



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Coal Mine Health And Safety TITLE-SERIES: 36-27

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

RULE NAME: Rules and Regulations Governing Surface Areas on Mine Property and Limitations on Mining Adjacent to Gas Facilities

CITE STATUTORY AUTHORITY: W. Va. Code §§22A-6-4 and 22A-6-5

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/16/2020 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Mallory Yates Hicks

ADDRESS: 106 Dee Drive  
Charleston, WV 25311

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

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

INCORPORATED BY REFERENCE: No

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

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Rule governing surface areas on mine property and limitations on mining adjacent to gas facilities.

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

Pursuant to the regulatory review and reform initiatives established in W. Va. Code §29A-3-20 (2016) and Executive Order No. 3-18, this proposed legislative-exempt rule modifies and updates 36 C.S.R. 27 to cross-reference the correct authorizing portions of the West Virginia Code and corrects typographical errors including errors in paragraph numbering.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This proposed legislative-exempt rule is not anticipated to impact the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This proposed legislative-exempt rule is not anticipated to impact special revenue accounts.

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

This proposed legislative-exempt rule is not anticipated to impact the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs and Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

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

N/A

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

Yes

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

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TITLE 36  
LEGISLATIVE EXEMPT RULE  
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 27  
RULES AND REGULATIONS GOVERNING SURFACE AREAS ON MINE PROPERTY  
AND LIMITATIONS ON MINING ADJACENT TO GAS FACILITIES

**§36-27-1. General.**

1.1. Scope. -- Rules and Regulations Governing Surface Areas.

1.2. Authority. -- W. Va. Code ~~§22A-6-4~~ §§22A-6-4 and 22A-6-5.

1.3. Filing Date. -- ~~May 7, 2010~~ \_\_\_\_\_.

1.4. Effective Date. -- ~~August 5, 2010~~ \_\_\_\_\_.

~~1.5. Applicability. 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 Article 1, Chapter 22 of the Code, relative to enforcement, are applicable to the enforcement of these rules and regulations.~~

1.5. Effect of Regulations. -- 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 et seq. relative to enforcement are applicable to the enforcement of these rules and regulations.

**§36-27-2. Definitions.**

2.1. "Coal Permit Holder" means the holder of an active coal mining permit issued by the West Virginia Department of Environmental Protection.

2.2. "Designated Mining Area" is an area of real property that is (i) subject to an active surface coal mining permit or the surface area of an active deep coal mine permit issued by the West Virginia Department of Environmental Protection (a "Coal Permit") and (ii) where Excavation Work will be conducted within the following twelve (12) month period.

2.3. "Excavation Work" shall mean work performed by motorized mining equipment where vegetation, timber, topsoil or overburden will be moved, removed or placed by surface mining operations and such surface impacts incident to underground coal mine operations.

2.4. "High voltage powerline" means any uninsulated suspended power conductor carrying high voltage.

2.5. "Lanyard" means a rope, suitable for supporting one person. One end is fastened to a safety belt or harness and the other end is secured to a substantial object or a safety line.

2.6. "Lifeline" means a rope, suitable for supporting one person, to which a lanyard or safety belt (or harness) is attached.

2.7. "Oil and Gas Operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any oil or gas well or engaged in

the operation of pipeline facilities or the transportation of oil or gas.

2.8. "Pipeline" means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

2.9. "Safety belt" means a device, usually worn around the waist, which, by reason of its attachment to a lanyard and lifeline for a structure, will prevent a worker from falling.

2.10. "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

2.11. All other terms used in these rules and regulations, not defined herein, shall have the ~~means~~ meanings set forth in W. Va. Code §22A-1-2.

**§36-27-3. Operating Equipment With Suspended Material.**

3.1. All persons 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.

**§36-27-4. Protection From Falls From Elevated Areas.**

4.1. Safety protection such as safety belts, lifelines, or lanyards to prevent a person from falling shall be provided at all times where the potential fall distance exceeds fifteen (15) feet, except that safety belts shall not be used where they are impractical or would pose a greater hazard.

4.2. Safety nets shall be provided when work places are more than twenty-five (25) feet above the ground where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts are impractical.

**§36-27-5. Safety Precautions on Coal Stockpiles.**

5.1. The following requirements shall apply to all surface coal stockpiles with draw-off tunnel feeders underneath the coal storage area of the stockpile which discharge onto a conveyor belt:

5.1.1. ~~5.1.a.~~ No person shall travel on foot or operate equipment on a coal stockpile or coal storage area directly over areas where underlying coal feeders are in place without a plan approving such activity by the Director, or his/her authorized representative. The ~~P~~plan shall be submitted by the operator or the independent contractor performing the work, and shall be reviewed with all persons prior to work being done, and a record kept of such review.

5.1.2. ~~5.1.b.~~ The ~~P~~plan shall outline procedures to protect the health and safety of those who may have to travel on foot or operate equipment on a coal stockpile or coal storage area directly over areas where underlying coal feeders are in place. The minimum criteria for approval of the plan shall include:

5.1.2.a. ~~5.1.b.1.~~ The equipment shall be equipped with an enclosed cab and doors and windows shall be closed and secured at all times the equipment is in operation. Beginning January 1, 2001 all mobile equipment manually operated on coal stockpiles, where there is a potential of the equipment falling into a cavity, shall be equipped with an enclosed cab fitted with chemically tempered glass and a window support system; provided however, that glass certified to withstand 40 psi may be installed without a window support system, provided that such glass is installed in a substantial frame. The Director of the Office of Miners Health, Safety and Training will approve all enclosed cabs pursuant to this section. The Director of the Office of Miners' Health, Safety and Training may approve other types of glass and window frames or support system provided that an equal or greater amount of protection is afforded.

5.1.2.b. ~~5.1.b.2.~~ The equipment shall have two-way communications and a back-up communication system supplied on an independent power source.

5.1.2.c. ~~5.1.b.3.~~ The equipment operator shall be provided with two self-contained self-rescuers or a system designed, installed and maintained to provide at least equivalent protection.

5.1.2.d. ~~5.1.b.4.~~ A remote control device capable of stopping the flow of coal from the feeder and stop the coal coming onto the stockpile. Such device shall be tested weekly.

5.1.2.e. ~~5.1.b.5.~~ A means of providing emergency lighting to the mobile equipment operator.

5.1.2.f. ~~5.1.b.6.~~ Warning signs shall be posted at the entrances to all coal stockpiles with underlying coal feeders.

5.1.2.e. ~~5.1.b.7.~~ No person shall travel on foot, except on an emergency basis, and only under direct supervision; they shall be secured by an overhead lifeline; and feeders shall be locked and tagged out.

5.1.3. ~~5.1.c.~~ The operator shall establish rules for the safe procedures for breaking through cavities and for marking the feeder areas on the surface. A copy of the rules shall be submitted to the Director, Office of Miners' Health, Safety and Training for approval. A copy of the approved rules shall be posted at the mine site, and all persons to perform such work shall be instructed in these procedures.

5.1.4. ~~5.1.d.~~ Telephone or equivalent two-way communications shall be established between equipment operators working on stockpiles and those persons who are operating conveyors, feeders, and hoppers at storage piles (where more than one person performs these duties), in order to keep such equipment operators advised of the possibility of bridged material over a cavity in the stockpile.

### **§36-27-6. Working Around High-Voltage Powerlines.**

6.1. Location of high-voltage powerlines. High-voltage powerlines located above surface work areas, driveways, haulageways, and railroad tracks shall be installed no less than fifteen (15) feet above ground.

6.2. Operation of equipment, minimum distance from high voltage lines.

6.2.1. ~~6.2.a.~~ Equipment or machinery operated on the surface of any coal mine shall not be operated within ten (10) feet of an overhead powerline unless the line is deenergized and visibly grounded at the point of work, or unless insulating barriers not part of or an attachment to; the equipment have been erected to prevent physical contact with the lines. Where the voltage of overhead powerlines is sixty-nine thousand (69,000) volts or more, the minimum clearance between the lines and part of the equipment or load shall be as follows: (Please see Table 36-27a).

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Nominal Powerline Voltage (in 1,000 volts)	Minimum Distance (in feet)
659 to 114	12
115 to 229	15
230 to 344	20
345 to 499	25
500 or more	35

~~6.2.2.~~ ~~6.2.b.~~ 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.

6.3. Movement of equipment; minimum distance for high voltage lines. When any part of any equipment operated on the surface of any coal mine 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 deenergized or other precautions shall be taken to prevent contact with the powerlines.

6.4. Deenergization 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~~ authority verifies that it is not an energized line and it has been visibly grounded.

**§36-27-7. Tires and Repairs.**

7.1. A safety tire rack, cage or equivalent protection shall be provided when inflating tires during installation on split rings or rims equipped with locking rings or similar devices. Tires shall be deflated before repairs on them are started, and adequate 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 separate from each other.

**§36-27-8. Crushers, Feeders, and Rotary Breakers.**

8.1. 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 deenergized and locked out.

**§36-27-9. Machines with Movable Parts.**

9.1. ~~Ninety (90) days after the effective date of this section, machines~~ Machines with movable parts used at surface mines or surface areas of underground mines; which are capable of coming into contact with its operating controls or ~~is~~ 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.

**§36-27-10. Seat Belts.**

10.1. Each employee working in a surface coal mine or in the surface areas of an underground coal mine

shall be required to wear seat belts in a vehicle where there is a danger of overturning and where roll protection is provided.

10.2. Seat belts shall be worn by all drivers of trucks, 5-ton or greater, while operating their trucks on surface mines and surface areas of underground mines.

**§36-27-11. Transporting Compressed Gas Cylinders.**

11.1. When tanks and cylinders are not used and they are being transported, they shall be securely mounted with regulators removed, cylinder valves closed and protective valve caps replaced, except in conformance with the following requirements:

11.1.1. ~~11.1.a.~~ Cylinders shall remain in a substantially constructed compartment while the gauges are attached and shall be secured against movement.

11.1.2. ~~11.1.b.~~ The substantially constructed compartment shall be designed specifically for the mine maintenance vehicles carrying it; the cylinders shall be secured against movement and be placed at no greater than a 45 degree angle.

11.1.3. ~~11.1.c.~~ The cylinder regulators, if not in enclosed compartments, shall be adequately covered to provide protection when regulators are left attached to cylinders.

11.1.4. ~~11.1.d.~~ The substantially constructed compartments shall be secured to the mine maintenance vehicle in such a manner to prevent the entire compartment from overturning at any time.

11.1.5. ~~11.1.e.~~ 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.

11.1.6. ~~11.1.f.~~ Cylinders, gauges, hoses, connectors, valve stems, and torches shall be checked for damage and proper fit by a qualified person immediately following transportation and prior to use.

11.1.7. ~~11.1.g.~~ The cylinder valves shall be in a shut-off position, and the hoses relieved of pressure when not in use and when being transported.

11.1.8. ~~11.1.h.~~ All substantially constructed compartments shall be approved by the Director or his/her authorized representative prior to initial use.

**§36-27-12. Mirrors on Surface Operated Equipment.**

12.1. When required by an authorized representative of the Director to enhance safe operation, adequate mirror(s) will be provided on surface mine equipment that operates at surface mines, surface areas of underground mines, preparation plants and loadouts.

12.2. Mirror(s) provided on equipment by manufacturers of said equipment shall be deemed adequate and in compliance with the regulations.

**§36-27-13. Safety Devices on Surface Haulage Equipment.**

13.1. ~~Sixty (60) days after the effective date of this section all~~ All surface mines, surface areas of underground mines, which utilize or operate vehicles capable of carrying 100-tons or greater, which operate



in close proximity of smaller vehicles, as identified in ~~Section 13.1(a)~~ Subsection 13.1.1, shall implement the following enhancements in order to maximize the visibility of operators and coordination of equipment.

13.1.1. ~~13.1.a.~~ All maintenance, service, foreman or other utility vehicles shall be equipped with strobe lights and/or whip antennas, or other suitable devices as approved by the Director, or to be escorted by a vehicle equipped with such devices. This requirement excludes employee vehicles that are traveling on designated access road(s) to and from work.

13.1.2. ~~13.1.b.~~ Equipment operators of haulage vehicles capable of carrying 100-tons or greater shall conduct a complete walk around of the equipment before it is placed in operation at the beginning of the shift and anytime the operator dismounts the machine.

13.1.3. ~~13.1.c.~~ Equipment operators of haulage vehicles capable of carrying 100-tons or greater shall sound an audible warning device three times before the machine is placed in operation; and after the machine has set idle while in operation for periods that exceed normal cycle times.

13.1.4. ~~13.1.d.~~ Reflective numbers or other clearly distinguishable identification markers, at a minimum of at least five (5) inches in height or as approved by the Director or his/her authorized representative, shall be installed, in conspicuous places, on all four sides of all vehicles capable of carrying 100-tons or greater.

13.1.5. ~~13.1.e.~~ All vehicles capable of carrying 100-tons or greater shall be equipped with two-way communications.

13.1.6. ~~13.1.f.~~ At no time shall a smaller vehicle travel into a blind spot of a vehicle over 100-ton capacity without communicating with the operator of the larger vehicle and receiving positive confirmation from that operator that it is safe to approach.

13.1.7. All employees of the mine shall receive a briefing of these procedures ~~within thirty (30) days of the effective date of this rule~~ and these procedures shall be included in the employees' annual retraining, newly hired miner training, and hazard training.

~~13.2. Within One Hundred and Eighty (180) days after the effective date of this section all~~ All trucks with a 230-ton capacity or greater on or around a surface mine or surface area of an underground mine will be equipped with a camera, approved by the Director or other devices approved by the Director and the Technical Review Committee, at the rear of the truck to reduce blind spot hazards.

~~13.3. Within One Year after the effective date of this section the West Virginia Board of Coal Mine Health and Safety will review the effectiveness of the cameras on the rear of the 230-ton capacity or greater off road haulage vehicles.~~

#### **§36-27-14. Requirements for Mining Adjacent to Gas Facilities.**

14.1. Applicability of Section 14. The regulations in this Section 14 shall apply to any new surface mining operation seeking its initial permit on or after the effective date of this regulation. These regulations shall not apply to any surface mine operator that has obtained its initial permit prior to the effective date of this rule. These regulations shall not apply to any utility or railroad having facilities in the vicinity of surface mining operations unless such utility or railroad is also the operator of such surface mining operations.

14.2. Prior to conducting eExcavation wWork, a cCoal pPermit hHolder shall provide by certified mail, return receipt requested, a nNotice of dDesignated mMining aArea to any oil and gas operator which has known wells or natural gas pipelines located in the dDesignated mMining aArea. A nNotice of dDesignated mMining aArea shall contain the following information:

14.2.1. ~~14.2.a.~~ A copy of the mine plan permit maps previously submitted to the West Virginia Department of Environmental Protection in connection with the permit, currently pursuant to W. Va. Code §22-3-9(12) and ~~CSR 38-2-4~~ 38 CSR 2, with a discernable boundary identifying the dDesignated mMining aArea where eExcavation wWork will be conducted within the following twelve (12) month period; and

14.2.2. ~~14.2.b.~~ The general location of all oil and gas wells and pipelines known to the coal mining permit holder or operator, or identified in the coal permitting process, together with any GPS or other survey information in the possession of the cCoal pPermit hHolder that identifies the location of any natural gas pipelines in the dDesignated mMining aArea; and

14.2.3. ~~14.2.c.~~ The office telephone number and mailing address for the mine where the work will occur, and identification of the location of any staffed guard gate or entrance.

14.3. The cCoal pPermit holder shall replace all natural gas pipeline markers disturbed, damaged or destroyed by the cCoal pPermit hHolder or its agent.

14.4. In the event that a nNotice of dDesignated mMining aArea is inaccurate or if there is a change in the area designated for mining or eExcavation wWork in the following twelve (12) months the cCoal pPermit hHolder shall provide a corrected or revised nNotice of dDesignated mMining aArea to all oil, gas and natural gas pipeline operators with lines in the area designated.

14.5. The cCoal pPermit hHolder shall provide written notice to all oil, gas or natural gas pipeline operators with pipelines in the area designated for mining or eExcavation wWork of any change in contact information or mine access points.

14.6. When an oil and gas company or pipeline operator notifies the designated mine office or staffed guard gate of entry onto an area identified by a nNotice of dDesignated mMining aArea, the coal mine operator shall inform them of any blasting schedules and times, where operations are occurring, and any new known safety hazards.

14.7. When eExcavation wWork is completed in the area designated in a nNotice of dDesignated mMining aArea, the cCoal pPermit hHolder will so notify all known oil and gas well and natural gas pipeline operators who have natural gas pipelines in the identified area.

14.8. When tree removal activities must be conducted within fifty (50) feet of the pPipeline, a grapple type excavator will be used to pick the fallen trees from the marked area. This work cannot be conducted unless the pPipeline is buried more than two (2) feet below the surface and at no time will the ground be disturbed below the surface.

14.9. No mining, excavation or equipment/vehicle operation shall occur within fifty 50 feet of a pPipeline or gas well unless adequate safeguards are provided for the protection of the oil and gas pipeline or well and the safety of miners. The permit holder shall notify the regional office of the Office of Miners' Health, Safety and Training and obtain prior written approval of the potentially affected oil and gas well and/or pipeline operator(s) and the Director before beginning mining or excavation work within fifty (50) feet of any known active oil and gas line or well. This shall not apply to mining and eExcavation wWork

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occurring within fifty (50) feet of any known active oil and gas well that is approved in accordance with W. Va. Code §22A-2-75.

14.10. Any ~~p~~Pipeline shall be considered active unless the line has been cut, purged and capped on each end. Any gas well will be considered active, unless the well has been adequately plugged below the elevation of the intended work area. Documentation will be provided to show that the condition of the gas lines and/or wells is as described above.

14.11. Pipeline awareness training shall be conducted with all personnel and resident contractors who are assigned to work in close proximity to ~~g~~Gas ~~f~~Facilities. This training shall be incorporated during the following sessions:

14.11.1. ~~14.11.a.~~ Newly employed experienced miner.

14.11.2. ~~14.11.b.~~ Annual retraining.

14.11.3. ~~14.11.c.~~ Hazard training.

14.11.4. ~~14.11.d.~~ Contractor training.

14.11.5. ~~14.11.e.~~ Additionally, immediately after gas lines have been located, a special safety talk will be conducted with all persons on the property concerning Pipeline and gas well locations.

14.11.6. ~~14.11.f.~~ Pipeline locations will be discussed in safety talks, at least on a quarterly basis.

14.11.7. ~~14.11.g.~~ Safety discussions will be held on gas line and gas well locations prior to moving into a new work area.

14.12. Nothing herein shall provide or alter any contract or statutory or regulatory or common law right or obligation.