator may alter an accident site or an accident related area until completion of all investigations pertaining to the accident except to the extent necessary to rescue or recover an individual, prevent or eliminate an imminent danger, or prevent destruction of mining equipment.

TITLE 37, SERIES 1 MINE BOARD OF APPEALS PROCEDURES AND PRACTICE BEFORE THE BOARD OF APPEALS

§37-1-1. General.

1.1. Scope.

(a) The procedures and rules of practice set forth herein shall govern and apply to proceedings before the Board of Appeals generally or Hearings Examiners appointed as authorized by law, including proceedings for the withdrawal of certification pursuant to section twenty-two-a, article one-a, chapter twenty-nine of the Code.

(b) In any proceeding 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 Board, no reissuance of any pleadings, 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 Board consistent with adequate consideration of the issues involved.

(d) On any procedural question not regulated by these 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 §22-1 and §29A-3

1.3. Filing Date. – April 12, 1982

1.4. Effective Date. – May 13, 1982

1.5. Definitions.

(a) All terms used in these rules, not defined herein, shall have the meanings set forth in section one, article one-a, chapter twenty-two-a of the Code.

(b) "Board of Appeals" means the Board created pursuant to section one, article five, chapter twenty-two of the Code.

(c) "Code," when following a reference to a specific section, article and chapter, means the West Virginia Code of 1931, as amended.

(d) "Hearing Examiner" means any person authorized by the Board of Appeals pursuant to section twenty-nine, article one-a, chapter twenty-two-a of the Code or any other provision of the Code to conduct hearings required or authorized under the laws of this state to be conducted by the Board of Appeals.

(e) "Representative of Miners" means a person or organization designated by a group of miners to act as their representative before the Board of Appeals.

(f) "Preliminary Motion" means a motion made pursuant to Section 1.11 of these rules prior to the conclusion of evidentiary hearings.

(g) "Applicant" means a person filing a petition pursuant to subsection (b), section twenty, article one-a, chapter twenty-two-a of the Code.

(h) "Charging Party" means a person filing a charge of breach of duty under section twenty-nine, article one-a, chapter twenty-two-a of the Code.

(i) "Charged Party" means a certified person charged with a breach of duty pursuant to section twenty-nine, article one-a, chapter twenty-two-a of the Code.

(j) "Charge" means a petition, complaint or any written document which plainly states a neglect or failure to perform any duty mandated by section one, article one-a, chapter twenty-two-a of the Code, et seq., or section one, article two, chapter twenty-two-a of the Code, et seq., and complies with the requirements of subsection (a), section twenty-nine, article one-a, chapter twenty-a of the Code.

(k) "Any Interested Person of Record" means any person in attendance at any hearing who has: (1) An interest in the outcome of the proceeding before the Board or Hearing Examiner, and (2) information or evidence which can be presented that could assist the Board or Hearing Examiner in performing its fact finding function, or if no hearing is held any person who meets the requirements of (1) and (2), and who may submit documents or materials to the Board for its consideration in the matter before it, or a person of record with the Board who meets above.

(l) "Chairman" means that person selected by the members of the Board of Appeals according to requirements of section one, article five, chapter twenty-two of the Code.

1.6. Parties.

(a) In a proceeding for withdrawal of certification under section twenty-nine, article one-a, chapter twenty-two-a of the Code, the parties shall be:

- (1) The charging party;
- (2) The charged party;
- (3) The Commissioner of the Department of Energy; and
- (4) 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 proceeding or any person otherwise seeking to intervene in a proceeding may become a party to a proceeding upon the Board'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 Commissioner 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 Board may grant or deny petitions for intervention or may permit intervention limited to a particular state 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 Board and may contain or include other information appropriate for the identification of the proceedings, 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, forms and documents in a proceeding described in these rules shall be filed with the Chairman, Board of Appeals, 1615 Washington Street, East, Charleston, West Virginia 25311.¹

(b) Number of copies. – Except as otherwise provided in these rules or by the Chairman, a party shall furnish an original and three (3) copies of all pleadings and other documents required or permitted to be filed with the Board.

(c) How to file. – All filing may be accomplished by personal delivery or first class mail.

(d) When filing effected. – 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 proceedings as described in Section 1.6 of these rules and companion sections.

(f) Method of service. – Documents by which any proceeding is initiated shall be served on each individual 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) Once the Board of Appeals has agreed to hear the petition or claim, all pleadings and other documents filed in any proceeding described in these rules shall contain a written certification of the date and manner of service. Such certification shall be in the form of an affidavit of the person making the service or of the written representation of

¹The new address is 7 Players Club Drive, Suite 2, Charleston, WV 25301.

the person's attorney. No pleading or document shall be considered filed for any purpose in the absence of such written certification.

(h) 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 may be made upon the attorney without additionally serving the individual party or parties. In any event once an attorney is of record in a proceeding under the rules, service shall be made on the attorney before service is complete.

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 Board; 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 Chairman of the Board 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 Chairman of the Board will then allow or disallow the filing based solely in his discretion as justice might require.

(b) A further and better statement of any cause or ground of complaint or defense, a further and better particulars of any matter stated, in any document, may in any case be ordered at the discretion of the Chairman or Hearing Examiner.

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 the service.

(c) Any motion, including motions made during the hearing and except for motions related to jurisdiction or directed verdict or for a motion for reconsideration of the final decision of the Board, 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 Board, oral argument on motions will not be heard.

1.12. Consolidation of proceedings. – The Chairman of the Board may at any time order a proceeding described in these rules consolidated with any other such proceeding then pending before the Board, if such a consolidation is, in the opinion of the Board, a more efficient and expeditious manner of taking evidence, as long as all parties to the proceeding are afforded due process of law and a fair opportunity to present and make a record of evidence.

1.13. Hearings. – All hearings shall be conducted by the Board itself, with the Chairman having the primary responsibility for conducting the hearing, or by a Hearing Examiner, pursuant to the direction of the Board, in those cases as authorized by the Code and consistent with the requirements of these rules. All hearings shall be conducted in a fair and impartial manner, be conducted in accordance with the provisions of Part 2 of these rules, and be open to the public.

1.14. Public access to board records.

(a) Subject to reasonable regulation by the Board, all Board records relating to reviewing charges to withdraw certification, and review of alleged discharges, discrimination or failure to compensate shall be open for public inspection.

(b) The Board shall make available for public inspection, all final orders, decisions and opinions in the adjudication of cases under the provisions of these rules.

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 Board may extend such time for good cause shown. If the motion for extension is made after the expiration of the prescribed time or any earlier granted extension, the extension shall be granted only upon the further showing that the failure to act was the result of excusable neglect.

(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. Action by the Board. – A vacancy in the Board shall not impair the right of the remaining two (2) members to exercise all of the powers of the Board. Two (2) members of the Board, at all times, shall constitute a quorum of the

Board. Only those members of the Board attending a hearing held in a proceeding shall participate in the decision in a proceeding arising out of such hearing. In any matter where only two (2) members of the Board attend the hearing held therein, action by the Board to grant the relief requested by the person initiating the proceeding shall require the concurrence of both of these members of the Board.

1.17. Discovery.

(a) Discovery shall be completed within thirty (30) days after commencement of a proceeding. For good cause shown, the Board may permit the time for discovery to be extended.

(b) 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.

(c) Upon application by a party or by the person from whom discovery is sought or upon its own motion, the Board 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.

(d) Upon application to the Board, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories. The time, place and manner of taking depositions shall be governed by the order of the Board.

(e) Upon receiving approval by the Board, any party may serve 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 requests within fifteen (15) days of service unless the proponent of the interrogatories or request agrees to a longer time, or unless the Board by order specifies a different time or excuses the party from answering on good cause shown. Interrogatories shall be answered under oath. For good cause shown, the Board may order a party to produce and permit inspection, copying or photographing of designated documents or objects.

1.18. Ex parte communications.

(a) No individual, partnership, corporation, association or other entity outside of this Board, its staff or its agents shall make or knowingly cause to be made any prohibited ex parte communication to the Board, its staff or its agents as to the merits of any proceeding before the Board which has not been concluded.

(b) No member of the Board, its staff or its agents shall request any prohibited ex parte communications or make or knowingly cause to be made any prohibited ex parte communications to any individual, partnership, corporation, association or other entity outside of this Board, its staff or its agents as to the merits of any proceeding before the Board which has not been concluded.

(c) "Ex Parte Communication" means an oral or written communication not on the public record with respect to which reasonable prior notice is not given to all parties as provided for in this rule.

(d) The ex parte communications prohibited by this rule include:

(1) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceedings; and

(2) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties to the proceeding and adequate opportunity afforded to them to be present.

(e) The ex parte communications prohibited by this rule shall not include:

(1) Oral or written requests for information solely with respect to the status of a proceeding; and

(2) Oral or written communications which all the parties to the proceeding agree, or which the Board formally rules, may be made on an ex parte basis.

(f) All ex parte communications made in violation of this rule shall be placed on the public record of the proceeding to which it relates.

(g) In the event an ex parte communication in violation of this rule occurs, the Board may make such orders or take such action as to the interests of justice require. Upon notice and hearing, the Board may determine that the interests of justice require that the claim or interest in the proceeding involving a party who knowingly makes a prohibited ex parte communication or knowingly causes a prohibited ex parte communication to be made be dismissed, denied or otherwise disregarded on account of such violation. Upon notice and hearing, the Board may censure, suspend, otherwise discipline or revoke the privilege of practice before the Board of any person who knowingly makes or causes the making of a prohibited ex parte communication.

1.19. Hearing examiners.

(a) In matters where authorized by the Code, the Board may appoint a Hearing Examiner. Anyone appointed to act as a Hearing Examiner must not have had any connection at any time with the coal industry or an organization representing miners, unless all parties to the proceeding consent to such a person's appointment. A reference to a hearing examiner shall be the exception and not the rule.

(b) The order of reference to the Hearing Examiner may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the Hearing Examiner's report. Subject to the specifications and limitations stated in the order, the Hearing Examiner has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for

the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference through subpoenas issued by the Board. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. The Hearing Examiner shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided for hearings before the Board.

(c) When a reference is made, the clerk of the Board shall forthwith furnish the hearing examiner with a copy of the order of reference. It is the duty of the hearing examiner to proceed with all reasonable diligence. Either party, on notice to the parties and hearing examiner, may apply to the Board for an order requiring the hearing examiner to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the hearing examiner may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(d) The parties may procure the attendance of witnesses before the hearing examiner by the issuance and service of subpoenas through the Board. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties and remedies as if the witness failed to appear or give evidence before the Board.

(e) The Hearing Examiner shall prepare a report upon the matters submitted to him by the order of reference and shall set forth his findings of fact and conclusions of law in the report. He shall file the report with the Board and shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The Board shall forthwith mail to all parties notice of the filing.

(f) The Board shall accept the Hearing Examiner's findings of fact unless clearly erroneous. Within ten (10) days after being served with notice of the filing of the report, any party may file with the Board and serve written objections thereto upon the other parties. Application to the Board for action upon the report and upon objections thereto shall be by motion and upon notice to the other parties. The Board, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(g) Before filing his report, a Hearing Examiner may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

§37-1-2. Hearings.

2.1. Scope. – Unless otherwise specified in these or other rules and regulations, the rules in this section shall govern and apply to hearings conducted by the Chairman or a Hearing Examiner pursuant to the authority provided in the laws of this State or Rules and Regulations pursuant thereto.

2.2. Conduct of hearings. – The Chairman or a Hearing Examiner appointed by the Board in those proceedings, as authorized by the Code, shall conduct every hearing.

2.3. Powers of the Board and Hearing Examiners.

(a) In all proceedings before the Board or during the time of reference of a proceedings to a Hearing Examiner in matters authorized by the Code, the Board or the Hearing Examiner in such respective matters shall have the authority and power to:

- (1) Administer oaths and affirmations;
- (2) Rule upon offers of proof and receive relevant evidence;
- (3) Take such action regarding discovery as required in any proceedings and as specified in these rules;
- (4) Regulate the course of the hearing;
- (5) Dispose of procedural requests or similar matters;
- (6) Hold conferences for the settlement or simplification of the issues with the consent of the affected parties;
- (7) Deny any continuance except for good cause shown;
- (8) Request the Director to investigate the charge filed in a decertification proceeding and report the results of the investigation within ten (10) days of his receipt of the request;
- (9) Adopt any other method for the gathering of sworn evidence which affords the Director and all parties due process of law and fair opportunity to present and make a record of evidence; and
- (10) Take any other action in connection with proceedings as authorized by law.

(b) In all proceedings, whether before the Board or a Hearing Examiner, the Board shall be responsible to subpoena witnesses and require the production of any books, papers, records or other documents relevant or material to the proceedings.

2.4. Notice of hearing: Contents of notice.

(a) Unless otherwise specified in the rules, no hearing shall be conducted under the 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, or notice of denial of the hearing for failure to state a charge, shall contain the date, time and place of the hearing; notice of the hearing and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the Director, the representative of the

miner or miners affected and to any interested person of record, and, such notice 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 provided in accordance with the provisions of section two, article seven, chapter twenty-nine-a of the Code.

2.5. Date, time and place of hearing. – The date, time and place of each hearing shall be determined by the Board or the Hearing Examiner who is to conduct the hearing. In assigning a hearing site, due regard shall be given to the convenience and necessity of the parties or their representatives and witnesses, the availability of suitable hearing facilities and other relevant factors.

2.6. Representation at hearings. – 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 who is also an operator may be represented by a full-time employee, and any miner may be represented by the representative of miners.

2.7. Burden of proof. – In all proceedings before the Board, the party initiating the proceeding shall have the burden of proving his case by a preponderance of the evidence.

2.8. Proposed findings, conclusions and orders; briefs.

The Board or the Hearing Examiner to whom a matter is referred may request the parties to file proposed findings of fact, conclusions of law and orders, together with a supporting brief. Such proposals and briefs also shall be allowed to be filed at the request of a party. At the request of a party, the Board or the Hearing Examiner to whom a matter is referred shall allow reply briefs to be submitted within ten (10) days after the date of filing of an opposing party's proposals and briefs.

All such proposals and briefs shall be served upon all parties and shall contain references to the record and authorities relied upon.

2.9. Hearings to be public. – All hearings conducted under these rules shall be open to the public; and hearings conducted to hear charges concerning withdrawal or suspension of certification pursuant to section one, article five, chapter twenty-two of the Code, shall have a transcript made of all evidence presented in any such hearing. A transcript shall not be made of a hearing conducted to hear charges concerning discrimination or miner's entitlements pursuant to section twenty, article one-a, chapter twenty-two-a of the Code, unless (a) a party to such proceedings requests that a transcript be made within thirty (30) days from the date of the receipt of a final order or decision by the Board, or (b) the Board orders a transcript prepared on its own motion, or (c) a court of record or other judicial body exercising jurisdiction over this proceeding or appeal orders that a transcript be prepared.

§37-1-3. Rules applicable to proceedings initiated to withdraw certification.

3.1. Scope. – The rules in this section govern and are applicable to proceedings initiated pursuant to section one, article five, chapter twenty-two of the Code by a mine inspector, Commissioner or the Director to charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to article(s) one-a or two, chapter twenty-two-a of the Code. In addition to the rules contained in this section, the general rules of practice before the Board contained in Section 1 of these rules and the rules relating to hearings held by the Board contained in Section 2 of these rules are also applicable to such proceedings.

3.2. By whom and against whom a charge may be initiated. – A mine inspector or the Director and the Commissioner may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to article(s) one-a or two, chapter twenty-two-a of the Code.

3.3. Initiation of proceedings. – The charge is initiated by filing it with the Director or with the Board. If a charge is filed with the Director, the Director, within ten (10) days, shall forward notice of the charge with a copy of the charge to the Board.

3.4. Notice of charge and time to answer. – The Board upon receipt of a charge shall immediately give notice of the charge accompanied by the charge, to the charged party, the Director and the Commissioner if he is not the charging party, and the representative of the miner or miners at the mine where the violation is alleged to have occurred, giving ten (10) days from the date of the notice in which to answer.

3.5. Contents of charge.

(a) A charge shall comply with applicable general requirements and shall contain:

- (1) The name of the person charged;
- (2) The duty or duties the person charged is alleged to have violated;
- (3) The approximate date and place so far as is known of the violation of duty; and
- (4) The capacity of the person making the charge.

(b) A charge shall be verified upon oath or affirmation on the basis of information and belief or personal knowledge by the charging party.

3.6. Contents of answer. – An answer shall comply with applicable general requirements and shall contain any documents and materials which could aid the Board in its determination of the possible substance of the charge.

3.7. Who may file an answer. – Any party may file an answer. The failure of a party to file an answer in the prescribed time shall not operate to bar that party's further participation in the proceeding.

3.8. Investigation of charge.

(a) If the Board is unable to determine the substance of the charge, it may request the Director to investigate the charge.

(b) Upon request by the Board, the Director shall investigate the charge and report the results of the investigation to the Board within ten (10) days of his receipt of the charge.

3.9. Probable cause determination.

(a) Within twenty (20) days after receipt of the charge the Board shall evaluate the charge and determine whether or not a violation of duty has been stated.

(b) In making a probable cause determination, the Board shall evaluate all documents and materials of record, including the charge and any answer filed, in order to determine as nearly as possible the substance of the charge.

3.10. Notice of probable cause determination, and hearing or denial of hearing.

(a) If the Board determines that probable cause exists to support the allegation that the person charged has violated his duty, the Board by the end of the twenty (20) day period shall set a date for hearing which date shall be within eighty (80) days of the filing of the charge.

(b) If probable cause is determined, notice of the hearing, a copy of the charge and the probable cause determination shall be mailed by certified mail, return receipt requested to:

- (1) The charging party;
- (2) The charged party;
- (3) The Director and the Commissioner, if he is not the charging party;
- (4) The representative of the miner or miners at the mine where the violation is alleged to have occurred;

and

- (5) To any interested person of record.

(c) If the Board determines that no probable cause exists, notice of denial of the hearing, a copy of the charge and the reasons for the failure to state a charge shall be mailed by certified mail, return receipt requested:

- (1) The charging party;
- (2) The charged party;
- (3) The Director and the Commissioner, if he is not the charging party;
- (4) The representative of the miner or miners at the mine where the violation is alleged to have occurred;

and

- (5) To any interested person of record.

3.11. Board findings.

(a) At the conclusion of the hearing the Board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision in writing containing its findings and conclusions of law.

(b) If the Board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked pursuant to section one, article five, chapter twenty-two-a of the Code, it shall enter an order to that effect. No renewal of the certificate shall be granted except as provided in section one, article five, chapter twenty-two-a of the Code.

3.12. Judicial review. – Any party adversely affected by a final order or decision issued by the Board under these rules pursuant to section one, article five, chapter twenty-two-a of the Code, shall be entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of the West Virginia Code.

§37-1-4. Rules applicable to proceedings initiated alleging discrimination or for compensation owed to miners as a result of a withdrawal order.

4.1. Scope. – The rules of this section govern and are applicable to proceedings initiated pursuant to section twenty, article one-a, chapter twenty-two-a of the Code by any miner or a representative of miners who believes that he has been discharged or in any other way discriminated against because he, (a) has notified the Director, his authorized representative or an operator, directly or indirectly, of any alleged violation or danger, (b) has filed, instituted or caused to be filed or instituted any proceeding under this law, (c) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of the state mining laws; or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order. In addition to the rules contained in this section, the general rules of practice before the Board contained in Section 1 of these rules and the rules relating to hearings held by the Board contained in Section 2 of these rules are also applicable to such proceedings.

4.2. When and by whom applications may be made to Board. – Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against as set out in (a), (b) or (c) of Section 4.1 of these rules, 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, make application to the Board for a review of such alleged discharge, discrimination or failure to compensate.

4.3. Initiation of proceedings. – The proceeding is initiated by filing the application with the Board.

4.4. Contents of application.

An application shall comply with applicable general requirements and shall contain:

- (1) The name of the respondent,
- (2) A description of the act and detailed circumstances surrounding the alleged discharge, discrimination or failure to compensate, accompanied by any supporting documents that may be available,
- (3) Copies of any contract arbitration decision involving the applicant and the same set of facts alleged in the application,
- (4) A statement as to whether a similar complaint has been filed with the Secretary of the United States Department of Labor pursuant to 30 U.S.C. §815(c) of the Federal Mine Safety and Health Act.

4.5. Contents of answer. – An answer shall comply with applicable general requirements and shall contain any documents and materials which could aid the Board in its determination of the possible substance of the charge.

4.6. Who may file an answer; time for answer. – Any party may file an answer within fifteen (15) days of the date of service of the application on the party. The failure of a party to file an answer shall not foreclose the party's further participation in the proceeding.

4.7. Investigation of application. – Upon receipt of the application, the Board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing as provided in Section 2 of these rules at the request of any party to enable the parties to present information relating to the alleged violation.

4.8. Notice of application. – A copy of the application along with any other materials filed with the Board shall be served on the respondent by the applicant as set forth in Section 1.9(f) of these rules.

4.9. Notice of hearing. – Mailing of the notice of hearing to the respondent at his last address of record as reflected in the records of the Department of Energy shall be deemed adequate notice to the respondent.

4.10. To whom notice is to be given and contents of notice.

(a) Notice of any hearing in the matter shall be mailed by certified mail, return receipt requested to:

- (1) The applicant;
- (2) The respondent; and
- (3) To any interested person of record.

(b) 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 provided in accordance with the provisions of section two, article seven, chapter twenty-nine-a of the Code.

4.11. Public hearing. – A public hearing shall be held only at the request of any party to enable the parties to present information relating to such violation or by order of the Board. A request for such hearing by any party must be filed with the Board and served on all other parties within twenty (20) days of the date of service of the application on the requesting party.

4.12. Final decisions of the Board.

(a) Finding of violation. – If the Board finds that a violation did occur, it shall issue a decision within forty-five (45) days of the conclusion of the investigation, making findings of fact and conclusions of law, incorporating 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.

(b) Finding of no violation. – If the Board finds that no violation occurred, it shall issue an order denying the application, such order shall incorporate the Board's findings therein.

4.13. Proceedings relative to discharge; forty-five (45) day limitation.

(a) If the proceedings under Section 4 of these rules relative to discharge are not completed within forty-five (45) days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination.

(b) If the proceedings under Section 4 of these rules relative to discharge 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.

(c) If the proceedings under Section 4 of these rules relative to discharge 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.

(d) Prior to any order of reinstatement under sections (a) or (b) of this rule, if no hearing has been previously held on the discharge by either the Board or a Hearing Examiner, the Board shall hold a hearing to determine the cause of any delay and the matters specified herein. Temporary reinstatement until the final determination of the proceedings shall be granted once the Board first determines that it has jurisdiction of the application, unless the respondent shows that there is a substantial unlikelihood that the application will succeed on the merits, and that the granting of the order of temporary reinstatement will adversely affect the safety or health of the miners at the mine where the applicant is to be reinstated.

4.14. Request by applicant for costs. – Whenever an order is issued under Section 4 of these rules pursuant to subsection (c), section twenty, article one-a, chapter twenty-two-a of the Code, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the reasonable 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.

4.15. Judicial review. – Any party adversely affected by a final order or decision issued by the Board under these rules pursuant to section twenty, article one-a, chapter twenty-two-a of the Code shall be entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of the Code.

4.16. Deferral. – In any proceeding instituted under the Code and to which this section applies and upon motion by any party to the proceeding, the Board may dismiss an application and defer to the processing of the same claim by the United States Department of Labor if the Board finds that the same claim was first presented to the United States Department of Labor and is being or has been processed by that agency.

**TITLE 56, SERIES 1
DEPARTMENT OF ENERGY
PROCEDURES AND PRACTICE BEFORE THE DEPARTMENT OF ENERGY**

ED NOTE: WHEREVER THIS RULE REFERS TO “DIRECTOR OF THE DEPARTMENT OF ENERGY” IT SHOULD BE REFERENCED TO “DIRECTOR OF THE OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING” EFFECTIVE OCTOBER 16, 1991.

§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 Commissioner of the Department of Energy 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 Department of Energy 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 Commissioner 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 Commissioner of the Department of Energy 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 Commissioner or any person authorized by the Commissioner 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 Department of Energy.

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 Department of Energy.

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 Department of Energy.

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 Department of Energy.

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 Department of Energy.

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 Department of Energy, 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 Commissioner 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 Commissioner, Department of Energy, 1615 Washington Street, E., Charleston, West Virginia 25311.²

b. Number of copies. Except as otherwise provided in these rules, a party shall furnish an original 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 acknowledgment 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.

²The new address is 7 Players Club Drive, Suite 2, Charleston, WV 25311.

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 Commissioner, 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 Commissioner 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 Commissioner 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 Commissioner 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 Department of Energy 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 serve 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 Commissioner or the Presiding Officer may make such orders or take such action as fairness requires. Upon notice and hearing, the Commissioner 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 Department of Energy, 1615 Washington Street, E., Charleston, West Virginia 25311. Telephone (304) 348-3500.³

§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 Commissioner 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 Commissioner shall designate and appoint the inspectors-at-large and their designees to act as Assessment Officer(s) for the Department of Energy. 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 Commissioner shall designate and appoint a person or persons to act as Assessment Review Officer(s) for the Department of Energy. It shall be the duty of the Assessment Review Officer, upon request for a pre-hearing 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 pre-hearing 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 Department of Energy 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 Department of Energy 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 Department of Energy discovering or witnessing the alleged violation and reporting the same to the Commissioner;
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 Commissioner 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

³The new address is 7 Players Club Drive, Suite 2, Charleston, WV 25311. The new telephone number is 304-558-1425.

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 Commissioner, Department of Energy, 1615 Washington Street, E., Charleston, West Virginia 25311.⁴ Checks should be made payable to the West Virginia Department of Energy.⁵

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 Commissioner 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 Commissioner, 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 Commissioner 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 Commissioner 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 Commissioner. 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.

⁴The new address is 7 Players Club Drive, Suite 2, Charleston, WV 25311.

⁵Checks should be made payable to the West Virginia Office of Miners' Health, Safety and Training.

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 Commissioner 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 Commissioner 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 Commissioner, the record in the case and the decision and order of the Presiding Officer shall be forwarded to the Commissioner for his review. The Commissioner shall approve, alter and approve or reject the decision and order of the Presiding Officer. In the event the Commissioner rejects the decision and order of the Presiding Officer, the Commissioner 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 Commissioner 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 3.13⁶ 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 Commissioner 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 Commissioner, such Presiding Officer may, on his own motion, and shall, at the request of any party, certify any interlocutory ruling to the Commissioner where he determines

⁶Typographical error – should be “3.12”.

(1) that such ruling involves a controlling question of law, and (2) that an immediate decision on the question by the Commissioner may materially advance the ultimate disposition of the matter before him.

c. In no case shall a Presiding Officer other than the Commissioner 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 waivers, 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 therefor 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 Commissioner, 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 Commissioner. Within fifteen (15) days of the service of the recommended decision a party adversely affected or aggrieved by such decision may file with the Commissioner, 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 Commissioner shall approve, alter, remand or reject the recommended decision and order of the Presiding Officer, the Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 of 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 Commissioner 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 Sections 2.8 through 2.12 of these rules.

4.4. Answer.

a. Any party, other than the Department of Energy, 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 Commissioner 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 Commissioner, the record in the case and the decision and order of the Presiding Officer shall be forwarded to the Commissioner for his review. The Commissioner shall approve, alter and approve, or reject the decision and order of the Presiding Officer. In the event the Commissioner rejects the decision and order of the Presiding Officer, the Commissioner 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 Commissioner 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 application 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 Commissioner shall be subject to review by the Commissioner.

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 Commissioner shall be subject to review by the Commissioner.

§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 Department of Energy with respect to the applicability to any person, property or statement of facts of any rule or statute enforceable by the Department of Energy. 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 Department of Energy.

5.4. Answer.

- a. Any party, other than the Commissioner, 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 requests 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 Commissioner 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 Commissioner 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 Commissioner, the record in the case and the decision and order of the Presiding Officer shall be forwarded to the Commissioner for his review. The Commissioner shall approve, alter and approve or reject the decision and order of the Presiding Officer. In the event the Commissioner rejects the decision and order of the Presiding Officer, the Commissioner 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 Commissioner shall be served, by certified mail, upon all parties and each order so served shall become effective upon service.

TITLE 56, SERIES 2
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
RULE GOVERNING SAFETY PROVISIONS FOR CLEARING CREWS

§56-2-1. General.

1.1. Scope. – This rule governs safety provisions for clearing crews while on mine property in the State of West Virginia. It does not extend to commercial logging operations that may be on mine property and are regulated by OSHA and the WV Division of Forestry.

1.2. Authority. – W. Va. Code §§22A-1-6 and 22A-1-38.

1.3. Filing Date. – May 8, 2006.

1.4. Effective Date. – May 8, 2006.

1.5. Applicability. – This rule applies to each mine operator and independent contractor registered with the WV Office of Miners' Health, Safety and Training as required by West Virginia Code 22A-2-63.

§56-2-2. Definitions.

2.1. "Backcut" (felling cut) means the final cut in a felling operation.

2.2. "Ballistic Nylon" means a nylon fabric of high tensile properties designed to provide protection from lacerations.

2.3. "Butt" means the bottom of the felled part of a tree.

2.4. "Clearing Crew" (Land Clearing) means persons employed by the mine operator or independent contractor to clear and grub vegetation in preparation of, or during, mining operations.

2.5. "Chock" means a block, often wedge shaped, which is used to prevent movement.

2.6. "Competent Person" means a person designated by the mine operator or independent contractor who has a minimum of twelve (12) months experience in the clear cutting industry and is familiar with the normal hazards associated therein.

2.7. "Danger Tree" means a standing tree that presents a hazard to employees due to conditions such as, but not limited to, deterioration or physical damage to the root system, trunk, stem or limbs, and the direction and lean of the tree.

2.8. "Designated Person" means an employee who has the requisite knowledge, training and experience to perform specific duties.

2.9. "Director" means the director of the office of miners' health safety and training provided for in W. Va. Code §22A-1-3.

2.10. "Domino felling" means partial cutting of multiple trees which are left standing and then pushed over with a pusher tree.

2.11. "Employer" means the person or entity that directly employs the clearing crew. It may be an independent contractor or in some cases it may be the production operator.

2.12. "Fell" (fall) means to cut down trees.

2.13. "Feller" (faller) means an employee who fells trees.

2.14. "Grounded" means the placement of a component of a machine on the ground or on a device where it is firmly supported.

2.15. "Guarded" means covered, shielded, fenced, enclosed, or otherwise protected by means of suitable enclosures, covers, casings, shields, troughs, railings, screens, mats, or platforms, or by location, to prevent injury.

2.16. "Independent Contractor" means any firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine.

2.17. "Limbing" means to cut branches off felled trees.

2.18. "Lodged Tree" (hung tree) means a tree leaning against another tree or object which prevents it from falling to the ground.

2.19. "Machine" means any vehicle (such as a car, bus, truck, trailer, or semi-trailer owned, leased or rented by the employer that is used for transportation of employees or movement of material), or any piece of stationary or mobile equipment having a self-contained power plant that is operated off-road and used for the movement of material. Machines include, but are not limited to, tractors, skidders, front-end loaders, scrapers, graders, bulldozer and mechanical felling devices, such as tree shears and feller bunchers. Machines do not include airplanes or aircraft (e.g., helicopters).

2.20. "Production Operator" means any owner, lessee or other person who operates, controls or supervisors at a coal mine.

2.21. "Rated Capacity" means the maximum load a system, vehicle, machine, or piece of equipment was designed by the manufacturer to handle.

2.22. "Root Wad" means the ball of a tree root and dirt that is pulled from the ground when a tree is uprooted.

2.23. "Serviceable Condition" means a state or ability of a tool, machine, vehicle or other device to operate as it was intended by the manufacturer to operate.

2.24. "Slope" (grade) means the increase or decrease in altitude over a horizontal distance expressed as a percentage. For example, a change of altitude of 20 feet (6 m) over a horizontal distance of 100 feet (30 m) is expressed as a 20 percent slope.

2.25. "Snag" means any standing dead tree or portion thereof.

2.26. "Spring Pole" means a tree, segment of a tree, limb, or sapling, which is under stress, or tension due to the pressure or weight of another object.

2.27. "Tie Down" means chain, cable, steel strips or fiber webbing and binders attached to a truck, trailer or other conveyance as a means to secure loads and to prevent them from shifting or moving when they are being transported.

2.28. "Undercut" means a notch cut in a tree to guide the direction of the tree fall and to prevent splitting or kickback.

2.29. "Winching" means the winding of cable or rope onto a spool or drum.

§56-2-3. Personal Protective Equipment.

3.1. The employer shall assure that personal protective equipment, including any personal protective equipment provided by an employee, is maintained in a serviceable condition.

3.2. The employer shall assure that personal protective equipment, including any personal protective equipment provided by an employee, is inspected before initial use during each work shift. Defects or damage shall be repaired or the unserviceable personal protective equipment shall be replaced before work is commenced.

3.3. The employer shall provide, at no cost to the employee, and assure that each employee handling wire rope wears, hand protection which provides adequate protection from puncture wounds, cuts and lacerations.

3.4. The employer shall provide, at no cost to the employee, and assure that each employee who operates a chain saw wears leg protection constructed with cut-resistant material, such as ballistic nylon. The leg protection shall cover the full length of the thigh to the top of the boot on each leg to protect against contact with a moving chain saw. Exception: This requirement does not apply when an employee is working as a climber if the employer demonstrates to the director that a greater hazard is posed by wearing leg protection in the particular situation, or when an employee is working from a vehicular mounted elevating and rotating work platform.

3.5. The employer shall assure that each employee wears foot protection, such as heavy-duty logging boots that are waterproof or water repellent, cover and provide support to the ankle. The employer shall assure that each employee who operates a chain saw wears foot protection that is constructed with cut-resistant material, which will protect the employee against contact with a running chain saw. Sharp, calk-soled boots or other slip-resistant type boots may be worn where the employer demonstrates to the director that they are necessary for the employee's job, the terrain, the timber type, and the weather conditions, provided that foot protection otherwise required by West Virginia Surface Mine Rule 56CSR3.47 is met.

3.6. The employer shall provide, at no cost to the employee, and assure that each employee who works in an area where there is potential for head injury from falling or flying objects wears head protection as stated in West Virginia Surface Mine Rule 56CSR3.47.

3.7. The employer shall provide, at no cost to the employee, and assure that each employee wears the following:

(a) Eye protection where there is potential for eye injury due to falling or flying objects, face protection where there is potential for facial injury such as, but not limited to, operating a chipper.

(b) Logger-type mesh screens may be worn by employees performing chain-saw operations. The employee does not have to wear a separate eye protection device where face protection covering both the eyes and face is worn.

§56-2-4. Emergency Provisions.

4.1. Each worksite shall have one first-aid kit for every three (3) persons located at each worksite and equipped with items listed in Appendix A.

4.2. In accordance with West Virginia Surface Mine Rule 56CSR3.48.3, emergency arrangements shall be provided for the mine site.

4.3. Each worksite in accordance with West Virginia Surface Mine Rule 56CSR3.48.4 shall be provided with emergency communications.

§56-2-5. Seat Belts.

5.1. Seat belts—For each vehicle or machine (equipped with rollover protective structure or falling object protective structure or overhead guards), including any vehicle or machine provided by an employee, the employer should assure:

(a) That a seat belt is provided for each vehicle or machine operator;

(b) That each employee uses the available seat belt while operating the vehicle or machine;

(c) That each employee securely and tightly fastens the seat belt to restrain the employee within the vehicle or machine cab;

(d) That each machine seat belt must meet the manufacturer's specifications.

(e) That seat belts are not removed from any vehicle or machine. The employer shall replace each seat belt which has been removed from any vehicle or machine that was equipped with seat belts at the time of manufacture; and

(f) That each seat belt is maintained in a serviceable condition.

§56-2-6. Environmental Conditions.

6.1. All work shall terminate and each employee shall move to a place of safety when environmental conditions, such as but not limited to, electrical storms, strong winds which may affect the fall of a tree, heavy rain or snow, extreme cold, dense fog, fires, mudslides, and darkness, create a hazard for the employee in the performance of the job.

§56-2-7. Work Areas.

7.1.

(a) Employees shall be spaced and the duties of each employee shall be organized so the actions of one employee will not create a hazard for any other employee.

(b) Work areas shall be assigned so that trees cannot fall into an adjacent occupied work area. The distance between adjacent occupied work areas shall be at least two tree lengths of the trees being felled. The distance between adjacent occupied work areas shall reflect the degree of slope, the density of the growth, the height of the trees, the soil structure and other hazards reasonably anticipated at that work site. A distance of greater than two tree lengths shall be maintained between adjacent occupied work areas on any slope where rolling or sliding of trees is reasonably foreseeable.

(c) Each employee performing land clearing on mine property shall work in a position or location that is within visual or audible contact with another employee.

(d) The employer shall account for each employee at the end of each work shift.

§56-2-8. Signaling and Signal Equipment.

8.1.

(a) Hand signals and audible contact, such as but not limited to, whistles, horns, or radios, shall be utilized whenever noise, distance, restricted visibility, or other factors prevent clear understanding of normal voice communications between employees.

(b) Engine noise, such as from a chain saw, is not an acceptable means of signaling.

(c) Only a designated person shall give signals, except in an emergency.

§56-2-9. Overhead Electric Lines.

9.1. Clearing operations near overhead electric lines shall be done in accordance with the requirements of West Virginia Surface Mine Rule 56CSR3.37.

9.2. The employer shall notify the power company immediately if a felled tree makes contact with any power line. Each employee shall remain clear of the area until the power company advises that there are no electrical hazards.

§56-2-10. Flammable and Combustible Liquids.

10.1.

(a) Flammable and combustible liquids shall be stored, handled, transported, and used in accordance with the requirements of West Virginia Surface Mine Rules 56CSR3.45.2 and 56CSR3.45.3.

(b) Flammable and combustible liquids shall not be transported in the driver compartment or in any passenger-occupied area of a machine or vehicle.

(c) Each machine, vehicle and portable powered tool shall be shut off during fueling. Diesel-powered machines and vehicles may be fueled while they are at idle, provided that continued operation is intended and that the employer follows safe fueling and operating procedures.

(d) Flammable and combustible liquids, including chain-saw and diesel fuel, may be used to start a fire, provided the employer assures that in the particular situation its use does not create a hazard for an employee.

§56-2-11. Explosives and Blasting Agents.

11.1. If at any time explosives and blasting agents are used in clearing operations they shall be secured and safely stored, handled, transported, and used in accordance with the requirements of West Virginia Surface Mine Rule 56CSR3.32.3 and Department of Environmental Protection, Office of Explosives and Blasting Rule 199CSR1.

§56-2-12. Hand and Portable Powered Tools General Requirements.

12.1. The employer shall assure that each hand and portable powered tool, including any tool provided by an employee, is maintained in serviceable condition. The employer shall assure that each tool, including any tool provided by an employee, is inspected before initial use during each work shift. At a minimum, the inspection shall include the following:

(a) Handles and guards to assure that they are sound, tight-fitting, properly shaped, free of splinters and sharp edges, and in place;

(b) Controls, to assure proper function;

(c) Chain-saw chains, to assure proper adjustment;

(d) Chain-saw mufflers, to assure that they are operational and in place;

(e) Chain brakes and nose shielding devices, to assure that they are in place and function properly;

- (f) Heads of shock, impact-driven and driving tools, to assure that there is no mushrooming;
- (g) Cutting edges, to assure that they are sharp and properly shaped; and
- (h) All other safety devices, to assure that they are in place and function properly.

12.2. The employer shall assure that each tool is used only for purposes for which it has been designed

12.3. When the head of any shock, impact-driven or driving tool begins to chip, it shall be repaired or removed from service.

12.4. The cutting edge of each tool shall be sharpened in accordance with manufacturer's specifications whenever it becomes dull during the work shift.

12.5. Each tool shall be stored in the provided location when not being used at a work site.

12.6. Racks, boxes, holsters or other means shall be provided, arranged and used for the transportation of tools so that a hazard is not created for any vehicle operator or passenger.

§56-2-13. Chain Saws.

13.1.

(a) Each chain saw shall be equipped with an operable chain brake which shall meet the requirements of the manufacturer.

(b) Each gasoline-powered chain saw shall be equipped with a continuous pressure throttle control system, which will stop the chain when pressure on the throttle is released.

(c) The chain saw shall be operated and adjusted in accordance with the manufacturer's instructions.

(d) The chain saw shall be fueled at least 10 feet (3 m) from any open flame or other source of ignition.

(e) The chain saw shall be started at least 10 feet (3 m) from the fueling area.

(f) The chain saw shall be started on the ground or where otherwise firmly supported. Drop starting a chain saw is prohibited.

(g) The chain saw shall be started with the chain brake engaged.

(h) The chain saw shall be held with the thumbs and fingers of both hands encircling the handles during operation unless the employer demonstrates to the director that a greater hazard is posed by keeping both hands on the chain saw in that particular situation.

(i) The chain-saw operator shall be certain of footing before starting to cut. The chain saw shall not be used in a position or at a distance that could cause the operator to become off-balance, to have insecure footing, or to relinquish a firm grip on the saw.

(j) Prior to felling any tree, the chain-saw operator shall clear away brush or other potential obstacles, which might interfere with cutting the tree or using the retreat path.

(k) The chain saw shall not be used to cut directly overhead.

(l) The chain saw shall be carried in a manner that will prevent operator contact with the cutting chain and muffler.

(m) The chain saw shall be shut off or the throttle released before the feller starts his retreat.

(n) The chain saw shall be shut down or the chain brake shall be engaged whenever a saw is carried further than 50 feet (15.2 m). The chain saw shall be shut down or the chain brake shall be engaged when a saw is carried less than 50 feet if conditions such as, but not limited to, the terrain, underbrush and slippery surfaces, may create a hazard for an employee.

§156-2-14.⁷ Machines, Vehicles, and Mobile Equipment.

14.1. General Requirements.

(a) The employer shall assure that each machine including any machine provided by an employee is maintained in serviceable condition.

(b) The employer shall assure that each machine including any machine provided by an employee is inspected before initial use during each work shift. Defects or damage shall be repaired on the unserviceable machine or shall be replaced before work is commenced.

(c) The employer shall assure that operating and maintenance instructions are available for each machine in the area where the equipment is being operated. Each machine operator and maintenance employee shall comply with the operating and maintenance instructions.

14.2. Machine Operation.

(a) The machine shall be started and operated only by a designated person.

(b) The rated capacity of any machine shall not be exceeded.

(c) To maintain stability, the machine must be operated within the limitations imposed by the manufacturer as described in the operating and maintenance instructions for that machine on any slope which is greater than the maximum slope recommended by the manufacturer.

⁷Typographical error – incorrectly numbered. Should be “§56-2-14.”

(d) Before starting or moving any machine, the operator shall determine that no employee is in the path of the machine.

(e) The machine shall be operated only from the operator's station or as otherwise recommended by the manufacturer.

(f) The machine shall be operated at such a distance from employees and other machines such that operation will not create a hazard for an employee.

(g) No employee other than the operator shall ride on any mobile machine unless seating, seat belts and other protection equivalent to that provided for the operator are provided.

(h) No employee shall ride on any load.

(i) Before the operator leaves the operator's station of a machine, it shall be secured as follows:

1. The parking brake or brake locks shall be applied.

2. The transmission shall be placed in the manufacturer's specified park position; and

3. Each moving element such as, but not limited to blades, buckets, saws, and shears shall be lowered to the ground or otherwise secured.

(j) If a hydraulic or pneumatic storage device can move the moving elements such as, but not limited to, blades, buckets, saws and shears, after the machine is shut down, the pressure or stored energy from the element shall be discharged as specified by the manufacturer.

(k) The rated capacity of any vehicle transporting a machine shall not be exceeded.

(l) The machine shall be loaded, secured, and unloaded so that it will not create a hazard for any employee.

(m) For safe operation of equipment on slopes the operator shall follow the manufacturer's specifications and limitations of the mobile equipment, wire ropes, and all attachments.

1. The machine being used to assist a dozer, or other machines working on slopes shall be of proper size and strength to provide adequate anchorage. The machine providing anchorage shall be positioned to provide maximum stability.

2. The winch line assembly shall be of proper size and strength, and properly maintained to provide safety for all machines.

(a) Winch cables used by machines working on slopes shall be of proper size according to manufacturer's specifications.

(b) Winch cables shall be secured to the winch assembly drum according to the manufacturer's specifications.

(c) A minimum of three (3) wraps of winch cable shall remain on the drum at all times.

(d) The live-end connection device used to secure the two machines together shall be of a design that minimizes the possibility of accidental disconnection. The connection device shall be of the proper strength for the duties performed and maintained in safe condition according to manufacturer's specifications.

(e) All winch cables shall be securely fastened to the live-end connection device by the proper number of wire-rope clamps, or properly wedged according to the manufacturer's specifications.

(f) All components of the winch line assembly shall be inspected by the machine operator periodically during daily operations.

3. Constant communications either audible or visual shall be maintained between machine operators while working on slopes.

14.3. Protective Structures.

(a) Each tractor, skidder and mechanical felling device, such as tree shears or feller-buncher, placed into initial service after February 9, 1995, shall be equipped with falling object protective structure or rollover protective structure. The employer shall replace falling object protective structure or rollover protective structure, which have been removed from any machine. Exception: This requirement does not apply to machines, which are capable of 360-degree rotation. Rollover protective structure shall be tested, installed, and maintained in serviceable condition.

(b) Each machine shall have rollover protective structure or falling object protective structure tested, installed, and maintained in accordance with manufacturer's specifications.

(c) Each protective structure shall be of a size that does not impede the operator's normal movements.

(d) The overhead covering of each cab shall be of solid material and shall extend over the entire canopy.

(e) Each machine manufactured after August 1, 1996, shall have a cab that is fully enclosed with mesh material with openings no greater than 2 inches (5.08 cm) at its least dimension. The cab may be enclosed with other material(s) where the employer demonstrates to the director such material(s) provides equivalent protection and visibility. Exception: Equivalent visibility is not required for the lower portion of the cab where there are control panels or similar obstructions in the cab, or where visibility is not necessary for safe operation of the machine.

(f) Each machine manufactured on or before August 1, 1996, shall have a cab, which meets the requirements specified in the above paragraph or a protective canopy for the operator which meets the following requirements:

1. The protective canopy shall be constructed to protect the operator from injury due to falling trees, limbs, saplings or branches which might enter the compartment side areas and from snapping winch lines or other objects.

2. The lower portion of the cab shall be fully enclosed with solid material, except at entrances, to prevent the operator from being injured from obstacles entering the cab.

3. The upper rear portion of the cab shall be fully enclosed with open mesh material with openings of such size as to reject the entrance of an object larger than 2 inches in diameter. It shall provide maximum rearward visibility; and

4. Open mesh shall be extended forward as far as possible from the rear corners of the cab sides so as to give the maximum protection against obstacles, branches, etc., entering the cab area.

5. The enclosure of the upper portion of each cab shall allow maximum visibility.

6. When transparent material is used to enclose the upper portion of the cab, it shall be made of safety glass or other material that the employer demonstrates to the director provides equivalent protection and visibility.

7. Transparent material shall be kept clean to assure operator visibility.

8. Transparent material that may create a hazard for the operator, such as but not limited to, cracked, broken or scratched safety glass shall be replaced.

9. Deflectors shall be installed in front of each cab to deflect whipping saplings and branches. Deflectors shall be located so as not to impede visibility and access to the cab.

10. The height of each cab entrance shall be at least 52 inches (1.3 meters) from the floor of the cab.

(g) Each forklift shall be equipped with an overhead guard and maintained in accordance with the manufacturer's specifications.

14.5.⁸ Machine Access.

(a) Machine access systems shall be installed and maintained in accordance with the manufacturer's specifications. Access systems shall be provided for each machine where the operator or any other employee must climb onto the machine to enter the cab or to perform maintenance.

(b) Each machine cab shall have a second means of egress. (This requirement does not pertain to skid steer loaders.)

(c) Walking and working surfaces of each machine and machine workstation shall have a slip resistant surface to assure safe footing.

(d) The walking and working surface of each machine shall be kept free of waste, debris and any other material, which might result in fire, slipping, or falling.

14.6.⁹ Exhaust Systems

(a) The exhaust pipes on each machine shall be located so exhaust gases are directed away from the operator. The exhaust pipes on each machine shall be mounted or guarded to protect each employee from accidental contact.

(b) The exhaust pipes shall be equipped with spark arresters. (Engines equipped with turbochargers do not require spark arresters.)

(c) Each machine muffler provided by the manufacturer, or their equivalent, shall be in place at all times the machine is in operation.

14.7.¹⁰ Brakes.

(a) Service brakes shall be sufficient to stop and hold each machine and its rated load capacity on the slopes over which it is being operated.

(b) Each machine placed into initial service on or after September 8, 1995 shall also be equipped with: back-up or secondary brakes that are capable of stopping the machine regardless of the direction of travel or whether the engine is running; and parking brakes that are capable of continuously holding a stopped machine stationary.

14.8.¹¹ Guarding.

(a) Each machine shall be equipped with guarding to protect employees from exposed moving elements, such as but not limited to, shafts, pulleys, belts on conveyors, and gears.

(b) Each machine used for limbing and chipping shall be equipped with guarding to protect employees from flying wood chunks, chips, bark, limbs and other material.

⁸Typographical error – incorrectly numbered. Should be “14.4.”

⁹Typographical error – incorrectly numbered. Should be “14.5.”

¹⁰Typographical error – incorrectly numbered. Should be “14.6.”

¹¹Typographical error – incorrectly numbered. Should be “14.7.”

(c) The guarding on each machine shall be in place at all times the machine is in operation.

14.9.¹²

(a) The employer shall assure that each machine used to perform any clearing operation is maintained in safe condition.

(b) The employer shall assure that each machine used to perform any clearing operation is inspected before initial use during each work shift. Defects shall be recorded on a form approved by the director and shall be signed by the person performing the examination. Imminent danger equipment defects shall be corrected before the equipment is put into operation.

(c) The employer shall assure that operating and maintenance instructions are available in each machine. Each machine operator and maintenance employee shall comply with the operating and maintenance instructions.

(d) Mounting steps and handholds shall be provided for each machine wherever it is necessary to prevent an employee from being injured when entering or leaving the machine.

(e) The seats of each machine shall be securely fastened.

§56-2-15. Tree Felling.

15.1. General requirements.

(a) Trees shall not be felled in a manner that may create a hazard for an employee, such as but not limited to, striking a rope, cable, power line, or machine.

(b) The immediate supervisor shall be consulted when unfamiliar or unusually hazardous conditions necessitate the supervisor's approval before cutting is commenced.

(c) While manual felling is in progress, no machine shall be operated within two tree lengths of trees being manually felled. Exception: This provision does not apply to machines performing tree-pulling operations.

(d) No employee shall approach a feller closer than two tree lengths of trees being felled until the feller has acknowledged that it is safe to do so, unless the employer demonstrates to the director that a team of employees is necessary to manually fell a particular tree.

(e) No employee shall approach a mechanical felling operation closer than two tree lengths of the trees being felled until the machine operator has acknowledged that it is safe to do so.

(f) Each danger tree shall be felled, removed or avoided. Each danger tree, including lodged trees and snags, shall be felled or removed using mechanical or other techniques that minimize employee exposure before work is commenced in the area of the danger tree. If the danger tree is not felled or removed, it shall be marked and no work shall be conducted within two tree lengths of the danger tree unless the employer demonstrates to the director that a shorter distance will not create a hazard for an employee.

(g) Each danger tree shall be carefully checked for signs of loose bark, broken branches and limbs or other damage before they are felled or removed. Accessible loose bark and other damage that may create a hazard for an employee shall be removed or held in place before felling or removing the tree.

(h) Felling on any slope where rolling or sliding of trees or is reasonably foreseeable shall be done uphill from, or on the same level as, previously felled trees.

(i) Domino felling of trees is prohibited. (The definition of domino felling does not include the felling of a single danger tree by felling another single tree into it).

§56-2-16. Manual Tree Felling.

16.1.

(a) Before felling is started, the feller shall plan and clear a retreat path. The retreat path shall extend diagonally away from the expected felling line unless the employer demonstrates to the director that such a retreat path poses a greater hazard than an alternate path. Once the back cut has been made the feller shall immediately move a safe distance away from the tree on the retreat path. Before each tree is felled, conditions such as, but not limited to, snow and ice accumulation, the wind, the lean of tree, dead limbs, and the location of other trees, shall be evaluated by the feller and precautions taken so a hazard is not created for an employee.

(b) Each tree shall be checked for accumulations of snow and ice. Accumulations of snow and ice that may create a hazard for an employee shall be removed before felling is commenced in the area or the area shall be avoided.

(c) When a spring pole or other tree under stress is cut, no employee other than the feller shall be closer than two trees lengths when the stress is released.

(d) An undercut shall be made in each tree being felled unless the employer demonstrates to the director that felling the particular tree without an undercut will not create a hazard for an employee. The undercut shall be of a size so the tree will not split and will fall in the intended direction.

(e) A backcut shall be made in each tree being felled. The backcut shall leave sufficient hinge wood to hold the tree to the stump during most of its fall so that the hinge is able to guide the tree's fall in the intended direction. The backcut shall not penetrate into the predetermined hinge area.

¹²Typographical error – incorrectly numbered. Should be “14.8.”

(f) The backcut shall be above the level of the horizontal facecut in order to provide an adequate platform to prevent kickback.

(g) Notches shall be used on all trees and trunks over five inches or (12.5cm) in diameter at breast height.

§56-2-17. Limbing and Bucking.

17.1.

(a) Limbing and bucking on any slope where rolling or sliding of trees or is reasonably foreseeable shall be done on the uphill side of each tree.

(b) Before bucking or limbing wind-thrown trees, precautions shall be taken to prevent the root wad, butt, or trees from striking an employee. These precautions include, but are not limited to, chocking or moving the tree to a stable position.

§56-2-18. Chipping (in-woods locations).

18.1.

(a) Chipper access covers or doors shall not be opened until the drum or disc is at a complete stop.

(b) Infeed and discharge ports shall be guarded to prevent contact with the disc, knives, or blower blades.

(c) The chipper shall be shut down, locked and tagged out when an employee performs any servicing or maintenance.

(d) Detached trailer chippers shall be chocked during usage on any slope where rolling or sliding of the chipper is reasonably foreseeable.

§56-2-19. Pre-shift and On-shift Examination.

19.1.

(a) Prior to the beginning of any shift a designated competent person shall visit and carefully examine all work areas for dangerous conditions. Upon completion of the examination, the competent person shall record the results in a book prescribed by the director, before persons enter the work area. This book shall be kept at the work area and made available for inspection by an authorized representative of the director.

(b) The designated competent person shall examine all work areas under his supervision for hazards at least once every four (4) hours during each working shift, or more often if necessary for safety. The competent person shall record the results of the on shift examination in a book prescribed by the director.

(c) Should the competent person find a place to be in a dangerous condition, they shall not leave the place until it has been made safe, or shall remove the persons working therein until the place is made safe.

(d) The competent person shall also record any dangerous conditions and practices found during the examination in a book provided for that purpose.

§56-2-20. Safety Meetings.

20.1. The employer shall have weekly safety meetings with all employees which shall provide training in the working practices and conditions at the work area and rules applicable thereto.

§56-2-21. Training.

21.1.

(a) The employer shall provide training for each employee, including supervisors, at no cost to the employee.

(b) As soon as possible but not later than ninety (90) days from the effective date of this rule all employees shall receive a minimum of sixteen (16) hours of training. This training shall consist of:

1. Eight (8) hours of task specific safety (clear cutting).

2. Eight (8) hours of first aid, CPR, and emergency procedures.

21.2. Before any new employee begins work they shall receive the 16-hours of training described in Section 21.1.

21.3. The employer shall provide annual continuing training of at least eight hours covering the subjects listed in subdivision 21.1.(b) for each employee, including supervisors, at no cost to the employee.

**APPENDIX A
First Aid Requirements**

The contents of the first-aid kit listed should be adequate for small work sites, consisting of approximately two to three employees. When larger operations or multiple operations are being conducted at the same location, additional first-aid kits should be provided at the work site or additional quantities of supplies should be included in the first-aid kits:

- Gauze pads (at least 4 x 4 inches)
- Two large gauze pads (at least 8 x 10 inches)
- Box adhesive bandages (band-aids)
- One package gauze roller bandage at least 2 inches wide
- Two triangular bandages
- Wound cleaning agent such as sealed moistened towelettes
- Scissors
- At least one blanket
- Tweezers
- Adhesive tape
- Latex gloves
- Resuscitation equipment such as resuscitation bag, airway, or pocket mask
- Two elastic wraps
- Splint
- Directions for requesting emergency assistance

**TITLE 56, SERIES 3
OFFICE OF MINERS' HEALTH, EDUCATION AND TRAINING
SAFETY OF THOSE EMPLOYED IN AND AROUND SURFACE MINES**

§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 Department of Energy 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.

§56-3-52. 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 Department of Energy 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.

**TITLE 56, SERIES 8
DEPARTMENT OF ENERGY
SUBMISSION AND APPROVAL OF A COMPREHENSIVE MINE SAFETY
PROGRAM FOR COAL MINING OPERATIONS**

ED. NOTE: WHENEVER THIS RULE REFERS TO "DIRECTOR OF DEPARTMENT OF ENERGY" IT SHOULD BE REFERENCED TO "DIRECTOR OF THE OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING" EFFECTIVE OCTOBER 16, 1991.

§56-8-1. General.

1.1. Scope. – Rules and Regulations Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia.

1.2. Authority. – W. Va. Code §22A-1A-34

1.3. Filing Date. – March 30, 1990

1.4. Effective Date. – April 1, 1990

§56-8-2. Preamble—Comprehensive Safety Program for Coal Mining Operations in the State of West Virginia.

2.1. Purpose – The primary goal of Section 34, Article 1A, Chapter 22A of the Code is to protect the health and safety of this State's coal miners by increasing safety awareness and by providing a safe work place through the development and implementation of comprehensive safety programs for each coal mine in the State. The purpose of these regulations is to implement the mandate of Section 34, Article 1A, Chapter 22A of the Code by requiring each coal operator and each independent contractor to develop a comprehensive safety program for each active mine, and by detailing the requirements for such programs. In implementing such mandate, it is recognized that different types of safety programs may be developed for each mine, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, and the physical features of the particular mine.

§56-8-3. Definitions.

3.1. Unless the context in which a word or phrase appears clearly requires a different meaning, all terms used in these rules and regulations, which are not defined herein, shall have the meanings set forth in Section 1, Article 1A, Chapter 22A of the Code.

3.1.1. Active Mining Operation – The term “active mining operation” shall mean, when used herein, any active surface mining operation or active underground mining operation.

a. The term “active underground mining operation” shall mean an underground coal mine which is ventilated, and in which miners are employed.

b. The term “active surface mining operation” shall mean a surface coal mine where miners are employed.

3.1.2. Comprehensive Mine Safety Program – The term “comprehensive mine safety program” “comprehensive safety program,” or “program” shall mean the particular safety program at each mine as required in Section 34, Article 1A, Chapter 22A of the Code, which is developed and submitted by the coal operator or independent contractor, approved by the Director, and includes such level of the safety program components set forth in Section 7.2 of these rules and regulations as the Director deems appropriate. Such program shall include and address the extraction, production, processing and preparation activities conducted by the mine operator or independent contractors.

3.1.3. Code – The term “code” shall mean the West Virginia Code of 1931, as amended.

3.1.4. Director – The term “Director” shall mean the Director of the Division of Health, Safety and Training of the West Virginia Department of Energy.

3.1.5. Independent Contractor – The term “Independent Contractor” shall mean any firm, corporation, partnership, or individual that contracts to engage in the extraction, production, processing or preparation activities associated with a coal mine.

3.1.6. Mine – The term “mine,” when used herein, shall mean any surface coal mine or underground coal mine as defined herein.

3.1.7. Operator – The term “operator” means any firm, corporation, partnership, or individual operating any coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

3.1.8. Surface Coal Mine – The term “surface coal mine” shall mean a surface area of land, and all structures, facilities, machinery, tools, equipment, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, which are used in, or to be used in, or resulting from the work of extracting coal from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities. It is identified by one federal identification number.

3.1.9. Underground Coal Mine – The term “underground coal mine” shall mean a mine as defined in Section 1(a)(6), Article 1A, Chapter 22A of the Code.

§56-8-4. Responsibility for Comprehensive Mine Safety Program.

4.1. The design, development, submission, implementation, evaluation and modification of the comprehensive mine safety program shall be the responsibility of the operator or independent contractor of each mine.

§56-8-5. Submission of Initial Comprehensive Mine Safety Program.

5.1. All operators and independent contractors of new mines shall submit a comprehensive mine safety program, and have such program approved by the Director prior to commencement of work or operations by miners at the mine site.

5.2. After the effective date of these regulations, all mines, which are temporarily inactive but which have an approved comprehensive safety program, shall resume operations under the comprehensive safety program for that mine in effect at the time such mine was temporarily closed. If the operator or independent contractor elects to retain the existing comprehensive safety program, the operator or independent contractor shall notify the Director prior to the resumption of work by miners at the mine. If the operator or independent contractor elects to modify the existing comprehensive safety program, the operator or independent contractor shall submit such modifications to the Director within ninety (90) calendar days after resuming active mining operations.

§56-8-6. Mine Evaluation for Development of the Initial Comprehensive Mine Safety Program; Submittals to Commissioner.

6.1. In developing the initial comprehensive safety program, the operator or independent contractor shall analyze the various program components, contained in Section 7 of these rules and regulations, in conjunction with the evaluation criteria provided in Section 8.2 of these rules and regulations, and shall take into consideration the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, or any other aspect of the particular mine deemed relevant by the operator or independent contractors. Based upon this analysis and evaluation of the type of safety program needed at a particular mine, the operator or independent contractor shall proceed to develop a comprehensive mine safety program composed of the appropriate components contained in section 7 of these rules and regulations and a plan and appropriate procedures for implementing each of the components of the program.

6.2. Each operator or independent contractor shall submit to the Director for approval, a comprehensive mine safety program in accordance with these rules and regulations. In addition each operator or independent contractor shall submit the following:

6.2.1. A statement that the analysis and evaluation required by Section 6.1 of these rules and regulations has been completed;

6.2.2. A statement indicating which process the operator or independent contractor has selected, consistent with Section 11.1 of these rules and regulations, to ensure that all employees at the mine are aware of all components of the comprehensive mine safety program prior to commencement of work at the mine;

6.2.3. A list of safety instructors and their certifications, and/or qualifications, who will have primary responsibility for planning and conducting safety training at the mine;

6.2.4. The name of the person or persons representing the operator or independent contractor, including his title or position and mailing address or telephone number, who can be notified by the Director for all matters concerning the operator or independent contractor's comprehensive mine safety program.

6.3. Within thirty (30) calendar days after submission of the initial comprehensive safety program, the Director shall either approve the program as submitted, or shall reject and return the program to the operator or independent contractor for modification and resubmission, stating in detail the reasons for such rejection. If the program is rejected, the Director shall give the operator or independent contractor, a reasonable length of time to modify and resubmit such program.

§56-8-7. Primary Safety Program Components.

7.1. Depending upon the safety program needs of a particular mine or independent contractor, the comprehensive mine safety program may include any of all of the components contained in Section 7.2 of these rules and regulations. Comprehensive mine safety programs submitted by independent contractors shall address only the specific type of work to be performed by the contractor.

7.2. A comprehensive mine safety program may include:

7.2.1. The operator or independent contractor's safety policy for each mine;

7.2.2. The operator or independent contractor's policies regarding personal safety protection of each worker (hard hats, shoes, etc);

7.2.3. Safety training programs and objectives, including any or all of the following:

- a. Classroom training
- b. Workplace training
- c. Safety meetings, and
- d. Informal training

7.2.4. The operator or independent contractor's practices and procedures for promoting:

- a. Safe working practices for personnel;
- b. Safe working conditions in the mine environment;
- c. Safe working practices for machinery, equipment, and systems

7.2.5. The operator or independent contractor's emergency provisions and procedures at the mine.

7.2.6. The operator or independent contractor's procedures for accident investigation and reporting, which may include:

- a. Investigation;
- b. Filing;
- c. Analysis; and
- d. Follow-up.

7.2.7. The operator or independent contractor's practices and procedures for comprehensive mine safety program promotion and enforcement; and

7.2.8. Such other components deemed necessary by the operator or independent contractor to effectuate the goals of Section 34, Article 1A, Chapter 22A of the Code.

§56-8-8. Annual Review of the Comprehensive Mine Safety Program.

8.1. Each operator or independent contractor shall conduct an annual review of the comprehensive mine safety program in effect at each mine. The purpose of the review shall be to determine the effective-ness of the comprehensive mine safety program by evaluating the components of the program to determine whether modifications to the existing program are necessary and desirable.

8.1.1. Each operator or independent contractor shall submit to the Director within thirty (30) days after the anniversary date of the program, a report which shall contain the findings of the annual review, a statement indicating whether as a result of such review, modifications to the existing program are necessary, and if applicable, proposed modifications to the existing program. When modifications to the existing program are submitted, the operator or independent contractor may request, and the Director may issue, temporary approval of requested modifications pending the Director's final review and approval.

8.1.2. The Director will review the annual report submitted by the operator or independent contractor and will either approve the report, or reject the report, stating in detail the reasons for rejection. The reasons for rejection may include proposed changes to the program deemed necessary by the Director and not included by the operator or independent contractor.

8.1.3. If rejected, the Director shall give the operator or independent contractor a reasonable period of time to modify and resubmit such report and proposed modifications. If within thirty (30) calendar days subsequent to receipt of the report or proposed modifications by the Director, no action has been taken by the Director, the proposed report and modifications shall be considered approved.

8.1.4. The anniversary date of the program shall be the date the initial program was approved by the Director.

8.2. The annual evaluation conducted pursuant to subsection 8.1 of these rules and regulations shall include a review of the following items relating to a particular mine:

8.2.1. Accident rate;

8.2.2. Accident distributions;

8.2.3. A review of violations written under Section 13a, Article 1A, Chapter 22A of the Code; and

8.2.4. Fatal accidents and serious injuries as defined by Title 36, Series 19, Section 3.2(2).

8.3. At the discretion of the mine operator or independent contractor, other sources of information may be used to ascertain performance of the safety program in the annual evaluation. They may include, but are not limited to:

8.3.1. Mine conditions or changes in mine conditions;

8.3.2. Mining methods or equipment or changes in mining methods or equipment at the mine;

8.3.3. Number of working sections at a mine or changes in the number of working sections at the mine;

8.3.4. Personnel or management, or changes in personnel or management;

8.3.5. Instructors responsible for safety training or changes in instructors responsible for safety training; and

8.3.6. Findings from safety observations conducted by responsible mine officials.

§56-8-9. Modifications.

9.1. The operator or independent contractor, in addition to any revisions or modifications to the mine safety program made in accordance with Section 8.1 of these rules and regulations, may submit at any time, proposed modifications or revisions along with the reasons thereof, to the Director.

9.2. Within thirty (30) days after receipt by the Director of any proposed revisions or modifications to the program, the Director shall either approve the revisions, or reject the revisions, stating in detail the reasons for such rejection. If within thirty (30) days of receipt of such revisions by the Director no action has been taken, the proposed revisions shall be taken as approved.

9.3. When revisions to a program are submitted to the Director, the operator or independent contractor may request and the Director may issue temporary approval of such revisions pending the Director's final review and approval.

9.4. The Director may require modifications to a comprehensive mine safety program at any time following the investigation of a fatal accident or serious injury, as defined by Title 36, Series 19, Section 3.2(2), if such modifications are warranted by the findings of the investigation.

§56-8-10. Review Procedure.

10.1. If a comprehensive mine safety program, modifications thereto, or an annual report is rejected by the Director pursuant to Sections 6.3, 8.1, or 9.2 of these rules and regulations, the operator or independent contractor shall be entitled to a hearing before the Director to contest such rejection.

10.2. The operator or independent contractor shall notify the Director within fifteen (15) days of the receipt of such rejection that he is requesting a hearing and shall state specifically his reasons thereto. A hearing shall be scheduled within ten (10) days of the receipt of the request for hearing, and shall be held within twenty (20) days of such request.

10.3. Any operator or independent contractor adversely affected by a decision rendered by the Director pursuant to subsection 10.2 of these rules and regulations may appeal such decision in accordance with Sections 5 and 6, Chapter 29A of the Code.

§56-8-11. Right of Mine Employees to Review and Comment on the Comprehensive Mine Safety Program; Posting Requirements.

11.1. Each employee of the mine shall be afforded an opportunity to review and submit comments to the Director regarding the annual review to the comprehensive mine safety program, any modifications or revisions to the program and the annual report. The operator or independent contractor shall satisfy this requirement by selecting one of the two methods set out in 11.1.1 or 11.1.2 below.

11.1.1. The operator or independent contractor may establish a safety committee at the mine. This committee shall consist of at least three (3) non-supervisory employees. Where feasible, the committee should have representation on each working shift. The requirements for such committee may be satisfied with an existing committee for the mine. It shall be the responsibility of the operator or independent contractor to provide this committee with the opportunity to review the initial comprehensive safety program, any modifications or revisions thereto, and the annual report, and to provide written comments and suggestions to the Director with copies to the operator or independent contractor. Such opportunity to review shall be satisfied by compliance with subsection 11.4 of these rules and regulations. It shall be the responsibility of the committee to ensure that all employees of the mine have the opportunity to review and comment on the proposed comprehensive safety program, any proposed modifications or revisions thereto, and the annual report.

11.1.2. The operator or independent contractor may hold a meeting for all employees of the mine at which meeting the operator or independent contractor shall provide an in-depth review of each of the components of the comprehensive safety program for the mine. The purpose of such meeting is to provide each employee of the mine the opportunity to review and comment on the proposed comprehensive safety program, any modifications or revisions thereto, and the annual report. Such meeting shall be held prior to the submittal of the initial program, the submittal of any modifications or revisions to such program, and the submittal of the annual report. The operator or independent contractor shall notify the Director and post notice on the mine bulletin board of the time and place of the meeting at least ten (10) calendar days prior to the meeting. The Director or his authorized representative has the right to attend such meeting.

11.2. If the operator or independent contractor selects a safety committee (11.1.1) to satisfy the requirements of this subsection 11.1, he shall provide a minimum of eight (8) hours annual instruction for each member of the safety committee at each mine, which instruction shall include materials and training relevant to the review and evaluation of the components of the comprehensive safety program. This instruction may be satisfied through other instruction and training programs the operator or independent contractor is required to provide, as approved by the Director.

11.3. Notwithstanding which option the operator or independent contractor elects to satisfy the requirements of this section, each employee of the mine has the right to review the proposed comprehensive mine safety program, any modifications or revisions thereto, and the annual report, and to provide comments to the Director.

11.4. A copy of the proposed modifications or revisions of the existing comprehensive mine safety program and the annual report, shall be posted on the mine bulletin board, as provided in Section 16(a), Article 1A, Chapter 22A of the Code, for at least fifteen (15) days prior to the date of submittal to the Director.

11.5. A copy of the current approved comprehensive mine safety program shall be made available to any employee of the mine upon request and shall also be posted on the mine bulletin board as provided in Section 16(a), Article 1A, Chapter 22A of the Code.

§56-8-12. Miscellaneous.

12.1. The Director may develop forms and guidelines to facilitate development, review, and approval of the comprehensive safety program submitted by each operator or independent contractor; provided, however, that such forms and guidelines cannot modify or expand the requirements of these rules and regulations.

INDEX

Accidents

Difference between medical treatment and first aid (§36-19-5).	57
Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents (§22A-1-14).	47
Investigation of accidents (§36-19-6).	58
Notification of accidents and occupational injuries (§36-19-4).	57
Written report of accidents (Title 36, Series 19).	56-58

Assessments

Quarry-related violations (§56-20-31).	41
--	----

Blasting

Auxiliary facilities (§56-20-8.11.).	12
Blasting (§56-20-8.6.).	10-11
Bulk delivery vehicles (§56-20-8.12.).	12
Clearing crews (§56-2-11.).	79
Close deep operations (§56-20-4.5.).	5
Firing/lead lines (§56-20-8.5.).	10
General requirements (§56-20-8.3.).	8-9
Misfires (§56-20-8.8.).	11
Post firing (§56-20-8.7.).	11
Shooting preparations (§56-20-8.4.).	9-10
Storage of explosives (§56-20-8.9.).	11-12
Storage of underground explosives in main facilities (§56-20-8.10.).	12
Transportation of explosives (§56-20-8.2.).	8
Transportation vehicles (§56-20-8.1.).	8

Board of Appeals

Board of Appeals (Chapter 22A, Article 5).	56
Withdrawal of Certification (§22A-1-31).	51-52

Clearing Crew

Chain saws (§56-2-13).	80
Chipping (in-woods locations) (§56-2-18).	84
Emergency provisions (§56-2-4).	78
Environmental conditions (§56-2-6).	79
Explosives and blasting agents (§56-2-11).	79
Flammable and combustible liquids (§56-2-10).	79
Hand- and portable-powered tools – general requirements (§56-2-12).	79-80
Limbing and bucking (§56-2-17).	84
Machines, vehicles, and mobile equipment (§56-2-14).	80-83
Manual tree felling (§56-2-16).	83-84
Overhead electric lines (§56-2-9).	79
Personal protective equipment (§56-2-3).	78
Pre-shift and on-shift examination (§56-2-19).	84
Safety meetings (§56-2-20).	84
Seat belts (§56-2-5).	78-79
Signaling and signal equipment (§56-2-8).	79
Training (§56-2-21).	84
Tree felling (§56-2-15).	83
Work areas (§56-2-7).	79

Communications

Constant communications either audible or visual shall be maintained between equipment operators while working on extreme slopes (§56-20-15.16.d.).	28
--	----

Each operator shall provide two-way communication at all times miners are present between all works sites at the quarry and an emergency communication center which may be at the quarry office or elsewhere at the quarry (§56-20-20.4.a.).	36
Each worksite shall be provided with emergency communications (§56-2-4.3.).	78
Installations – communications or some other means of signaling shall be provided near the entrance to the escapeways in drawoff tunnels (§56-20-16-11.c.).	30
Persons and supplies (§56-20-11.3.d.).	15
Statement of availability of emergency communication shall be provided in escape and evacuation plans (§56-20-10.1.e.1.F.).	14
Surface blasting (§56-20-8.6.b.).	10
Telephone or other voice communication shall be provided between the surface and refuge chambers and such systems shall be independent of the mine power supply (§56-20-10.1.c.).	14
Telephones and other two-way (§56-20-10.1.i.1.).	15
Two-way equipment turned off (§56-20-8.4.b.).	9

Comprehensive Mine Safety Program

Annual review of the comprehensive mine safety program (§56-8-8).	88
Comprehensive safety program for coal mining operations in West Virginia (§56-8-2).	86
Mandatory safety programs; penalties (§22A-1-36).	52
Mine evaluation for development of the initial comprehensive mine safety program; submittals to commissioner (§56-8-6).	87
Miscellaneous (§56-8-12).	89
Modifications (§56-8-9).	88
Primary safety program components (§56-8-7).	87
Responsibility for comprehensive mine safety program (§56-8-4).	86
Review procedure (§56-8-10).	88
Right of mine employees to review and comment on the comprehensive mine safety program; posting requirements (§56-8-11).	89
Submission of initial comprehensive mine safety program (§56-8-5).	86

Compressed Gases and Welding

Acetylene welding (§56-20-14.5.).	23
Compressors and compressed air receivers (§56-20-12.5.b.).	17
Directed toward persons (§56-20-12.5.d.).	17
Electrical welding (§56-20-14.6.).	23
Fire protection (§56-20-18.19.a.1.).	34
Handling and use of welding or cutting equipment generally (§56-20-14.1.).	22
Maintenance and repairs (§56-20-14.8.).	24
No welding or cutting on bulk vehicles (§56-20-8.12.a.).	12
Permanently installed fixtures (§56-20-18.19.a.5.).	34
Preparation of pipelines or containers (§56-20-18.17.).	33
Protective equipment (§56-20-19.1.a.).	35
Safety chains or suitable locking devices (§56-20-12.5.a., -5.c.).	16, 17
Safety hazards (§56-20-14.7.).	23-24
Storage and use of compressed gas cylinders (§56-20-14.2.).	22
Transportation of compressed gas cylinders (§56-20-14.3.).	22-23
Welding preparations (§56-20-14.4.).	23

Conveyor and Drive Belts

Belt conveyors in locations where fire would create hazard to personnel (§56-20-15.11.b.).	27
Belt rollers shall not be cleaned in motion (§56-20-16.2.c.).	29
Conveyor belt slippage (§56-20-18.14.).	33
Conveyors, crossovers and crossunders (§56-20-16.7.).	29
Drive belts (§56-20-16.6.).	29
Machinery (§56-20-15.11.).	27
Not lubricated while in motion (§56-20-16.4.a.).	29
Underground belt conveyor fire protection (§56-20-18.9.).	32

Dangerous Gases

Diesel exposure monitoring (§56-20-25.5.)	40
Diesel limits on exposure (§56-20-25.1.)	37-38
Each operator shall provide (§56-20-24.2.)	37
Exposure monitoring (§56-20-24.3.a.)	37
No shots shall be fired where gas is detected (§56-20-8.3.m.)	9
Oxygen deficiency (§56-20-24.3.b.)	37
Persons whose duties require (§56-20-24.1.)	37
Prior to welding, cutting, etc. (§56-20-14.4.c.)	23
Tests for methane in structures (§56-20-16.12.a.)	30
Underground workings special precautions (§56-20-9.1.c.)	13
When entering bins, tanks, etc. (§56-20-16.1.i.)	28

Definitions

Definitions (§56-20-3.)	1-4
-------------------------	-----

Diesel Equipment

Engines (§56-20-25.3.)	39
Fueling and storage (§56-20-18.3.a.)	32
Limits on exposure (§56-20-25.1.)	37-38
Test for compliance (§56-20-25.2.)	38-39
Training (§56-20-25.4.)	39

Drilling

Approach of electrical storm (§56-20-8.3.f.1.A.)	9
Drilling position (§56-20-7.4.)	7
Holes intersecting a loaded hole (§56-20-8.4.d.)	9
Horizontal drill (§56-20-7.2.)	7
Inspection (§56-20-7.1.)	7
Movement of drills (§56-20-7.5.)	8
Vertical drilling (§56-20-7.3.)	7

Dust

Control measures (§56-20-16.3.d.)	29
Created by haulage (§56-20-11.2.b.)	15
Dusty location (§56-20-16.1.b.)	28
Exposure monitoring (§56-20-24.3.a.)	37
First aid supplies, dust-tight (§56-20-20.2.)	36
Miners exposed (§56-20-19.7.a.)	35
No person shall return to blasting area (§56-20-8.7.b.)	11
Permissible dust collectors (§56-20-19.7.b.)	35
Surface installations (§56-20-16.12.c.)	30
Welding, cutting and burning (§56-20-14.7.a.)	23
Where coal is stored (§56-20-17.2.)	31

Electricity

Cables (§56-20-13.6.)	19
Circuit breakers (§56-20-13.5.)	18-19
Dust-tight housings or enclosures (§56-20-16.1.b.)	28
Electrical equipment generally (§56-20-13.3.)	17-18
Electric power operated tools shall be approved double-insulated or grounded type (§56-20-15.12.f.)	27
Electrically powered equipment and trailing cables (§56-20-8.4.c.)	9
Electrically powered mobile equipment shall not be left unattended (§56-20-15.6.e.)	25
Energized lines generally (§56-20-13.8.)	20
Grounding (§56-20-13.7.)	19-20
High voltage (§56-20-13.9.)	20-21
Movement of electrical equipment (§56-20-13.10.)	21
Other electrical apparatus (§56-20-13.11.)	21-22

Performance of electrical work (§56-20-13.1.)	17
Power lines constructed over haulage roads (§56-20-11.2.k.)	15
Surface explosives magazines location (§56-20-8.9.c.)	11
Testing, maintenance and repair of electrical equipment (§56-20-13.4.)	18
Transformers (§56-20-13.2.)	17
Underground explosive storage (switches) (§56-20-8.10.b.7.)	12
Wheel covers (hubcaps) shall be provided for electric wheel motors (§56-20-15.6.k.)	26
Emergency Medical Technician	
Requirements (§56-20-21.2.)	36
Employee/Miner/Worker	
Alcohol and drugs (§56-20-12.2.)	16
Discrimination (§22A-1-22)	50-51
Horseplay/practical jokes (§56-20-12.1.)	16
No working alone (§56-20-12.6.)	17
Persons entering a quarry (§56-20-12.11.)	17
Right of miner to refuse to operate (§22A-2-71)	54
Right of miner to refuse to work (§22A-2-71a)	54
Equipment	
Dump trucks and dumping (§56-20-15.5.)	25
Equipment generally (§56-20-15.6.)	25-26
Glass, doors and mirrors (§56-20-15.7.)	26
Guards (§56-20-15.8.)	26
Hand-held tools, power tools and safety devices (§56-20-15.12.)	27
Haulage equipment – construction and maintenance (§56-20-11.3.)	15
Jacks (§56-20-15.13.)	27
Loads (§56-20-15.10)	26
Machinery (§56-20-15.11.)	27
Machines, vehicles, and mobile equipment (§56-2-14)	80-83
Maintenance and repairs (§56-20-15.3.)	24-25
Mobile equipment (§56-20-15.1.)	24
Operating equipment on extreme slopes (§56-20-15.16.)	28
Operation of mobile equipment (§56-20-15.9.)	26
Operation of shovel, draglines, tractors, backhoes, loaders, etc. (§56-20-15.2.)	24
Stationary grinding machines, protective devices (§56-20-15.14.)	27
Tires and repairs (§56-20-15.15.)	27-28
Warning devices, lights, breaks (§56-20-15.4.)	25
Escapeways/Exits	
Rooms with circuit breakers or controls (§56-20-13.11.e.)	22
Runaway road or suitable equivalent (§56-20-11.2.j.)	15
Tunnel (§56-20-16.11.a.)	30
Two exits (§56-20-18.19.a.2.)	34
Underground evacuation instruction (§56-20-18.12.)	33
Underground only (§56-20-10.1.)	14-15
Examinations	
Air quality and exposure monitoring (§56-20-24.3.a.)	37
Air quality device maintenance (§56-20-24.2.)	37
Air quality device training (§56-20-24.1.)	37
Clearing crews pre- and on-shift inspections (§56-2-19.1.)	84
Close deep operation (§56-20-4.5.)	5
Dangerous conditions (§56-20-4.4.)	5
Diesel exposure monitoring (§56-20-25.5.)	40
Electrical examinations (§56-20-13.4.a.1.)	18
Electrical welding connections (§56-20-14.6.a.)	23
Excluded or modified inspection (§56-20-4.7.)	5

Instructions (§56-20-4.6.)	5
Maintenance of firefighting equipment (§50-20-18.4.)	32
Mobile equipment (§56-20-15.1.a., -15.1.b.)	24
On-shift examination (§56-20-4.2.)	4-5
Pre-shift examination (§56-20-4.1.)	4
Prior to horizontal drilling (§56-20-7.2.c.)	7
Prior to welding, cutting, etc. (§56-20-14.4.c.)	23
Records of examinations (§56-20-4.3.)	5
Tests for leaks on hoses, valves, gauges (§56-20-14.8.b.)	24
Tests for methane in structures (§56-20-16.12.a.)	30
Excavating	
Repairs in excavation areas (§56-20-6.9.a., -6.9.b.)	6
Facilities/Installations	
Auxiliary facilities (§56-20-8.11.)	12
Conveyors, crossovers and crossunders (§56-20-16.7.)	29
Drawoff tunnels (§56-20-16.11.)	30
Drive belts, etc. (§56-20-16.6.)	29
Two exits (§56-20-18.19.a.2.)	34
Employee parking (§56-20-11.6.a.)	16
Facilities using bins, tunnels, piles (§56-20-17.)	31
Hoisting (§56-20-16.10.)	30
Installations generally (§56-20-16.1.)	28
Ladders (§56-20-16.9.)	30
Machinery guards (§56-20-16.2.)	28-29
Persons entering a quarry (§56-20-12.11.)	17
Railroad equipment (§56-20-16.13.)	30-31
Railroad track construction and maintenance (§56-20-16.14.)	31
Ramps and dumping (§56-20-16.3.)	29
Repairs of machinery (§56-20-16.4.)	29
Stairs, platforms, etc. (§56-20-16.5.)	29
Storage of surface explosives (§56-20-8.9.)	11-12
Toilet facilities (§56-20-12.9.)	17
Travelways (§56-20-16.8.)	30
Underground main facilities explosive storage (§56-20-8.10.)	12
Ventilation and methane (§56-20-16.12.)	30
Fans	
Auxiliary fan systems (§56-20-9.2.a.2.O.)	13
Ventilation plan – fans (§56-20-10.1.e.1.A.)	14
Fire Protection	
Adequate fire protection – welding, cutting, etc. (§56-20-14.4.f.)	23
Battery-charging stations (§56-20-18.13.)	33
Clear cutting flammable liquids (§56-2-10)	79
Conveyor belt slippage (§56-20-18.14.)	33
Drills (§56-20-18.6.)	32
Escape and refuges fire fighting plan (§56-20-10.1.e.1.D.)	14
Explosives and blasting vehicles (§56-20-8.1.a.)	8
Fire extinguishers (§56-20-18.1.)	31
Fire watchers (§56-20-14.4.e.)	23
Firefighting, evacuation and rescue (§56-20-18.10.)	32
Flammable liquids (§56-20-18.2.)	31-32
Fueling and storage (§56-20-18.3.)	32
Installations (§56-20-18.19.)	34-35
Maintenance of firefighting equipment (§56-20-18.4.)	32
Mine opening vicinity (§56-20-18.15.)	33
Noncombustible barrier of cylinders (§56-20-14.2.c.)	22

Preparation of pipelines or containers (§56-20-18.17.).	33
Signs at storage areas of cylinders (§56-20-14.2.b.).	22
Smoking or open flame (§56-20-12.4.).	16
Supported on a noncombustible base (§56-20-18.16.).	33
Surface fan installation and opening (§56-20-18.7.).	32
Underground belt conveyors (§56-20-18.9.).	32
Underground evacuation (§56-20-18.12.).	33
Underground rescue and firefighting (§56-20-81.11.).	32
Underground shops (§56-20-18.18.).	33-34
Use of fire underground (§56-20-18.8.).	32
Warnings (§56-20-18.5.).	32

First-Aid

Emergency arrangements (§56-20-20.3.).	36
Emergency communications (§56-20-20.4.).	36
First aid stations and equipment (§56-20-20.1).	35-36
First aid training (§56-20-21.1., -21.2.).	36
Mantrip minimum equipment (§56-20-11.6.b.1.).	16
Proper storage of first aid supplies (§56-20-20.2.).	36

Ground Control

Benches (§56-20-6.2.).	5
Dump areas (§56-20-6.12.).	7
Examinations (§56-20-6.8.).	6
Ground control plan (§56-20-6.13.).	7
Ground support use (§56-20-6.7.).	6
Highwall and burden bank work areas (§56-20-6.3.).	5
Loose material removal (§56-20-6.1.).	5
Night work (§56-20-6.11.).	6
Repairs in excavation areas (§56-20-6.9.).	6
Rock fixtures (§56-20-6.6.).	6
Scaling and support (§56-20-6.4.).	6
Scaling tools (§56-20-6.5.).	6
Tree removal (§56-20-6.10.).	6

Haulage

Employee parking and mantrips (§56-20-11.6.).	16
Haulage equipment – construction and maintenance (§56-20-11.3.).	15
Haulage equipment – operation (§56-20-11.4.).	16
Haulage roads – construction and maintenance (§56-20-11.2.).	15
Haulage roads – traffic directions and warning signs (§56-20-11.1).	15
Loading and hauling large rocks (§56-20-11.7.).	16
Loading, hauling and unloading of equipment or supplies (§56-20-11.8.).	16
Operation of mobile equipment (§56-20-15.9.).	26
Parked vehicles (§56-20-11.5.).	16
Safe roads to blast areas (§56-20-8.2.g.).	8
Supplies, materials and tools on mantrips (§56-20-11.9.).	16
Travelways (§56-20-11.10.).	16

Hoisting

Hoisting (§56-20-16.10.).	30
Only proper hoisting equipment shall be used for hoisting or lowering tools (§56-20-15.12.g.).	27

Housekeeping

General provisions (§56-20-12.3.).	16
Good housekeeping shall be practiced on all equipment (§56-20-15.3.c).	25
Installations (§56-20-16.1.f.).	28

Independent Contractors

Address of record and telephone number (§56-20-28).....	40
Enforcement of violations and orders (§56-20-29).....	41
Independent contractor register (§56-20-26).....	40
Mine evaluation for development of initial comprehensive mine safety program; submittals to commissioner (§56-8-6).....	87
Primary safety program components (§56-8-7).....	87
Responsibility for completing mine safety program (§56-8-5).....	86
Service of documents (§56-20-27).....	40

Lights, Lighting, Illumination

Employee parking (§56-20-11.6.a.).....	16
Illumination sufficient to provide safe working conditions shall be provided (§56-20-16.1.d.).....	28
Installation of electric lights (§56-20-13.11.f., -11.g.).....	22
Lights, flares, or other approved warning devices on parked equipment creating a hazard to vehicular traffic (§56-20-11.5.a.).....	16
Safety devices shall be functioning properly (§56-20-8.1.e.).....	8
Smoking and use of open lights prohibited (§56-20-18.3.d.).....	32
Surface magazines for storage of explosives (§56-20-8.9.b.).....	11
Warning devices, lights, brakes (§56-20-15.4.).....	25

Methane

Examinations for methane before and during welding (§56-20-14.4.c.).....	23
Ventilation and methane where coal is stored and used (§56-20-16.12.).....	30

Mine Foreperson/Assistant

Blasting (§56-20-8.6.f.2.).....	11
Close deep operations (§56-20-4.5.).....	5
Dangerous conditions (§56-20-4.4.).....	5
Definitions (§56-20-3.37, -3.74).....	3, 4
Duty of quarry foreperson to notify operator when unable to comply with law (§56-20-5).....	5
Equipment in contact with energized line (§56-20-13.8.h.).....	20
Examination after a slide (§56-20-6.8.).....	6
Imminent danger defects (§56-20-15.1.a., -15.1.c.).....	24
Instructions (§56-20-4.6.).....	5
Misfires (§56-20-8.8.a., -8.8.b.).....	11
On-shift examination (§56-20-4.2.).....	4-5
Pre-shift examination (§56-20-4.1.).....	4
Records of examinations (§56-20-4.3.).....	5
Shooting preparation (§56-20-8.4.c., -8.4.i.).....	9

Mine Inspectors' Examining Board

Inspectors shall submit to written and oral examination by the mine inspectors' examining board (§22A-4-5).....	55-56
--	-------

Mine Rescue

Mine rescue teams for underground quarries (§56-20-20.3.c.).....	36
Underground rescue and firefighting operations (§56-20-18.11.).....	32

Miner's Representative

Definitions (§56-20-3.45.).....	3
Documentation (§56-20-25.5.d.).....	40
Miner's personal exposure to diesel particulate matter (§56-20-25.1.a.).....	37
Notification when quarry operation may interfere with safe operation (§56-20-9.1.b.).....	13

Monthly Reporting

Monthly report by operator (§22A-4-4).	55
Monthly report by operator (§56-3-52).	85

Office of Miners' Health, Safety and Training

Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents (§22A-1-14).	47
Director; powers and duties (§22A-1-4).	45-46
Discrimination (§22A-1-22).	50-51
Enforcement of orders and citations (§56-20-29).	41
Findings, orders and notices (§22A-1-15).	47-48
Fire protection (§56-20-18).	31-35
Highwall failure affecting safe working conditions of quarry (§56-20-6.3.b.).	5
Inability of quarry foreperson to comply with requirements of law (§56-20-5).	5
Independent contractor registry (§56-20-26).	40
Injunctions (§22A-1-20).	50
Judicial review (§22A-1-19).	50
Offices continued (§22A-1-5).	46
Plan outlining safeguards shall be submitted before drilling and blasting in areas where underground seam(s) are burning (§56-20-8.6.h.).	11
Posting of notices, orders and decisions; delivery to agent of operator; names and addresses to be filed by operators (§22A-1-18).	49-50
Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors (§22A-1-16).	48-49
Procedures and practice before the department of energy (Title 56, Series 1).	66-77
Records and reports (§22A-1-23).	51
Records of examinations (§56-20-4.3).	5
Review of orders and notices by the director (§22A-1-17).	49
Rules applicable to proceedings initiated to assess civil penalties (§56-1-2).	70-72
Rules applicable to proceedings initiated upon petition for declaratory ruling (§56-1-5).	76-77
Rules applicable to proceedings for modification, extension, termination or review of orders and notices (§56-1-4).	74-76
Rules for protection of health and safety of employees (§22A-3-3).	55
Savings provisions (§22A-1-7).	46-47
Underground/mine quarry activities to be co-ordinated jointly by operators involved and approved by the director (§56-20-9.1.a.1.).	13

Open Pit Mines, Cement Manufacturing Plants and Underground Limestone and Sandstone Mines

Monthly report by operator (§22A-4-4).	55
--	----

Orders/Notices

Findings, orders and notices (§22A-1-15).	47-48
Independent contractor enforcement of citations and orders (§56-20-29).	41
Injunctions (§22A-1-20).	50
Judicial review (§22A-1-19).	50
Posting of orders, notices, decisions (§22A-1-18).	49-50
Powers and duties of electrical inspectors (§22A-1-16).	48-49
Review of orders and notices by the director (§22A-1-17).	49

Protective Equipment and Clothing

Check-in, check-out system (§56-20-10.1.f.).	14
Clothing (§56-20-19.2.).	35
Energized electrical work gloves (§56-20-13.11.d.).	22
Energized high voltage gloves (§56-20-13.9.e.).	21
Energized trailing cable gloves (§56-20-13.10.c.).	21
Eye and face protection (§56-20-19.1.).	35
Fall protection and fall arrest (§56-20-19.5.).	35
Hard hats and safety toed shoes (§56-20-19.3.).	35
Hearing protection (§56-20-19.6.).	35

Location of self-rescue devices (§56-20-10.1.h.)	14-15
Mechanically operated grinding wheels (§56-20-15.14.a.)	27
Personal protective equipment – clearing crews (§56-2-3)	78
Provisions and maintenance of self-rescue devices (§56-20-10.1.g.)	14
Respiratory equipment (§56-20-19.7.)	35
Seat belts (§56-20-15.6.m.)	26
Welding and cutting clothes (§56-20-14.1.a.)	22
Welding, cutting, etc., goggles or shields (§56-20-14.4.b.)	23
Working around water (§56-20-19.4.)	35
Quarry Maps	
Availability of quarry map (§56-20-23.3.)	37
Certification of quarry maps (§56-20-23.2.)	37
Escape and evacuation plans (§56-20-10.1.e.)	14
To be updated and a copy provided to the Office of Miners' Health, Safety and Training (§56-20-23)	37
Operator shall maintain an updated quarry map (§56-20-23.1.)	37
Ventilation plan (§56-20-9.2.a.)	13-14
Railroad	
Applicability (§56-20-1.5.)	1
Equipment (§56-20-16.13.)	30-31
Location of railroad tracks on quarry map (§56-20-23.1.i.)	37
Storage of explosives (§56-20-8.9.h.)	12
Track construction and maintenance (§56-20-16.14.)	31
Rights of a Miner	
Right of miner to refuse to operate unsafe equipment; procedure; discrimination (§22A-2-71)	54
Right of a miner to refuse to work in an unsafe area or unsafe manner (§22A-2-71a)	54
Right of mine employees to review and comment on the comprehensive mine safety program; posting requirements (§56-8-11)	89
Safety Equipment	
Maintenance and repairs (§56-20-15.3.a.)	24
Safety Training Program	
Right of mine employees to review and comment on comprehensive mine safety program (§56-8-11)	89
Safety training program components (§56-8-7)	87
Shaft/Slope	
Shafts and slopes (§22A-2-70)	52-54
Shelters	
Communication (§56-20-10.1.c.)	14
Method of refuge (§56-20-10.1.b.)	14
Mine maps or diagrams (§56-20-10.1.e.1.A.)	14
Smoking/Open Fires	
Explosives (§56-20-8.3.d.)	9
Fire protection (§56-20-18.19.a.)	34-35
Smoking prohibited (§56-20-12.4.)	16
Smoking prohibited in battery-charging stations (§56-20-18.13.b.)	33
Smoking prohibited where flammable materials stored (§56-20-18.3.d.)	32
Storage and use of compressed gas cylinders (§56-20-14.2.)	22
Storage of explosives (§56-20-8.9.b.)	11
Warnings posted (§56-20-18.5.)	32

Stationary Equipment

Diesel equipment (§56-20-18.16.)	33
Grinding machine, protective devices (§56-20-15.14.)	27
Maintained in safe condition (§56-20-15.3.b.)	24-25

Tires

Tires and repairs (§56-20-15.15.)	27-28
---	-------

Tools

Hand-held tools, power tools and safety devices (§56-20-15.12.)	27
Jacks (§56-20-15.13.)	27
Persons using welding and cutting tools (§56-20-14.4.a.)	23
Scaling tools (§56-20-6.5.)	6
Stationary grinding machines (§56-20-15.14.)	27
Supplies, materials and tools on mantraps (§56-20-11.9.)	16
Tools on haulage equipment (§56-20-11.3.b.)	15

Training/Safety Plans

Training for inexperienced miner (§56-20-22.2.)	36-37
Training to be provided in accordance with 30 C.F.R. 46 (§56-20-22.1.)	36

Underground Clay Mine

Clay mine foreman; when to be employed; qualifications; assistants (§22A-3-2)	55
Rules for protection of health and safety of employees (§22A-3-3)	55

Underground Workings

Battery-charging stations (§56-20-18.13.)	33
Belt conveyors (§56-20-18.9.)	32
Close deep operations (§56-20-4.5.)	5
Conveyor belt slippage (§56-20-18.14.)	33
Escapeways and refuges (§56-20-10.1.)	14-15
Evacuation instructions (§56-20-18.12.)	33
Firefighting, evacuation and rescue procedures (§56-20-18.10.)	32
Mine opening vicinity (§56-20-18.15.)	33
Mine rescue teams (§56-20-20.3.c.)	36
Rescue and firefighting operations (§56-20-18.11.)	32
Shops (§56-20-18.18.)	33-34
Stationary diesel equipment (§56-20-18.16.)	33
Use of fire (§56-20-18.8.)	32
Ventilation (§56-20-9.2.)	13-14
Workings (§56-20-9.1.)	13

Ventilation

Cabs of mobile equipment (§56-20-15.9.e.)	26
Facilities using coal storage bins; recovery tunnels; coal storage bins (§56-20-17)	31
Fans (§56-20-10.1.e.1.A.)	14
Installations (§56-20-16.1.g.)	28
Tunnels (§56-20-16.11.b.)	30
Ventilation in underground workings (§50-20-9.2)	13-14
Welding areas (§56-20-14.7.a.)	23
Welding operations (§56-20-14.4.d.)	23

Written Reports of Accidents

Difference between medical treatment and first aid (§36-19-5)	57
Investigation of accidents (§36-19-6)	58
Monthly report by operator (§22A-4-4)	55
Notification of accidents and occupational injuries (§36-19-4)	57
Preservation of evidence following accident (§36-19-7)	58
Reports after fatal accidents (§22A-1-14(f))	47

Notes:

