WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4340

(BY DELEGATES PHILLIPS, LANE, KELLY, SYPOLT,

WESTFALL, MARCUM, STATLER, MAYNARD, SOBONYA,

PACK AND FOSTER)

[Introduced January 29, 2018; Referred

to the Committee on Energy then the Judiciary.]

A BILL to repeal §22A-2-14, §22A-2-28, §22A-2-30, §22A-2-31, §22A-2-32, §22A-2-33, §22A-2-34, §22A-2-35, §22A-2-41, §22A-2-50, §22A-2-51, §22A-2-52, and §22A-2-73 of the Code of West Virginia,1931, as amended; to amend and reenact §5B-2A-5, §5B-2A-6, §5B-2A-8, and §5B-2A-9 of said code; to amend and reenact §11-13BB-3, §11-13BB-4, §11-13BB-14 of said code; to amend and reenact §22-3-9 and §22-3-20 of said code; and to amend and reenact §22-11-7a of said code; to amend and reenact §22A-1-2, §22A-1-3, §22A-1-4, §22A-1-6, §22A-1-14, §22A-1-15, §22A-1-21, and §22A-1-22 of said code; to amend said code by adding thereto two new sections, designated §22A-1-42 and §22A-1-43; to amend and reenact §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-6, §22A-2-11, §22A-2-13, §22A-2-16, §22A-2-20, §22A-2-24, §22A-2-25, §22A-2-26, §22A-2-27, §22A-2-29, §22A-2-36, §22A-2-37, §22A-2-38, §22A-2-39, §22A-2-40, §22A-2-42, §22A-2-43, §22A-2-43a, §22A-2-44, §22A-2-45, §22A-2-46, §22A-2-47, §22A-2-48, §22A-2-49, §22A-2-53, §22A-2-53a, §22A-2-53b, §22A-2-53c, §22A-2-55, §22A-2-55a, §22A-2-56, §22A-2-57, §22A-2-58, §22A-2-59, §22A-2-60, §22A-2-61, §22A-2-62, §22A-2-63, §22A-2-64, §22A-2-66, §22A-2-70, §22A-2-72, §22A-2-74, §22A-2-75, and §22A-2-78 of said code; and to amend said code by adding thereto a new section, designated §22A-2-80; all relating to the powers and duties of the Office of Coalfield Community Development, including a community impact review; determining the community assets that may be developed, and determining the land and infrastructure needs in the general area of the surface mining operations; amending the “List of approved innovative mine safety technology” by providing that detection devices, cameras and underground safety shelters and the refurbishing thereof shall qualify and be on the list whether required or not under the West Virginia Innovative Mine Safety Technology Tax Credit Act, list of approved innovative mine safety technology under that tax credit act; providing that the tax credit terminate December 31, 2025; permit application requirements and contents under the Surface Coal Mining and Reclamation Act; providing that a copy of an

applicant's public notice information to be distributed by the director to the public on the division's internet-based public notice mailing list; and when a certification is granted under the Water Pollution Control Act; relating generally to miners' health, safety and training; administration and enforcement; and mine rescue teams; providing that the Office of Miners' Health, Safety and Training staff mine rescue teams; removing definitions relating to "electrical"; underground safety compliance visits and education of coal mines; additional duties of inspectors; director to propose rules relating to safety compliance assistance visits and enforcement of state mine certifications and Individual Penalty Assessments (IPAs); civil and criminal penalties for violations; procedure and exceptions to charges of discrimination; providing that all procedures previously followed are subject to standards established by the U.S. Mine Safety & Health Administration; and providing that by August 31, 2018, existing state rules or regulations be revised to reflect the changes in this bill.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. UNDERGROUND MINES.

§22A-2-14. Safety inspections; removal of gases.

[Repealed]

§22A-2-28. Equipment to conform with height of seam.

[Repealed]

§22A-2-30. Surface magazines for explosives.

[Repealed].

§22A-2-31. Transportation of explosives.

[Repealed]

§22A-2-32. Underground storage of explosives.

[Repealed].

§22A-2-33. Preparation of shots; blasting practices.

[Repealed]

§22A-2-34. Misfires of explosives.

[Repealed]

§22A-2-35. Other blasting devices.

[Repealed]

§22A-2-41. Bonding track used as power conductor.

[Repealed].

§22A-2-50. Procurement of dust-tight electrical equipment; fireproof construction; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.

[Repealed].

§22A-2-51. Housekeeping.

[Repealed].

§22A-2-52. Storage of flammable liquids in lamphouse.

[Repealed]

§22A-2-73. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of Board of Coal Mine Health and Safety to promulgate rules; time limits therefor.

[Repealed]

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-5. Powers and duties.

The office has and may exercise the following duties, powers and responsibilities:

~~(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established~~

~~(2)~~ (1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;

~~(3)~~ (2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in §5B-2A-9 of this code and to administer the procedure so established;

~~(4)~~ (3) To establish a procedure to develop action reports and annual updates as provided in §5B-2A-10 of this code and to administer the procedure so established;

~~(5)~~ (4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

~~(6)~~ (5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;

~~(7)~~ (6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns and complaints relating to surface mining; and

~~(8)~~ (7) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall include the preparation of a master-land use plan pursuant to the provisions of §5B-2A-9 of this code.

§5B-2A-6. Community impact review.

(a) The office shall, no less frequently than quarterly, either consult with representatives of the department's Office of Mining and Reclamation or review the department's permit application database or databases to determine whether newly proposed surface mines or significant modifications to existing surface mining operations may present opportunities for mine operators to cooperate with local landowners and local governmental officials to mine and reclaim properties so as to develop community assets or secure developable land and infrastructure

pursuant to this article.

(b) The provisions of this section apply to all surface mining permit applications advertised after July 1, 2018.

§5B-2A-8. Determining and developing needed community assets.

(a) The office shall determine the community assets that may be developed by the community, county or region to foster its viability when surface mining operations are completed.

(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

~~(c) The operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:~~

~~(1) A map of the area for which a permit under article three, chapter twenty-two of this code is being sought or has been obtained;~~

~~(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and~~

~~(3) A statement of the post-mining land use for all land which may be affected by the mining operations~~

~~(d)~~ (c) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

(1) An evaluation of the future of the community once mining operations are completed;

(2) The prospects for the long-term viability of any asset developed under this section;

(3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of §5B-2A-9 of this code; and

(4) The extent to which the community, local, state or the federal government may participate in the development of assets the community needs to assure its viability.

§5B-2A-9. Securing developable land and infrastructure.

(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations <u>for which it makes the determination authorized in §5B-2A-6 of this code.</u>

(b) For the purposes of this section, the term “general area” shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office, the operator, <u>upon request by the office,</u> shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under §22-3-1 *et seq.* of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature and cost to develop and maintain the community assets identified in §5B-2A-8 of this code; and

(6) The availability of federal, state and local grants and low-interest loans to finance all

or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for ~~a~~ the Development Office or a county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of §22-3-10 of this code. No provision of this section may be construed to modify requirements of relating to §22-3-1 *et seq.* of this code.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land-use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses or recreational facility uses. A county commission or other governing body of a county may designate a local, county or regional development or redevelopment authority to assist in the preparation of a master land-use plan. A county commission or other governing body of a county may adopt a master land-use plan developed after July 1, 2009, only after a reasonable public comment period;

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land-use plan;

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land-use plans existing as of July 1, 2009. If the office determines that a master land-use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010;

(B) Master land-use plans developed after July 1, 2009, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land-use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article;

(C) The office shall review a master land-use plan approved under this section every three years. No later than six months before the review of a master land-use plan, the county or designated development or redevelopment authority shall submit an updated master land-use plan to the department and the office for review. The county may submit its updated master land-use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article;

(D) If the office does not approve a master land-use plan, the county or designated development or redevelopment authority shall submit a supplemental master land-use plan to the office for approval;

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land-use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that: (i) The property use is compatible with adjacent land uses; (ii) the use satisfies the relevant county or development or redevelopment authority's anticipated need and market use; (iii) the property has in place necessary infrastructure components needed to achieve the anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property is eligible for bond release in accordance with §22-3-23 of this code; and (vi) the use is feasible.

Required infrastructure component standards require approval of the relevant county commission, commissions or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period;

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to §22-3-23(c)(1) (C) of this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment or planning agencies.

CHAPTER 11. TAXATION.

ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX CREDIT ACT.

§11-13BB-3. Definitions.

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) “Certified eligible safety property” means eligible safety property in which an eligible taxpayer has made qualified investment for which credit has been certified under this article.

(2) “Coal mining company” means:

(A) A person subject to tax imposed on the severance of coal by §11-13A-3 of this code; or

(B) A person working as a contract miner of coal, mining coal in this state, under contract with a person subject to tax imposed on the severance of coal by §11-13A-3 of this code.

(3) “Director” means the Director of the Office of Miners' Health, Safety and Training or West Virginia Office of Miners' Health, Safety and Training established under §22A-1-1 *et seq.* of this code.

(4) “Eligible safety property” means safety technology equipment that, at the time of acquisition, is on the list of approved innovative mine safety technology: *Provided,* That eligible safety property includes proximity detection systems and cameras used on continuous mining machines and underground haulage equipment and machine mounted methane monitors required by §22A-2-43 of this code.

(5) “Eligible taxpayer” means a coal mining company that purchases eligible safety property.

(6) “List of approved innovative mine safety technology” means the list required to be compiled and maintained by the Mine Safety Technology Task Force and approved and published by the director under this article: *Provided,* That proximity detection devices, cameras and underground safety shelters and the refurbishing thereof shall qualify and be on the list whether required or not.

(7) “Office of Miners' Health, Safety and Training” or “West Virginia Office of Miners' Health, Safety and Training” means the Office of Miners' Health, Safety and Training established under §22A-1-1 *et seq.* of this code.

(8) “Person” includes any corporation, limited liability company or partnership.

(9) “Qualified investment” means the eligible taxpayer's investment in eligible safety property pursuant to a qualified purchase as qualified and limited by §11-13BB-6 of this code.

(10) “Qualified purchase” means and includes only acquisitions of eligible safety property for use in this state.

(A) A lease of eligible safety property may constitute a qualified purchase if the lease was entered into and became effective at a time when the equipment is on the list of approved innovative mine safety technology and if the primary term of the lease for the eligible safety property is five years or more. Leases having a primary term of less than five years do not qualify.

(B) “Qualified purchase” does not include:

(i) Purchases or leases of realty or any cost for, or related to, the construction of a building,

facility or structure attached to realty;

(ii) Purchases or leases of property not exclusively used in West Virginia;

(iii) Repair costs including materials used in the repair unless, for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iv) Motor vehicles licensed by the Division of Motor Vehicles;

(v) Clothing;

(vi) Airplanes;

(vii) Off-premises transportation equipment;

(viii) Leases of tangible personal property having a primary term of less than five years;

(ix) Property that is used outside this state; and

(x) Property that is acquired incident to the purchase of the stock or assets of an industrial taxpayer that was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(C) Acquisitions, including leases, of eligible safety property may constitute qualified purchases for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group but the Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under Section 1014(e) of

the United States Internal Revenue Code of 1986, as amended.

(11) “Safety technology” means depreciable tangible personal property and equipment, other than clothing, principally designed to directly minimize workplace injuries and fatalities in coal mines.

(12) “Taxpayer” means a person subject to any of the taxes imposed by §11-13A-1 *et seq.*, §11-23-1 *et seq.*, or §11-24-1 *et seq.* of this code.

§11-13BB-4. List of approved innovative mine safety technology.

(a) *List of approved innovative mine safety technology. -–* The Mine Safety Technology Task Force, established in §22A-11-2 of this code, shall annually compile a proposed list of approved innovative mine safety technologies as required by §22A-11-3(g) of this code. The list shall be transmitted to the director for approval. The director has 30 days to approve or amend the list. At the expiration of 30 days, the director shall publish the list of approved innovative mine safety technologies. The list shall describe and specifically identify safety equipment for use in West Virginia coal mines which, in the fiscal year when the equipment is added to the list, is not required by the Mine Safety and Health Administration of the United States Department of Labor or the West Virginia Office of Miners' Health, Safety And Training or any other state or federal agency, to be used in a coal mine or on a mine site or on any other industrial site. Safety equipment shall remain on the list from year to year until the director removes it from the list. The Office of Miners' Health, Safety and Training may establish by legislative rule or interpretive rule a shorter time period for issuance of and updating of the list of approved innovative mine safety technologies.

(b) It is the intent of the Legislature that the list of approved innovative mine safety technologies include only safety equipment that is depreciable tangible personal property for federal income tax purposes, which is so new to the industry and so innovative in concept, design, operation or performance that, in the fiscal year when it is added to the list of approved innovative mine safety technologies, the equipment has not yet been adopted by the Federal Mine Safety

and Health Administration or the West Virginia Office of Miners Health, Safety and Training or any other state or federal agency as required equipment to be used in a coal mine or on a mine site or on any other industrial site, except as specified herein.

(c) *Delisting.* -- (1) If any item of equipment or any line of equipment or class of equipment is listed on the list of approved innovative mine safety technologies in any fiscal year, but then is subsequently adopted by the Federal Mine Safety and Health Administration or the West Virginia Office of Mine Safety or any other state or federal agency as required equipment to be used in a coal mine or on a mine site or on any other industrial site, the equipment shall be removed from the list of approved innovative mine safety technologies compiled and issued for the next succeeding periodic issuance thereafter of the list of approved innovative mine safety technologies.

(2) If it is determined by the director that any item of equipment or any line of equipment or class of equipment that is listed on the list of approved innovative mine safety technology has ceased to be innovative in concept, design, operation or performance, or is ineffective, or has failed to meet the expectations of the Mine Safety Technology Task Force, or has failed to prove its value in directly minimizing workplace injuries and fatalities in coal mines, the equipment shall be removed from the list of approved innovative mine safety technologies that is compiled and issued for the next succeeding periodic issuance of the list of approved innovative mine safety technologies after the determination has been reached.

(3) However, any eligible taxpayer who invested in the equipment as certified eligible safety property during the time the equipment was lawfully listed on the list of approved innovative mine safety technologies, shall not forfeit the credit authorized by this article as a result of the delisting of the equipment under either subdivision (1) or subdivision (2) of this subsection, so long as the requirements of this article are otherwise fulfilled by the taxpayer for entitlement to the credit.

§11-13BB-14. Termination.

The tax credit authorized in this article shall terminate December 31, ~~2018~~ 2025.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-9. Permit application requirements and contents.

(a) The surface mining permit application shall contain:

(1) The names and addresses of: (A) The permit applicant; (B) the owner of record of the property, surface and mineral, to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator, if different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

(2) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area: *Provided,* That all residents living on property contiguous to the proposed permit area shall be notified by the applicant, by registered or certified mail, of such application on or before the first day of publication of the notice provided for in subdivision (6) of this subsection;

(3) A statement of any current surface mining permits held by the applicant in the state and the permit number and each pending application;

(4) If the applicant is a partnership, corporation, association or other business entity, the following where applicable: The names and addresses of every officer, partner, resident agent, director or person performing a function similar to a director, together with the names and addresses of any person owning of record ten percent or more of any class of voting stock of the applicant; and a list of all names under which the applicant, officer, director, partner or principal shareholder previously operated a surface mining operation in the United States within the five-year period preceding the date of submission of the application;

(5) A statement of whether the applicant, or any officer, partner, director, principal

shareholder of the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, has ever been an officer, partner, director or principal shareholder in a company which has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been permanently suspended or revoked or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) A copy of the applicant's ~~advertisement to be published in a newspaper of general circulation in the locality of the proposed permit area at least once a week for four successive weeks. The advertisement~~ public notice information to be distributed by the director to the public on the division's internet-based public notice mailing list at least once a week for four successive weeks. The public notice shall contain in abbreviated form, the information required by this section including the ownership and map of the tract location and boundaries of the proposed site so that the proposed operation is readily locatable by local residents, the location of the office of the division where the application is available for public inspection and stating that written protests will be accepted by the director until a certain date which is at least 30 days after the last ~~publication of the applicant's advertisement~~ distribution of the public notice by the director;

(7) A description of the type and method of surface mining operation that exists or is proposed, the engineering techniques used or proposed, and the equipment used or proposed to be used;

(8) The anticipated starting and termination dates of each phase of the surface mining operation and the number of acres of land to be affected;

(9) A description of the legal documents upon which the applicant's legal right to enter and conduct surface mining operations on the proposed permit area is based and whether that right is the subject of pending court litigation: *Provided,* That nothing in this article may be construed as vesting in the director the jurisdiction to adjudicate property-rights disputes;

(10) The name of the watershed and location of the surface stream or tributary into which

surface and pit drainage will be discharged;

(11) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the director of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability: *Provided,* That this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency or, if existing and in the possession of the applicant, from the applicant: *Provided, however,* That the permit application shall not be approved until the information is available and is incorporated into the application;

(12) Accurate maps to an appropriate scale clearly showing: (A) The land to be affected as of the date of application; (B) the area of land within the permit area upon which the applicant has the legal right to enter and conduct surface mining operations; and (C) all types of information set forth on enlarged topographical maps of the United States geological survey of a scale of 1:24,000 or larger, including all man-made features and significant known archaeological sites existing on the date of application. In addition to other things specified by the director, the map shall show the boundary lines and names of present owners of record of all surface areas abutting the proposed permit area and the location of all structures within 1,000 feet of the proposed permit area;

(13) Cross-section maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the director, showing pertinent elevation and location of test borings or core samplings, where required by the director, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of subsurface water, if encountered, and its quality;

(C) the nature and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) the location of any significant aquifers; (I) the estimated elevation of the water table; (J) the location of spoil, waste or refuse areas and topsoil preservation areas; (K) the location of all impoundments for waste or erosion control; (L) any settling or water treatment facility or drainage system; (M) constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and (N) adequate profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator's proposed reclamation plan;

(14) A statement of the result of test borings or core samples from the permit area, including: (A) Logs of the drill holes; (B) the thickness of the coal seam to be mined and analysis of the chemical and physical properties of the coal; (C) the sulfur content of any coal seam; (D) chemical analysis of potentially acid or toxic forming sections of the overburden; and (E) chemical analysis of the stratum lying immediately underneath the coal to be mined: *Provided,* That the provisions of this subdivision may be waived by the director with respect to the specific application by a written determination that such requirements are unnecessary;

(15) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards established by the secretary of agriculture in order to confirm the exact location of such prime farmlands;

(16) A reclamation plan as presented in §22-3-10 of this code;

(17) Information pertaining to coal seams, test borings, core samplings or soil samples as required by this section shall be made available to any person with an interest which is or may be

adversely affected: *Provided,* That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record;

(18) When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and

(19) Other information that may be required by rules reasonably necessary to effectuate the purposes of this article.

(b) If the director finds that the probable total annual production at all locations of any coal surface mining operator will not exceed 300,000 tons, the determination of probable hydrologic consequences including the engineering analyses and designs necessary as required by this article or rules promulgated thereunder; the development of cross-section maps and plans as required by this article or rules promulgated thereunder; the geologic drilling and statement of results of test borings and core samplings as required by this article or rules promulgated thereunder; preblast surveys required by this article or rules promulgated thereunder; the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by this article or rules promulgated thereunder; and the collection of archaeological and historical information required by this article and rules promulgated thereunder and any other archaeological and historical information required by the federal department of the interior and the preparation of plans that may be necessitated thereby shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the director and a reasonable cost of the preparation of such determination and statement shall be assumed by the division from funds provided by the United States Department of the Interior pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(c) Before the first ~~publication~~ public notice by the director of the applicant's advertisement, each applicant for a surface mining permit shall file, except for that information pertaining to the coal seam itself, a copy of the application for public inspection in the nearest office of the division as specified in the applicant's advertisement.

(d) Each applicant for a permit shall be required to submit to the director as a part of the permit application a certificate issued by an insurance company authorized to do business in this state covering the surface mining operation for which the permit is sought, or evidence that the applicant has satisfied state self-insurance requirements. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(e) Each applicant for a surface mining permit shall submit to the director as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards.

(f) The applicant shall file as part of the permit application a schedule listing all notices of violation, bond forfeitures, permit revocations, cessation orders or permanent suspension orders resulting from a violation of the federal Surface Mining Control and Reclamation Act of 1977, as amended, this article or any law or regulation of the United States or any department or agency of any state pertaining to air or environmental protection received by the applicant in connection with any surface mining operation during the three-year period prior to the date of application, and indicating the final resolution of any notice of violation, forfeiture, revocation, cessation or permanent suspension.

(g) Within five working days of receipt of an application for a permit, the director shall notify

the operator in writing, stating whether the application is administratively complete. ~~and whether the operator's advertisement may be published~~ If the application is not administratively complete, the director shall state in writing why the application is not administratively complete.

§22-3-20. Public notice; written objections; public hearings; informal conferences.

(a) At the time of submission of an application for a surface mining permit or a significant revision of an existing permit pursuant to the provisions of this article, the applicant shall submit to the department a copy of the ~~required advertisement~~ public notice information. At the time of submission, the ~~applicant~~ director shall ~~place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation~~ distribute public notice of the application using its public notice mailing list at least once a week for four consecutive weeks. The secretary shall notify various appropriate federal and state agencies as well as local governmental bodies, planning agencies and sewage and water treatment authorities or water companies in the locality in which the proposed surface-mining operation will take place, notifying them of the operator's intention to mine on a particularly described tract of land and indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within a reasonable period established by the secretary on the mining application with respect to the effect of the proposed operation on the environment which is within their area of responsibility. Such comments shall be immediately transmitted by the secretary to the applicant and to the appropriate office of the department. The secretary shall provide the name and address of each applicant to the Commissioner of the Division of Labor who shall within 15 days from receipt notify the secretary as to the applicant's compliance, if necessary, pursuant to §21-5-14 of this code.

(b) Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state or local governmental agency, has the right to file written objections to the proposed initial or revised permit application for a surface mining operation with the secretary within 30 days after the ~~last publication of the advertisement~~ public notice of the application

required in subsection (a) of this section. Such objections shall be immediately transmitted to the applicant by the secretary and shall be made available to the public. If written objections are filed and an informal conference requested within 30 days of the last publication of the above notice, the secretary shall then hold a conference in the locality of the proposed mining within a reasonable time after the close of the public comment period. Those requesting the conference shall be notified and the date, time and location of the informal conference shall also be ~~advertised by the secretary in a newspaper of general circulation in the locality~~ distributed by the director on the division's public notice mailing list at least two weeks prior to the scheduled conference date. The secretary may arrange with the applicant, upon request by any party to the conference proceeding, access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. The record shall be maintained and shall be accessible to the parties at their respective expense until final release of the applicant's bond or other security posted in lieu thereof. The secretary's authorized agent shall preside over the conference. In the event all parties requesting the informal conference stipulate agreement prior to the conference and withdraw their request, a conference need not be held.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification granted; effective date.

(a) After June 30, 2018, any applicant for a federal license or permit associated with a surface mining facility as defined in §22-3-1 *et seq.* of this code is hereby granted a certification under 33 U.S.C. § 1341(a) without further conditions, provided the facility is required to obtain a water discharge permit issued under §22-11-8 of this code.

(b) For any certification under 33 U.S.C. §1341(a) issued prior to July 1, 2018 for a federal license or permit associated with a surface mining facility, any obligation to comply with water quality standards adopted pursuant to this article, which was imposed as a condition of the certification, is met where the surface mining facility obtained a water discharge permit issued

under §22-11-8 of this code.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-2. Definitions.

Unless the context in which used clearly requires a different meaning, the following definitions apply to this chapter:

(a) *General. —*

(1) Accident: The term "accident" means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

(2) Agent: The term "agent" means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

(3) Approved: The term "approved" means in strict compliance with mining law, or, in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

(4) Face equipment: The term "face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated by the last open crosscut in an entry or room.

(5) Imminent danger: The term "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

(6) Mine: The term "mine" includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside

the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

(7) Miner: The term “miner” means any individual working in a coal mine.

(8) 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.

~~(9) Permissible: The term “permissible” means any equipment, device or explosive that has been approved as permissible by the Federal Mine Safety and Health administration and/or the United States Bureau of Mines and meets all requirements, restrictions, exceptions, limitations and conditions attached to such classification by that agency or the bureau~~

~~(10)~~ (9) Person: The term “person” means any individual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

~~(11)~~ (10) Work of preparing the coal: The term “work of preparing the coal” means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal or lignite and such other work of preparing such coal as is usually done by the operator of the coal mine.

(b) *Office of Miners’ Health, Safety and Training. —*

(1) Board of appeals: The term “board of appeals” means as provided for in §22A-5-1 *et seq.* of this code.

(2) Director: The term “director” means the Director of the Office of Miners’ Health, Safety and Training provided for in §22A-1-3 of this code.

(3) Mine inspector: The term “mine inspector” means a state mine inspector provided for in §22A-1-8 of this code.

(4) Office: The term “office” means, when referring to a specific office, the Office of Miners’ Health, Safety and Training provided for in this article. The term “office”, when used generically,

includes any office, board, agency, unit, organizational entity or component thereof.

(c) *Mine areas. —*

(1) Abandoned workings: The term “abandoned workings” means excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

(2) Active workings: The term “active workings” means all places in a mine that are ventilated and inspected regularly.

(3) Drift: The term “drift” means a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

(4) Excavations and workings: The term “excavations and workings” means any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and working places, whether abandoned or in use.

(5) Inactive workings: The term “inactive workings” includes all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

(6) Mechanical working section: The term “mechanical working section” means an area of a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working places that are generally contiguous; and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

(7) Panel: The term “panel” means workings that are or have been developed off of submain entries which do not exceed 3000 feet in length.

(8) Return air: The term “return air” means a volume of air that has passed through and ventilated all the working places in a mine section.

(9) Shaft: The term “shaft” means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals and material, in connection with the mining of coal.

(10) Slope: The term “slope” means a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(11) Working face: The term “working face” means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(12) Working place: The term “working place” means the area of a coal mine inby the last open crosscut.

(13) Working section: The term “working section” means all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term “working unit” means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

(d) *Mine personnel. —*

(1) Assistant mine foreman: The term “assistant mine foreman” means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

(2) Certified electrician: The term “certified electrician” means any person who is qualified as a mine electrician and who has passed an examination given by the office, or has at least three years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the office or any person who is qualified as a mine electrician in any state that recognizes certified electricians licensed in West Virginia.

(3) Certified person: The term “certified person”, when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned,

means a person who is qualified under the provisions of this law to perform such duty.

(4) Interested persons: The term “interested persons” includes the operator, members of any mine safety committee at the mine affected and other duly authorized representatives of the mine workers and the office.

(5) Mine foreman: The term “mine foreman” means the certified person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

(6) Qualified person: The term “qualified person” means a person who has completed an examination and is considered qualified on record by the office.

(7) Shot firer: The term “shot firer” means any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his or her knowledge of mine gases, the use of a flame safety lamp, and other approved detecting devices by examination and certification given him or her by the office.

(8) Superintendent: The term “superintendent” means the person who has, on behalf of the operator, immediate supervision of one or more mines.

(9) Supervisor: The term “supervisor” means a superintendent, mine foreman, assistant mine foreman or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

~~(e) *Electrical.* —~~

~~(1) Armored cable: The term “armored cable” means a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.~~

~~(2) Borehole cable: The term “borehole cable” means a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mine.~~

~~(3) Branch circuit: The term “branch circuit” means any circuit, alternating current or direct~~

~~current, connected to and leading from the main power lines.~~

~~(4) Cable: The term "cable" means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).~~

~~(5) Circuit breaker: The term "circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.~~

~~(6) Delta connected: The term "delta connected" means a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.~~

~~(7) Effectively grounded: 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 fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.~~

~~(8) Flame-resistant cable, portable: The term "flame-resistant cable, portable" means a portable flame-resistant cable that has passed the flame tests of the federal mine safety and health administration.~~

~~(9) Ground or grounding conductor (mining): The term "ground or grounding conductor (mining)", also referred to as a safety ground conductor, safety ground and frame ground, means a metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring system with a mine track or other effective grounding medium.~~

~~(10) Grounded (earthed): The term "grounded (earthed)" means that the system, circuit or apparatus referred to is provided with a ground.~~

~~(11) High voltage: The term "high voltage" means voltages of more than one thousand volts.~~

~~(12) Lightning arrestor: The term "lightning arrestor" means a protective device for limiting surge voltage on equipment by discharging or by passing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.~~

~~(13) Low voltage: The term "low voltage" means up to and including six hundred sixty volts.~~

~~(14) Medium voltage: The term "medium voltage" means voltages from six hundred sixty-one to one thousand volts.~~

~~(15) Mine power center or distribution center: The term "mine power center or distribution center" means a combined transformer or distribution unit, complete within a metal enclosure from which one or more low-voltage power circuits are taken.~~

~~(16) Neutral (derived): The term "neutral (derived)" means a neutral point or connection established by the addition of a "zig-zag" or grounding transformer to a normally underground power system.~~

~~(17) Neutral point: The term "neutral point" means the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.~~

~~(18) Portable (trailing) cable: The term "portable (trailing) cable" means a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.~~

~~(19) Wye-connected: The term "wye-connected" means a power system connection in which one end of each phase windings or transformers or a.c. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.~~

~~(20) Zig-zag transformer (grounding transformer): The term "zig-zag transformer (grounding transformer)" means a transformer intended primarily to provide a neutral point for grounding purposes~~

§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~~ compliance visits and education 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~~ the director 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~~ may not be a candidate for or hold any other public office, ~~shall~~ may not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director ~~in the event~~ if 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~~ if there is 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 cannot 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 $10,000. 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~~ may 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 30 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~~ safety compliance assistance visits 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~~ safety compliance assistance visits 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 and the number of ~~inspections~~ safety compliance assistance visits made by each inspector, the number and type of

~~violations~~ notices of correction found by each inspector. However, no inspector may be identified by name in this report. ~~Such~~ The 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~~ certified person 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 §22A-1A-1 *et seq.* of this code 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 §29A-3-1 *et seq.* 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 §22A-1A-1 of this code 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 30 days to approve or amend the list as provided in §11-13BB-4 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 §11-13BB-4 of this code.

§22A-1-6. Director's authority to promulgate rules.

The director has the power and authority to propose or promulgate rules to organize the office and to carry out and implement the provisions of this chapter relating to health and safety ~~inspections~~ safety compliance assistance visits and enforcement of state mine certifications and Individual Penalty Assessments (IPAs). ~~All rules in effect on the effective date of this article which pertain to the provisions of this chapter as they relate to health and safety inspection and enforcement shall remain in effect until changed or superseded by the director, or as appropriate~~ Except when specifically exempted by the provisions of this chapter, all rules or changes thereto shall be proposed or promulgated by the director in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§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 for safety compliance assistance visits. 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. During such visits, inspectors small make job safety observations of miner's carrying out their regularly assigned job duties. These sheets shall detail the work activities of the miner, noting their safe mining practices and areas where improvements are suggested. These sheets shall be provided to the operator and to the miner at the end of the shift. Also, during these visits, the inspector shall provide compliance assistance to operators in safe operating practices, plan improvements and accident prevention.

(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: *Provided*, That miners are always encouraged to work with mine management with regards to safety concerns.

(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 §22A-1-15 of this code, exists in the mine and provide safety compliance assistance to all mines in this state by conducting job observations and advice on ways to improve the miner's health and safety and improve existing safety plans and programs. ~~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)~~ (d) 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 30 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)~~ (e) 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)~~ (f) At the commencement of any ~~inspection~~ safety compliance assistance visits of a coal mine by an authorized representative of the director, ~~the authorized representative of the miners at the mine, as well as~~ a salaried employee of management, at the time of the inspection, shall be given an opportunity to accompany the authorized representative of the director on the inspection. At the close of the compliance assistance visit, the authorized representative of the director shall report his or her findings to the authorized representative of the miners and operator at the mine and go over job safety observations conducted during the shift.

§22A-1-15. Findings, orders and notices.

(a) If upon any ~~inspection~~ safety compliance assistance visits 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 §22A-1-15(d)(1), §22A-1-15(d)(2), §22A-1-15(d)(3) and §22A-1-15(d)(4) of this code, 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)~~ (b) 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 significant and substantial violations at the mine~~

~~(E)~~ (B) Any accident, injury or illness record that demonstrates a serious safety or health management problem at the mine; and

~~(F)~~ (C) 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 or area throughout which the director determines the dangerous condition 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 mine or area throughout which the director determines the dangerous condition until a thorough inspection of the mine or area 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)~~ (c) 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 for 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)~~ (d) 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)~~ (e) ~~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)~~ (f) Each Notice of Correction from safety compliance assistance visit or imminent danger 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.

(g) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the director.

(h) 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-1-21. Penalties.

~~(a) (1) Any operator of a coal mine in which a violation of any health or safety rule occurs or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than $5,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.~~

~~(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code~~

~~(3)~~ (a) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under §22A-1-21 (b) of this code which shall not be more than $250 for each occurrence of the violation.

~~(4)~~ (b) A civil penalty under ~~subdivision (1) or (2, subsection (a) of this section or subdivision (1) or (2), subsection (b) of~~ this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director's findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the

decision requiring that the penalty be paid. Any hearing under this section shall be of record.

~~(5)~~ (c) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section 20 of this article and, upon the request of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

~~(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section fifteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty-two of this article, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than $5,000 and for a second or subsequent violation assessed a civil penalty of not more than $10,000, unless the director determines that it is appropriate to impose a special assessment for the violation, pursuant to the provisions of subdivision (2) of this subsection.~~

~~(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:~~

~~(A) Violations involving fatalities and serious injuries;~~

~~(B) Failure or refusal to comply with any order issued under section fifteen of this article;~~

~~(C) Operation of a mine in the face of a closure order;~~

~~(D) Violations involving an imminent danger;~~

~~(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or~~

~~(F) A discrimination violation under section twenty-two of this article.~~

~~In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least $5,000 and not more than $10,000.~~

~~(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section~~

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon

conviction thereof, shall be fined not more than $10,000 or confined in jail not more than one year, or both fined and confined. The conviction of any person under this subsection shall result in the revocation of any certifications held by the person under this chapter which certified or authorized the person to direct other persons in coal mining by operation of law and bars that person from being issued any license under this chapter, except a miner's certification, for a period of not less than one year or for a longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of the equipment, who willfully misrepresents the equipment as complying with the provisions of this law, or with any specification or rule of the director applicable to the equipment, and which does not comply with the law, specification or rule, is guilty of a misdemeanor and, upon conviction thereof, is subject to the same fine and confinement that may be imposed upon a person under subsection (d) of this section.

(f) Any person who willfully violates any safety standard pursuant to this chapter or a rule promulgated thereunder that causes a fatality or who willfully orders or carries out such violation that causes a fatality is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or confined in a state correctional facility not less than one year and not more than five years, or both fined and ~~imprisoned~~ confined.

(g) There is continued in the Treasury of the State of West Virginia a Special Health, Safety and Training Fund. All civil penalty assessments collected under this section shall be collected by the director and deposited with the Treasurer of the State of West Virginia to the credit of the Special Health, Safety and Training Fund. The fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

§22A-1-22. Discrimination.

(a) No person ~~shall~~ may 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~~ acted as described in §22A-1-22(a)(1), §22A-1-22(a)(2) or §22A-1-22(a)(3) of this code. ~~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 30 days after ~~such~~ the 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~~ the person who shall be the respondent. Upon receipt of ~~such~~ the application, the appeals board shall cause ~~such~~ the investigation to be made as it ~~deems~~ considers appropriate. ~~Such~~ The 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~~ the 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~~ The 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~~ a violation did occur, it shall issue a decision within 45 days, incorporating an order therein, requiring the person committing ~~such~~ the violation to take such affirmative action to abate the violation as the board ~~deems~~ determines 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~~ The order shall incorporate the board's finding therein. If the proceedings under this section relative to discharge are not completed within 45 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~~ the proceedings are not completed within 45 days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If ~~such~~ the proceedings are not completed within 45 days of the date of discharge due to delay caused by the miner the board ~~shall~~ may 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~~ the proceedings, shall be assessed against the person committing ~~such~~ the violation.

(d) This section may not apply if the miner elects to file a charge of discrimination with the U.S. Mine Safety & Health Administration. The filing of a federal 105(c) charge shall end the right to file a charge of discrimination with the state WVOMHST.

§22A-1-42 Mine Rescue Teams staffed by the WVOMHST.

(a) This section governs mine rescue requirements for the Office of Miners' Health, Safety and Training (OMHS&T). This section does not relieve mine operators from their requirement to either have their own mine rescue team or contract coverage.

(b) The director shall develop a mine emergency operation plan for the mine rescue teams that represent the Office of Miners' Health, Safety and Training that shall include, but is not limited to, the following criteria:

(1) Establish and maintain two mine rescue stations within the Office of Miners' Health, Safety and Training; one located in the northern area of the state, and one located in the southern

area of the state, at locations determined by the director.

(2) To establish one fully trained mine rescue team for each Office of Miners' Health, Safety and Training regional office for a total of four teams in the state - two in the north and two in the south.

(3) The members assigned to the mine rescue and recovery work may be inspectors, instructors or other qualified employees of the Office of Miners' Health, Safety and Training OMHS&T as the director determines necessary. The director shall employ additional employees as he or she considers necessary to fulfill the requirement of this section.

(4) To provide the necessary fully equipped mine rescue vehicles for each Office of Miners' Health, Safety and Training mine rescue station that would include, but is not limited to, cell phones, satellite telephone, landline telephones (teleconferencing), on-site radios and fax/copy machines, computers with mine mapping software (cad) and modems; and any other equipment deemed necessary by the director.

(5) To purchase new additional mine rescue equipment, including, but is not limited to, mask mounted radio connections and permissible radios for underground wireless communications; new lifeline/communications reels with a "down hole" speaker microphone system; new additional handheld gas detectors and infra-red and electrochemical gas monitoring equipment, gas sampling tubing, satellite telephones and four channels of seismic inputs (geophones); and any other equipment as deemed necessary by the director.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity.

(1) If there is a fire, explosion or recovery operations in or about any mine, the director may assign any mine rescue team to the mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors or other

qualified employees of the office as he or she considers necessary.

(2) The agency's mine rescue team members shall be considered "duly qualified emergency service worker" as defined in §15-5-11 of this code.

(3) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(4) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this amendment.

(5) An applicant for agency mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that the examination was taken, together with pertinent data relating thereto, shall be kept on file by the director. A team member requiring corrective eyeglasses is not disqualified if the eyeglasses can be worn securely within an approved facepiece.

(d) In determining whether a miner an applicant is physically capable of performing mine rescue duties, the physician shall take the following conditions into consideration:

(1) Seizure disorder;

(2) Perforated eardrum;

(3) Hearing loss without a hearing aid greater than 40 decibels at 400, 1000, and 2000 hz;

(4) Repeated blood pressure (controlled or uncontrolled by medication) reading which exceeds 160 systolic, or 100 diastolic, or which is less than 105 systolic, or 60 diastolic;

(5) Distant visual acuity (without glasses) less than 20/50 snellen scale in one eye, and 20/70 in the other;

(6) Heart disease;

(7) Hernia;

(8) Absence of a limb or hand; or

(9) Any other condition which the examining physician determines is relevant to the question of whether the miner is fit for rescue team service.

(e) Upon completion of the initial training, all agency's mine rescue team members shall receive at least 96 hours of refresher training annually.

(f) Each member of a mine rescue team shall be examined annually by a physician who shall certify that each person is physically fit to perform mine rescue and recovery work for prolonged periods under strenuous conditions.

(g) Any person making application to participate in initial agency mine rescue training shall have had an examination by a physician, who shall certify that the applicant is physically fit to perform mine rescue and recovery work while wearing a self-contained oxygen breathing apparatus. The physical examination shall be completed within 30 days prior to scheduled initial training.

(h) A physician shall fill out a form prescribed by the director, and the form shall be presented to the mine rescue training instructor five days prior to scheduled initial training.

(i) Agency mine rescue team members are to be paid a minimum of $250 per month, with the rate thereafter to be determined annually by the director.

(j) When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of the agency's mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case may this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor and paid according to the following criteria:

(1) Time and half – when on standby at hotel/home

(2) Double time – when available on the surface

(3) Triple time – when under apparatus underground

(4) The director will invoice the operator and ensure proper distribution to the individual agency mine rescue team members.

(k) During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of such emergency employer.

§22A-1-43 Existing regulations to be revised.

By August 31, 2018, all existing state regulations under the authority of this §22A-1-1 through §22A-1-43 of this code shall be revised to reflect these changes.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-2. Submittal of detailed ventilation plan to director.

(a) ~~A mine operator shall submit a detailed ventilation plan and any addendums to the director for review and comment. The mine operator shall review the plan with the director and address concerns to the extent practicable. The operator shall deliver to the miners' representative employed by the operator at the mine, if any, a copy of the operator's proposed annual ventilation plan at least ten days prior to the date of submission. The miners' representative, if any, shall be afforded the opportunity to submit written comments to the operator prior to such submission; in addition the miners' representative, if any, may submit written comments to the director. The director shall submit any concern that is not addressed to the United States Department of Labor - Mine Safety and Health Administration (MSHA) through comments to the plan. The mine operator shall provide a copy of the plan to the director ten days prior to the submittal of the plan to MSHA~~ A Ventilation Plan approved by the federal Mine Safety and Health Administration shall meet all requirements for operating a mine under the state laws of West Virginia. A separate state ventilation plan may not be required.

The mine operator shall submit its approved MSHA ventilation plan to the West Virginia Office of Miner's Health Safety and Training.

(b) The operator shall give the director a copy of the MSHA-approved plan and any

addendums as soon as the operator receives the approval.

~~(c) In the event of an unforeseen situation requiring immediate action on a plan revision, the operator shall submit the proposed revision to the director and the miners' representative, if any, employed by the operator at the mine when the proposed revision is submitted to MSHA. The director shall work with the operator to review and comment on the proposed plan revision to MSHA as quickly as possible~~

~~(d)~~ (c) Upon approval by MSHA, the plan is enforceable by the director. The approved plan and all revisions and addendums thereto shall be posted on the mine bulletin board and made available for inspection by the miners at that mine for the period of time that they are in effect.

§22A-2-3. Fans.

(a) The ventilation of mines, the systems for which extend for more than 200 feet underground and which are opened after the effective date of this article, ~~shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners or other persons holding a certificate to make preshift examination. If ventilation is restored to the mine before miners reach the surface,~~

~~the miners may return to underground working areas only after an examination of the areas is made by a certified person and the areas are determined to be safe.~~

~~(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: *Provided,* That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: *Provided, however,* That there is another opening having a weak wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.~~

~~(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to provide adequate ventilation to the working faces: *Provided,* That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.~~

~~(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working place is restored. During such stoppage, the ventilation shall be by means of the primary air current conducted into the place in a manner to prevent accumulation of methane.~~

~~(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.~~

~~(f) The director may require that when continuous mine equipment is being used, all face~~

~~ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.~~

~~(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the Office of Miners' Health, Safety and Training. A duly authorized representative of the employees should be consulted if practical under the circumstances~~ are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-4. Ventilation of mines in general.

(a) ~~The operator or mine foreman of every coal mine, whether worked by shaft, slope, or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or set of entries shall be not less than nine thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of three thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand cubic feet of air per minute if at least nine thousand cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. The operator shall provide to the safety committee access to anonometers and smoke tubes while performing their duties. All active underground working places in a mine shall be ventilated by a current of air containing not less than nineteen and five-tenths percent of oxygen, not more than five-tenths percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.~~

~~(b) Airflow shall be maintained in all intake and return air courses of a mine and, where multiple fans are used, neutral areas created by pressure equalization between main fans shall not be permitted. Production activities in working faces shall cease while tubing, line brattice or other ventilation devices are being installed inby the machine operator.~~

~~(c) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.~~

~~(d) Brattice cloth used underground shall be of flame-resistant material. The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive and noxious gases, dust and explosive fumes.~~

~~(e) Each working unit newly developed in virgin coal hereafter, shall be ventilated by a separate split of air: *Provided,* That in areas already under development and in areas where physical conditions prevent compliance with this provision, the director may grant temporary relief from compliance until such time as physical conditions make compliance possible. The quantity of air reaching the last crosscut shall not be less than nine thousand cubic feet of air per minute and shall under any condition have sufficient volume and velocity to reduce and carry away smoke and flammable or harmful gases from each working face in the section.~~

~~(f) As working places advance, crosscuts for air shall be made not more than one-hundred-five feet apart. Where necessary to render harmless and carry away noxious or flammable gases, line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. All crosscuts between the main intake and return airways not required for passage of air and equipment shall be closed with stoppings substantially built with incombustible or fire-resistant material so as to keep working places well ventilated. In mines where it becomes~~

~~necessary to provide larger pillars for adequate roof support, working places shall not be driven more than two hundred feet without providing a connection that will allow the free flow of air currents. In such cases, a minimum of twelve thousand cubic feet of air a minute shall be delivered to the last open crosscut and as much more as is necessary to dilute and render harmless and carry away flammable and noxious gases.~~

~~(g) In special instances for the construction of sidetracks, haulageways, airways or openings in shaft bottom or slope bottom layouts where the size and strength of pillars is important, the director may issue a permit approving greater distances. The permit shall specify the conditions under which such places may be driven.~~

~~(h) In all mines a system of bleeder openings on air courses designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure shall be made a part of pillar recovery plans projected after July 1, 1971.~~

~~(i) If a bleeder return is closed as a result of roof falls or water during pillar recovery operations, pillar operations may continue without reopening the bleeder return if at least twenty thousand cubic feet of air per minute is delivered to the intake of the pillar line.~~

~~(j) No operator or mine foreman shall permit any person to work where he~~ or she ~~is unable to maintain the quantity and quality of the air current as heretofore required: *Provided,* That such provisions shall not prohibit the employment of men to make place of employment safe.~~

~~(k) The ventilation of any mine shall be so arranged by means of air locks, overcasts or undercasts, that the use of doors on passageways where men or equipment travel may be kept to a minimum. Where doors are used in a mine, they shall be erected in pairs so as to provide a ventilated air lock unless the doors are operated mechanically.~~

~~(l) A crosscut shall be provided at or near the face of each entry or room before such places are abandoned.~~

~~(m) Overcasts or undercasts shall be constructed of incombustible material and~~

~~maintained in good condition.~~

~~(n) After January 1, 1987, all run through check curtains shall be substantially constructed of translucent material, except that where belting material has to be used because of high velocity, there shall be a window of translucent material at least thirty inches square or one half the height of the coal seam, whichever is less~~ The ventilation of mines is governed by standards established by the U.S. Mine Safety & Health Administration and MSHA approved ventilation plans.

§22A-2-4a. Use of belt air.

(a) *Definitions*. -– For purposes of this section, “belt air” means the use of a belt conveyor entry as an intake air course to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed.

(b) Upon the effective date of the enactment of this section, ~~belt air may not be used to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed: *Provided,* That if an alternative method of ventilation will at all times guarantee no less than the same measure of protection afforded the miners of an underground mine by the foregoing or if the application of the foregoing to an underground mine will result in a diminution of safety to the miners in the mine, the director may approve the interim use of belt air pursuant to the following:~~

~~(1) For those operators using belt air pursuant to a ventilation plan approved by the director in accordance with the provisions of section two of this article prior to the effective date of the enactment of this section, the director shall cause an inspection to be made of the mine ventilation system and ventilation equipment. The director may allow the continued use of belt air in that mine if he or she determines that: (i) The use meets the minimum requirements of 30 CFR 75.350(b); and (ii) the use, as set forth in the ventilation plan and as inspected, will at all times guarantee no less than the same measure of protection afforded the miners of the mine if belt air were not used, or that the prohibition of the use of belt air in the mine will result in a diminution of safety to the miners in the mine.~~

~~(2) For those operators submitting on or after the effective date of the enactment of this section, a ventilation plan proposing the use of belt air to the director pursuant to section two of this article, the director shall immediately upon receipt of the plan give notice of the plan to the representative of the miners in that mine and cause any investigation to be made that the director considers appropriate: *Provided,* That the investigation shall include a review of any comments on the plan submitted by the representative of miners in the mine. Upon receiving the report of the investigation, the director shall make findings of fact and issue a written decision, incorporating in the decision his or her findings and an order approving or denying the use of belt air pursuant to the terms of the ventilation plan. To approve the use of belt air pursuant to a ventilation plan, the director shall, at a minimum, determine that: (i) The operator's proposed use of belt air meets the minimum requirements of 30 CFR 75.350(b); and (ii) approval of the proposed use of belt air will at all times guarantee no less than the same measure of protection afforded the miners of the mine if belt air were not used, or that the prohibition of the use of belt air in the mine will result in a diminution of safety to the miners in the mine.~~

~~(3) The interim use of belt air shall be accurately reflected in operator's plan of ventilation, as approved by the director in accordance with the provisions of section two of this article.~~

~~(c) Upon completion of the independent scientific and engineering review concerning the use of belt air and the composition and fire retardant properties of belt materials in underground coal mining by the technical study panel created pursuant to the provisions of 30 U. S. C. §963 and the Secretary of the United States Department of Labor's corresponding report to Congress pursuant to the review, the Board of Coal Mine Health and Safety shall, within thirty days of the Secretary of Labor's report to Congress, provide the Governor with its recommendations, if any, for the enactment, repeal or amendment of any statute or rule which would enhance the safe ventilation of underground mines and the health and safety of miners: *Provided,* That at least sixty days after the Secretary of Labor's report to Congress, the Board of Coal Mine Health, Safety and Training shall promulgate emergency rules regulating the use of belt air in light of that report:~~

~~*Provided, however,* That the provisions of subsections (a) and (b) of this section shall expire and no longer have any force and effect upon the filing of such emergency rules~~ any belt air use approved by the U.S. Mine Safety & Health Administration may be used in any coal mine in the State of West Virginia.

§22A-2-5. Unused and abandoned parts of mine.

(a) In any mine, all workings which are abandoned after July 1, 1971, shall be sealed or ventilated ~~If the workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be considered to be abandoned until the panel is abandoned.~~

~~(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any working mine, unless permission is granted by the director with unanimous agreement of the technical and mine safety review committee. Air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. Air which has been used to ventilate an area from which the pillars have been removed shall not be used to ventilate any working place in a mine, except that the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent, are reopened, the director shall be notified.~~

~~(c) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, a professional engineer registered with the Board of Registration for Professional Engineers pursuant to article thirteen, chapter thirty of this code shall certify the design of all new seals as meeting the criteria established by the director. Every seal design shall have the professional engineer's certificate and signature, in addition to his or her~~

~~seal, in the following form:~~

~~"I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations.~~

~~_____P.E."~~

~~(d) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the director shall approve the construction of all new seals in accordance with rules authorized in this section. The construction shall also be:~~

~~(1) Certified by the mine foreman-fire boss of the mine as being in accordance with the design certified by a professional engineer pursuant to subsection (c) of this section; and~~

~~(2) (A) Constructed of solid concrete blocks and in accordance with the other provisions of 30 CFR 75.335(a)(1); or~~

~~(B) Constructed in a manner that the director has approved as having the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1).~~

~~(e) On or after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the operator shall inspect the physical condition of all seals and measure the atmosphere behind all seals in accordance with protocols developed by the Board of Coal Mine Health and Safety, pursuant to rules authorized in this section and consistent with a mine-specific atmospheric measurement plan submitted to and approved by the director. The atmospheric measurements shall include, but not be limited to, the methane and oxygen concentrations and the barometric pressure. The atmospheric measurements also shall be recorded with ink or indelible pencil in a book kept for that purpose on the surface at a location designated by the operator. The protocols shall specify appropriate methods for inspecting the physical condition of seals, measuring the mine atmosphere in sealed workings, and inerting the mine atmosphere behind the seals, where appropriate.~~

~~(f) (1) In all mines containing workings sealed using seals constructed in accordance with~~

~~the provisions of 30 CFR 75.335(a)(2) which are constructed: (A) Of cementitious foam blocks; or (B) with methods or materials that the Board of Coal Mine Health and Safety determines do not provide an adequate level of protection to miners, the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals or constructing new seals in place of or immediately outby the seals. After being remediated, all seals must have the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1). The design, development, submission and implementation of the remediation plan is the responsibility of the operator of each mine. Pursuant to rules authorized in this section, the Board of Coal Mine Health and Safety shall specify appropriate methods of enhancing the seals.~~

~~(2) Notwithstanding any provision of this code to the contrary, if the director determines that any seal described in subdivision (1) of this subsection is incapable of being remediated in a safe and effective manner, the mine foreman-fire boss shall, at least once every twenty-four hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. The daily inspections and measurements shall otherwise be performed in accordance with the protocols and atmospheric measurement plan established pursuant to subsection (e) of this section.~~

~~(g) Upon the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, second mining of lower coal on retreat, also known as bottom mining, shall not be permitted in workings that will be sealed unless an operator has first submitted and received approval by the director of a remediation plan that sets forth measures that will be taken to mitigate the effects of remnant ramps and other conditions created by bottom mining on retreat which can increase the force of explosions originating in and emanating out of workings that have been bottom mined. The director shall require that certification in a manner similar to that set forth in subsection (c) of this section shall be obtained by the operator from a professional engineer and the mine foreman-fire boss for the plan design and plan~~

~~implementation, respectively.~~

~~(h) No later than sixty days after the effective date of the amendment and reenactment of this section during the 2007 regular session of the Legislature, the Board of Coal Mine Health and Safety shall develop and promulgate rules pursuant to the provisions of section four, article six of this chapter to implement and enforce the provisions of this section.~~

~~(i) Upon the issuance of mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines by the Secretary of the United States Department of Labor pursuant to 30 U. S. C. §811, as amended by section ten of the federal Mine Improvement and New Emergency Response Act of 2006, the director, working in consultation with the Board of Coal Mine Health and Safety, shall, within thirty days, provide the Governor with his or her recommendations, if any, for the enactment, repeal or amendment of any statute or rules which would enhance the safe sealing of abandoned mine workings and the health and safety of miners~~ as required by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; premovement requirements; certified and qualified persons.

Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel and under standards established by the U.S. Mine Safety & Health Administration. ~~When equipment is being transported or trammed where trolley wire is energized on the split of air in which said equipment is being transported or trammed, no person shall be permitted to be inby the equipment in the ventilating split that is passing over such equipment, except those directly involved with transporting or tramming the equipment, and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance~~

§22A-2-11. Boreholes.

The drilling of boreholes is governed by standards established by the U.S. Mine Safety & Health Administration.

~~It shall further be the duty of the mine foreman to have boreholes kept not less than twenty feet in advance of the face, one each twenty feet on sides of the working places that are being driven toward and in dangerous proximity to an abandoned mine or part of a mine which may contain inflammable gases or which is filled with water. These holes shall be drilled whenever any working place in an underground mine approaches within fifty feet of abandoned workings in such mine, as shown by surveys made and certified by a competent engineer or surveyor, or within two hundred feet of any abandoned workings of such mine which cannot be inspected~~

§22A-2-13. Daily inspection of working places; records.

Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his or her assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep under this chapter. All examinations shall be made as required by the U.S. Mine Safety & Health Administration. T~~he mine foreman, assistant mine foreman or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine foreman or his~~ or her ~~assistants upon observing a violation or potential violation of article two of this chapter or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself~~ or

~~herself. Should the mine foreman or his or her assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.~~

~~He or she shall place his or her initials, time and the date at or near each place he or she examines. He or she shall also record any dangerous conditions and practices found during his or her examination in a book provided for that purpose~~

§22A-2-16. Examinations of reports of fire bosses.

The mine foreman shall, each day, read carefully and countersign with ink or indelible pencil all reports entered in the record book of the fire bosses as required by the federal Mine Safety & Health Administration. The mine foreman shall supervise the fire boss or fire bosses, except as provided in section twenty-one of this article. No less frequently than bi-weekly, the superintendent or, if there is no superintendent, the senior person at the mine shall obtain complete copies of the books of the fire bosses, and acknowledge that he or she has reviewed such copies and acted accordingly. This acknowledgment shall be made by signing a book prescribed by the director for that purpose.

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

(a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his or her shift or prior to his or her entering the mine to make his or her examination and, except for those persons already on assigned duty, no person except the mine owner, operator or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him or her to be safe. When reported by him or her to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make the fire boss examinations shall be

assigned a definite underground area of the mine, and, in making his or her examination shall examine all active working places in the assigned area and make tests with an approved device for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face and ribs in the working places and on active roadways and travelways, approaches to abandoned workings, accessible falls in active sections and areas where any person is scheduled to work or travel underground. He or she shall place his or her initials and the date at or near the face of each place he or she examines. Should he or she find a condition which he or she considers dangerous to persons entering the areas, he or she shall place a conspicuous danger sign at all entrances to the place or places. Only persons authorized by the mine management may enter the places while the sign is posted and only for the purpose of eliminating the dangerous condition. Upon completing his or her examination he or she shall report by suitable communication system or in person the results of this examination to a certified person trained as a certified miner with at least two years mining experience designated by mine management to receive and record the report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in coal-producing shifts. He or she shall also record the results of his or her examination with ink or indelible pencil in a book prescribed by the director, kept for the purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

(b) *Supplemental examination*. - When it becomes necessary to have workers enter areas of the mine not covered during the preshift examination, a supplemental examination shall be performed ~~by a fire boss or certified person acting as such within three hours before any person enters the area. The fire boss or certified person acting as such shall examine the area for hazardous conditions, determine if air is traveling in its proper direction and test for oxygen deficiency and methane~~ under standards established by the U.S. Mine Safety & Health Administration.

~~(c) Each examined area shall be certified by date, time and the initials of the examiner~~

~~(d)~~ (c) The results of the examination shall be recorded with ink or indelible pencil by the examiner in the book referenced in subsection (a) of this section before he or she leaves the mine on that shift.

§22A-2-24. Control of coal dust; rock dusting.

(a) In all mines, dangerous accumulations of fine, dry coal and coal dust shall be removed from the mine, and all dry and dusty operating sections and haulageways and conveyors and back entries shall be rock dusted or dust allayed by other methods as ~~may be approved by the director~~ required by regulations established by the U.S. Mine Safety & Health Administration.

~~(b) All mines or locations in mines that are too wet or too high in incombustible content for a coal dust explosion to initiate or propagate are not required to be rock dusted during the time any of these conditions prevail. Coal dust and other dust in suspension in unusual quantities shall be allayed by sprinkling or other dust allaying devices.~~

~~(c) In all dry and dusty mines or sections thereof, rock dust shall be applied and maintained upon the roof, floor and sides of all operating sections, haulageways and parallel entries connected thereto by open crosscuts. Back entries shall be rock dusted. Rock dust shall be so applied to include the last open crosscut of rooms and entries, and to within forty feet of faces. Rock dust shall be maintained in a quantity that the incombustible content of the mine dust that could initiate or propagate an explosion shall not be less than eighty percent. The incombustible content of mine dust in return entries shall also be equal to or greater than eighty percent.~~

~~(d) Rock dust shall not contain more than five percent by volume of quartz or free silica particles and shall be pulverized so that one hundred percent will pass through a twenty mesh screen and seventy percent or more will pass through a two hundred mesh screen.~~

~~(e) If requested by the director, an operator shall provide records establishing the quantity of bulk and bag rock dust purchased for a period not to exceed the immediately preceding six months~~

ROOF-FACE-RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

(a) ~~Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his or her authorized representative and shall be available to the miners and their representatives.~~ A Roof Control Plan approved by the federal Mine Safety & Health Administration shall meet all requirements for operating a mine under the state laws of West Virginia. A separate state roof control plan may not be required.

The mine operator shall submit its approved MSHA Roof Control Plan to the West Virginia Office of Miner's Health Safety and Training. All revisions to the MSHA Roof Control Plan shall be submitted to the WOMHST immediately on approval by MSHA.

(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. ~~Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes~~

~~are being drilled, roof bolts are being installed and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct immediate supervision of a certified miner~~

(c) The operator of a mine ~~has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners~~ shall comply with all standards of the U.S. Mine Safety & Health Administration for supporting unsupported roof before entering those areas.

~~(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.~~

~~(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.~~

~~(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner~~

~~(g)~~ (d) Any action taken against a miner due, in whole or in part, to his or her refusal to

work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to §22A-1-22 of this code. Upon a finding of discrimination by the appeals board pursuant to §22A-1-22(b) of this code, the miner shall be awarded by the appeals board all reliefs available pursuant to §22A-1-22(b) and §22A-1-22(c) of this code of this code.

This sub-section may not apply if the miner choses to file a charge of discrimination with the U.S. Mine Safety & Health Administration. The filing of a charge with MSHA terminates state jurisdiction over any state discrimination charge.

§22A-2-26. Roof support; specific requirements.

~~(a) *Generally.* --~~ The method of mining followed in any coal mine ~~shall~~ may not expose the miner to unusual dangers from roof falls and all roof support are conducted under standards required by the U.S. Mine Safety & Health Administration and under MSHA approved Roof Control Plans.

~~(b) *Roadways, intersections and arches*. -- The width of roadways shall not exceed sixteen feet unless additional support is added cross sectional. During the development of intersections, the roof between the tangents of the arches in the entry or room shall be supported with artificial roof supports prior to the development of such intersections. All areas where the arch is broken shall be considered as having unsupported roof and such roof should have artificial roof supports installed prior to any other work being performed in the area.~~

~~(c) *Examinations and corrections.* -- Where miners are exposed to danger from falls of roof, face and ribs, the operator shall examine and test the roof, face and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately. A probe or probes for methane detectors shall be provided on each working section other than longwall sections and sections mined solely with continuous miners with integral roof bolters.~~

~~(d) *Roof bolt recovery*. -- Roof bolts shall not be recovered where complete extraction of~~

~~pillars is attempted, where adjacent to clay veins or at the locations of other irregularities, whether natural or otherwise, that induce abnormal hazards. Where roof bolt recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided~~

§22A-2-27. Canopies or cabs; electric face equipment.

~~An authorized representative of the director may require in any coal mine where the height of the coal bed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls~~

The use of canopies and cabs is governed by standards and plans established by the U.S. Mine Safety & Health Administration. ~~or other effective communication system by which aid or assistance can be obtained promptly.~~

~~(d) A stop switch shall be provided in the automatic elevator compartment that will permit the elevator to be stopped at any location in the shaft~~

EXPLOSIVES AND BLASTING

§22A-2-29. Use of authorized explosives; storage or use of unauthorized explosives.

Permissible explosives or permissible blasting devices only shall be used in blasting coal or other material in underground coal mines. All blasting, including the storage of explosives, shall be performed under standards established by the U.S. Mine Safety & Health Administration. ~~It shall be unlawful to have, use or store any nonpermissible explosives or nonpermissible blasting devices in any coal mine or on the premises of the mine, without a permit from the director~~

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

(a) The use of hoisting machinery is governed by standards established by the U.S. Mine

Safety & Health Administration. operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he or she shall be readily available at all times when men are in the mine. He or she shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift there shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derails shall be placed near the top and at all intermediate landings of slopes and surface inclines and at approaches to all shaft landings. A waiting station with sufficient room, ample clearance from moving equipment, and adequate seating facilities shall be provided where men are required to wait for man trips or man cages, and the miners shall remain in such station until the man trip or man cage is available.

~~(b) No operator of any coal mine worked by shaft, slope or incline, shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine any but competent and sober engineers or drum runners; and no engineer or drum runner in charge of such machinery shall allow any person, except such as may be designated for this purpose by the operator, to interfere with any part of the machinery; and no person shall interfere with any~~

~~part of the machinery; and no person shall interfere with or intimidate the engineer or drum runner in the discharge of his or her duties. Where the mine is operated or worked by shaft or slope, a minimum space of two and one-half square feet per person shall be available for each person on any cage or car where men are transported. In no instance shall more than twenty miners be transported on a cage or car without the approval of the director. No person shall ride on a loaded cage or car in any shaft, slope, or incline: *Provided,* That this does not prevent any trip rider from riding in the performance of his or her authorized duties. No engineer is required for automatically operated cages, elevators, or platforms. Cages and elevators shall have an emergency power source unless provided with other escapeway facilities.~~

~~(c) Each automatic elevator shall be provided with a telephone~~

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

(a) Use of haulage roads and equipment along with signals and inspection shall meet standards established by the U.S. Mine Safety & Health Administration. ~~The roadbed, rails, joints, switches, frogs and other elements of all haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to ensure safe operation. Where transportation of personnel is exclusively by rail, track shall be maintained to within one thousand five hundred feet of the nearest working face, except that when any section is fully developed and being prepared for retreating, then the track shall be maintained to within one thousand five hundred feet of that retreat mining section if a rubber tired vehicle is readily available: *Provided*, That in any case where such track is maintained to within a distance of more than five hundred feet and not more than one thousand five hundred feet of the nearest working face, a self-propelled rubber-tired vehicle capable of transporting an injured worker shall be readily available.~~

~~(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throws and stands, where possible,~~

~~shall be placed on the clearance side.~~

~~(c) Haulage roads on entries shall have a continuous, unobstructed clearance of at least twenty-four inches from the farthest projection of any moving equipment on the clearance side.~~

~~(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.~~

~~(e) On the trolley wire or "tight" side, there shall be at least twelve inches of clearance from the farthest projection of any moving equipment.~~

~~(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.~~

~~(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies or other material: *Provided,* That not more than twenty-four inches need be kept free of such obstructions.~~

~~(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors which in no event shall be less than twenty-four inches.~~

~~(I) Shelter holes shall be provided along haulage entries. Such shelter holes shall be spaced not more than one hundred five feet apart, except when variances are authorized by the director with unanimous agreement of the mine safety and technical review committee. Shelter holes shall be on the side of the entry opposite the trolley wire except that shelter holes may be on the trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by the director.~~

~~(j) Shelter holes shall be at least five feet in depth, not more than four feet in width and as high as the traveling space, unless the director with unanimous agreement of the mine safety and technical review committee grants a waiver. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.~~

~~(k) Shelter holes shall be kept clear of refuse and other obstructions.~~

~~(l) Shelter holes shall be provided at switch throws and manually operated permanent~~

~~doors.~~

~~(m) No steam locomotive shall be used in mines where miners are actually employed in the extraction of coal, but this shall not prevent operation of a steam locomotive through any tunnel haulway or part of a mine that is not in actual operation and producing coal.~~

~~(n) Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any other compound shall not be used in a coal mine, unless the equipment is diesel-powered equipment approved, operated and maintained as provided in article two-a of this chapter.~~

~~(o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage equipment shall be maintained in a safe operating condition. Each locomotive, personnel carrier, barrier tractor and other related equipment shall be equipped with a suitable lifting jack and handle. An audible warning device and headlights shall be provided on each locomotive and each shuttle car. All other mobile equipment, using the face areas of the mine, shall be provided with a conspicuous light or other approved device so as to reduce the possibility of collision.~~

~~(p) No persons other than those necessary to operate a trip or car shall ride on any loaded car or on the outside of any car. Where pusher locomotives are not used, the locomotive operator shall have an assistant to assist him or her in his or her duties.~~

~~(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: *Provided,* That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars when in motion: *Provided, however,* That trip lights need not be used on cars being shifted to and from loading machines, or on cars being handled at loading heads during gathering operations at working faces. . No person, other than the motorman and brakeman, should ride on a locomotive unless authorized by the mine foreman, and then only when safe riding facilities are provided. An empty car or cars shall be used to provide a safe distance between the locomotive~~

~~and the material car when rail, pipe or long timbers are being hauled. A safe clearance shall be maintained between the end car or trips placed on side tracks and moving traffic. On haulage roads the clearance point shall be marked with an approved device.~~

~~(r) No motorman, trip rider or brakeman shall get on or off cars, trips or locomotives while they are in motion, except that a trip rider or brakeman may get on or off the rear end of a slowly moving trip or the stirrup of a slowly moving locomotive to throw a switch, align a derail or open or close a door.~~

~~(s) Flying or running switches and riding on the front bumper of a car or locomotive are prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not over eighty feet), or when going up extremely steep grades and then only at slow speed. The operator of a shuttle car shall face in the direction of travel except during the loading operation when he or she shall face the loading machine.~~

~~(t) (1) A system of signals, methods or devices shall be used to provide protection for trips, locomotives and other equipment coming out onto tracks used by other equipment.~~

~~(2) In any coal mine where more than three hundred fifty tons of coal are produced on any shift in each 24-hour period, a dispatcher shall be on duty when there are movements of track equipment underground, including time when there is no production of coal. Such traffic shall move only at the direction of the dispatcher.~~

~~(3) The dispatcher's only duty shall be to direct traffic*: Provided,* That the dispatcher's duties may also include those of the responsible person required by section forty-two of this article: *Provided, however,* That the dispatcher may perform other duties which do not interfere with his or her dispatching responsibilities and do not require him or her to leave the dispatcher's station except as approved by the mine safety and technical review committee.~~

~~(4) Any dispatcher's station shall be on the surface.~~

~~(5) All self-propelled track equipment shall be equipped with two-way communications.~~

~~(u) Motormen shall inspect locomotives, and report any mechanical defects found to the~~

~~proper supervisor before a locomotive is put in operation.~~

~~(v) A locomotive following another trip shall maintain a distance of at least three hundred feet from the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.~~

~~(w) Positive stop blocks or derails shall be installed on all tracks near the top and at landings of shafts, slopes and surface inclines. Positive-acting stop blocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.~~

~~(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator: *Provided*, That the addition of or use of sideboards on shuttle cars shall be permitted if the shuttle car is equipped with cameras: *Provided, however*, That shuttle cars with sideboards as manufactured by an equipment manufacturer shall be permitted to be used without the use of cameras if permitted by the director.~~

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

~~(z) All self-propelled track haulage equipment shall be equipped with an emergency stop switch, self-centering valves, or other devices designed to de-energize the traction motor circuit in the event of an emergency. All track-mounted trolley equipment shall be equipped with trolley pole swing limiters or other means approved by the mine safety and technical review committee to restrict movement of the trolley pole when it is disengaged from the trolley wire. Battery-powered mobile equipment shall have the operating controls clearly marked to distinguish the forward and reverse positions~~

§22A-2-38. Transportation of miners by cars; self-propelled equipment; belts.

~~(a) Man trips shall be pulled, unless self-propelled, at safe speeds consistent with the condition of roads and type of equipment used, but not to exceed twelve miles an hour. Each man trip shall be under the charge of a certified person or other competent person designated by a mine foreman or assistant mine foreman. It shall be operated independently of any loaded trip of coal or other heavy material, but may transport tools, small machine parts and supplies. When mine cars are used for man trips, a locomotive shall be used on each end of the trip.~~

~~(b) Cars on the man trip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided. Sufficient space shall be afforded so that no miner shall have to be transported in a hazardous position.~~

~~(c) No person shall ride under the trolley wire unless the man cars used are suitably covered and insulated. No person shall ride on loaded timber cars, loaded supply trucks, empty timber cars or empty supply trucks which are not equipped with side guards, on top of locomotives, on chain conveyors, inside shuttle cars, on the tops of machinery or equipment, or on the sides of machinery or equipment, except for operators of such machinery or equipment.~~

~~(d) Miners shall not load or unload before the cars in which they are to ride, or are riding, come to a full stop. Miners shall proceed in an orderly manner to and from man trips.~~

~~(e) When belts are used for transporting miners, a minimum clearance of eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring and other objects. Visible reflectors shall be placed where projected equipment, cap pieces, overhead cables, wiring or other pieces cross the belt line. Where the height of the coal seam permits, the clearance shall not be less than twenty- four inches.~~

~~(f) The belt speed shall not exceed two hundred fifty feet per minute where the minimum overhead clearance is eighteen inches, or three hundred feet per minute where the minimum overhead clearance is twenty-four inches, while miners are loading, unloading, or being transported. A signaling system or method shall be provided for stopping the belt and miners shall ride not less than six feet apart.~~

~~(g) An assistant mine foreman or some other person designated by the mine foreman shall supervise the loading and unloading of belts and man trips. Where miners are required to cross over belts, adequate and safe facilities shall be provided.~~

~~(h) Positive-acting stop controls shall be installed along all belt conveyors used to transport miners, and such controls shall be readily accessible, and maintained so that the belt can be stopped or started at any location.~~

~~(i) Belt conveyors used for man trips shall be stopped while men are loading or unloading.~~

~~(j) There shall be at least thirty-six inches of side clearance where miners board or leave such belt conveyors.~~

~~(k) Adequate illumination including colored lights or reflective signs shall be installed at all loading and unloading stations. Such colored lights and reflective signs shall be so located as to be observable to all persons riding the belt conveyor.~~

~~(l) Telephone or other suitable communications shall be provided at points where miners are regularly loaded on or unloaded from belt conveyors.~~

~~(m) After supplies have been transported on man trip cars, such cars shall be examined for unsafe conditions prior to the transportation of miners.~~

~~(n) While trackmen are working on haulageways, the dispatcher, or if there is no dispatcher, such other person responsible for communications with haulage crews shall give notice to haulage crews to maintain traffic under a slow and safe operating speed at the point of construction or repair~~ The transportation of miners shall be governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-39. Belt conveyor; installation; maintenance; examination of belt conveyors and belt entries.

(a) ~~On or after July 1, 1971, all conveyor belts acquired for use underground shall be flame-resistant conveyor belts~~ All belts, including installation, maintenance and examinations of belt conveyors and entries are governed by standards established by the U.S. Mine Safety & Health Administration.

~~(b) A clear travelway at least twenty-four inches wide shall be provided on both sides of all belt conveyors installed after July 1, 1971. Where roof supports are installed within twenty-four inches of a belt conveyor, a clear travelway at least twenty-four inches wide shall be provided on the side of such support farthest from the conveyor.~~

~~(c) On belt conveyors that do not transport men, stop and start controls shall be installed~~

~~at intervals not to exceed one thousand feet. Such controls shall be properly installed and positioned so as to be readily accessible.~~

~~(d) Persons shall not cross moving belt conveyors, except where suitable crossing facilities are provided.~~

~~(e) All belt conveyors shall be inspected by a certified belt examiner, mine foreman-fireboss or assistant mine foreman-fireboss for frozen rollers and fire hazards following the last production shift each week, also before holidays, vacation periods, as hereinafter provided, with records kept of daily inspection.~~

~~(f) (1) Belt conveyors on which coal is transported on any shift shall be examined during each coal-producing shift. Such examination shall be made of belt conveyors and belt conveyor entries for unsafe conditions including, but not limited to, mine gases, frozen rollers, hazardous roof or rib conditions and fires.~~

~~(2) Whenever an on-shift examination of a belt conveyor and belt conveyor entry has not been made during the preceding shift, an examination shall be made of the belt conveyor and belt conveyor entry prior to the conveyor being started; or if any miner is going to enter the belt conveyor entry, then the area where such miner will be working shall be examined. Such examination shall be made by a certified mine foreman-fire boss, assistant mine foreman-fire boss, or a certified belt examiner. Thereafter, on-shift examinations by a certified belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss shall be made as herein required.~~

~~(g) In the conduct of the examination, the belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss shall travel the full extent of the belt conveyor or belt conveyor entry assigned and shall place his initials and the date and time of his examination at or near each belt head and along each belt conveyor he examines. Should the belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss find a condition which he considers dangerous to persons entering such area, he shall erect a danger sign to prevent other persons from entering the area and notify his immediate supervisor of the condition. Only state or federal inspectors or~~

~~authorized representatives of the miners, and persons authorized by mine management to correct the condition, may enter such area while the danger sign is posted. At the conclusion of each shift, belt examiners, mine foreman-fire bosses or assistant mine foreman-fire bosses shall record in a book provided for that purpose the results of their examination, including comments concerning the physical condition of the belt conveyor and the area where the belt conveyor is located. Such book shall be examined and countersigned by the mine foreman or his assistant and by the person conducting such examination on the next oncoming shift.~~

~~(h) The examinations set forth in this section shall be the only examinations required of belt conveyors and belt conveyor entries, notwithstanding any provision of sections fourteen, twenty or any other section of this chapter relating to the examination of belt conveyors and belt conveyor entries.~~

~~(i)~~ (b) The board of miner training, education and certification shall establish criteria and standards for the training, examination and certification of “belt examiners”. Persons seeking to be certified as a “belt examiner” must hold a miner's certificate and have at least two years practical underground mining experience. ~~Such~~ The training, examination and certification program ~~shall~~, as a minimum, requires a demonstration of knowledge of belt conveyors, roof control, ventilation, and gases.

~~(j) Deluge-type water sprays, water sprinklers, dry chemical sprinkler system or foam generators (designed to be automatically activated in the event of a fire or rise in the temperature at or near the belt drive) shall be installed at each main and secondary conveyor drive that are located underground.~~

~~(k) All underground belt conveyors shall be equipped with slippage and sequence switches.~~

~~(l) Telephones or other suitable communications shall be provided at points where supplies are regularly loaded or unloaded from the belt conveyors.~~

~~(m) After supplies have been transported on belt conveyors, such belts shall be examined~~

~~by a belt examiner, mine foreman-fire boss or assistant mine foreman-fire boss for unsafe conditions prior to the transportation of men.~~

~~(n) No person shall be permitted to perform any work within the confines of the cargo space of a crusher or feeder, unless the crusher or feeder has been de-energized and locked out~~

ELECTRICITY

§22A-2-40. General provisions.

Operators of coal mines in which electricity is used as a means of power shall comply with ~~the following provisions:~~

~~(1) All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.~~

~~(2) Underground transformers shall be air cooled or cooled with noninflammable liquid or inert gas.~~

~~(3) Underground stations containing circuit breakers filled with inflammable liquids shall be put on a separate split of air or ventilated to the return air, and shall be of fireproof construction.~~

~~(4) Transformers shall be provided with adequate overload protection.~~

~~(5) "Danger -- High Voltage" signs with the voltage indicated shall be posted conspicuously on all transformer enclosures, high-potential switchboards and other high-potential installations.~~

~~(6) Dry insulating platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.~~

~~(7) Capacitors used for power factor connection shall be noninflammable liquid filled. Suitable drain-off resistors or other means to protect miners against electric shock following removal of power shall be provided.~~

~~(8) All unattended underground loading points where electric driven hydraulic systems are~~

~~used shall utilize a fireproof oil or emulsion.~~

~~(9) Before electrical changes are made to permissible equipment for use in a mine, they shall be approved by the director.~~

~~(10) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.~~

~~(11) In all mines all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible.~~

~~(12) All hand-held electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment which are taken into or used inby the last open crosscut of any coal mine shall be permissible.~~

~~(13) All electric face equipment which is taken into or used inby the last open crosscut of any coal mine shall be permissible.~~

~~(14) In mines operated in coal seams which are located at elevations above the water table, the phrase "coal seams above the water table" means coal seams in a mine which are located at an elevation above a river or the tributary of a river into which a local surface water system naturally drains.~~

~~(15) The operator of each coal mine shall maintain in permissible condition all electric face equipment, which is taken into or used inby the last open crosscut of any mine.~~

~~(16) Except where permissible power connection units are used, all power-connection points outby the last open crosscut shall be in intake air.~~

~~(17) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing.~~

~~(18) Energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of a mine shall require that such persons wear approved and tested insulated shoes and wireman's gloves.~~

~~(19) No electrical work shall be performed on low-, medium-, or high-voltage distribution~~

~~circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons who installed them, or, if such persons are unavailable, by persons authorized by the operator or his agent.~~

~~(20) All electric equipment shall be examined weekly, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the director and to the miners in such mine.~~

~~(21) 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 material.~~

~~(22) All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.~~

~~(23) Cables shall enter metal frames of motors, splice boxes, and electric compartment only through proper fittings. When insulated wire, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.~~

~~(24) All power wire (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-installed insulators and shall not contact combustible material, roof or ribs.~~

~~(25) Power wires and cables, including, but not limited to, phone communication and~~

~~control wires, except trolley wires, trolley feeder wires and bare signal wires, shall be insulated adequately and fully protected. The provisions of this subdivision shall not become effective until January 1, 1978.~~

~~(26) Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.~~

~~(27) Incandescent lamps installed along haulageways and at other locations shall not contact combustible material, and if powered from trolley or direct current feeder circuits, need not be provided with separate short circuits or overload protection, if the lamp is not more than eight feet in distance from such circuits.~~

~~(28) In all main power circuits, disconnecting switches shall be installed underground within five hundred feet of the bottoms of shafts and boreholes through which main power circuits enter the underground area of the mine and within five hundred feet of all other places where main power circuits enter the underground area of the mine.~~

~~(29) All electric equipment shall be provided with switches or other controls that are safely designed, constructed and installed.~~

~~(30) Each underground, exposed power conductor that leads underground shall be equipped with suitable lightning arrestors of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low-resistance grounding medium on the surface which shall be separated from neutral ground by a distance of not less than twenty-five feet.~~

~~(31) Except for areas of a coal mine inby the last open crosscut, incandescent lamps may be used to illuminate underground areas. When incandescent lamps are used in a track entry or belt entry or near track entries to illuminate special areas other than structures, the lamps shall be installed in weatherproof sockets located in positions such that the lamps will not come in~~

~~contact with any combustible material. Lamps used in all other places must be of substantial construction and be fitted with a glass enclosure.~~

~~(32) An authorized representative of the director may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.~~

~~(33) An authorized representative of the director shall require manually operated emergency stop switches, designed to deenergize the traction motor circuit when the contractors or controller fail to open, to be installed on all battery powered tractors, taken into or used inby the last open crosscut of any entry or room.~~

~~(34) Trailing cables used in coal mines shall meet the requirements for flame-resistant cables.~~

~~(35) 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.~~

~~(36) When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.~~

~~(37) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. 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 or more conductors that have been severed.~~

~~(38) When permanent splices in trailing cables are made, they shall be:~~

~~(A) Mechanically strong with adequate electrical conductivity and flexibility;~~

~~(B) Effectively insulated and sealed so as to exclude moisture; and~~

~~(C) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.~~

~~(39) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cables will be hung in a manner which will damage the insulation or conductors.~~

~~(40) Trailing cables shall be adequately protected to prevent damage by mobile equipment.~~

~~(41) Trailing cable and power cable connections to junction boxes and to electrical equipment shall not be made or broken under load.~~

~~(42) All metallic sheaths, armors and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the director.~~

~~(43) Except where waived by the director, metallic frames, casings and other enclosures of electric equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and on or before January 1, 1978, shall have a ground monitoring system.~~

~~(44) In instance 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 and other enclosure of such equipment to a separate grounding conductor which establishes a continuous connection to a grounded center tap of the transformer.~~

~~(45) The attachment of grounding wires to a mine tract or other grounded power conductor will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection.~~

~~(46) The frames of all offtrack direct-current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at no less safe voltages.~~

~~(47) Installation of silicon diodes shall be restricted to electric equipment receiving power from a direct-current system with one polarity grounded. Where such diodes are used on circuits having a nominal voltage rating of two hundred fifty, they must have a forward current rating of four hundred amperes or more, and have a peak inverse voltage rating of four hundred or more. Where such diodes are used on circuits having nominal voltage rating of five hundred fifty, they must have a forward current rating of two hundred fifty amperes or more, and have a peak inverse voltage rating of eight hundred or more.~~

~~(48) In addition to the grounding diode, a polarizing diode must be installed in the machine control circuit to prevent operation of the machine when the polarity of a trailing cable is reversed.~~

~~(49) When installed on permissible equipment, all grounding diodes, over-current devices, and polarizing diodes must be placed in explosion-proof compartments.~~

~~(50) High-voltage lines, both on the surface and underground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test and maintain protective devices in making such repairs.~~

~~(51) When two or more persons are working on an energized high-voltage surface line simultaneously, and any one of them is within reach of another, such persons shall not be allowed to work on different phases or on equipment with different potentials.~~

~~(52) All persons performing work on energized high-voltage surface lines shall wear protective rubber 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 repairs on high-voltage surface lines shall be worn~~

~~continuously from the time he leaves the ground until he returns to the ground, and, if such devices are employed for extended periods, such person shall visually inspect the equipment assigned him or her for defects before each use, and, in no case, less than twice each day.~~

~~(53) Disconnecting or cutout switches on energized high-voltage surface lines shall be operated only with insulated sticks, fuse tongs or pullers which are adequately insulated and maintained to protect the operator from the voltage to which he is exposed. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.~~

~~(54) Solely for purposes of grounding ungrounded high-voltage power systems, grounded messenger wires used to suspend the cables of such systems may be used as a grounding medium.~~

~~(55) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.~~

~~(56) High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit and overcurrent.~~

~~(57) Circuit breakers protecting high-voltage circuits entering an underground area of any coal mine shall be located on the surface and in no case installed either underground or within a drift.~~

~~(58) One circuit breaker may be used to protect two or more branch circuits, if the circuit breaker is adjusted to afford overcurrent protection for the smallest conductor.~~

~~(59) The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred volts under fault conditions. 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.~~

~~(60) High-voltage circuits extending underground and supplying portable mobile or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, 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 high-voltage equipment supplied power from the circuit, except that the director or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the director or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.~~

~~(61) High-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity, and the fail-safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the director or his authorized representative to assure such continuity.~~

~~(62) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor with one or more ground conductors having a total cross-sectional area of not less than one half the power conductor, and with an insulated internal or external conductor not smaller than No. 10 (A.W.G.) for the ground continuity~~

~~check circuit.~~

~~(63) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.~~

~~(64) Single-phase loads, such as transformer primaries, shall be connected phase-to-phase.~~

~~(65) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.~~

~~(66) Disconnecting devices shall be installed at the beginning of branch lines in underground high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.~~

~~(67) Circuit breakers and disconnecting switches underground shall be marked for identification.~~

~~(68) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with the manufacturers' specifications.~~

~~(69) Frames, supporting structures and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.~~

~~(70) Low-and medium-voltage power circuits serving three-phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacity 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 overcurrent.~~

~~(71) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the director may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the director and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that when such centers and transformers are moved while energized as permitted under this section, energized high-voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman's gloves.~~

~~(72) Low-and medium-voltage three-phase alternating-current circuits used underground 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 or her 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 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.~~

~~(73) Low-and medium-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the director or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the director on a mine-to-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.~~

~~(74) Disconnecting devices shall be installed in conjunction with circuit breakers serving portable or mobile equipment to provide visual evidence that the power is connected.~~

~~(75) Circuit breakers shall be marked for identification.~~

~~(76) Single-phase loads shall be connected phase-to-phase.~~

~~(77) Trailing cables for medium-voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a ground metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated two thousand volts or more.~~

~~(78) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than two thousand feet and near the beginning of all branch lines.~~

~~(79) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.~~

~~(80) Trolley wires and trolley feeder wires, high-voltage cables, and transformers shall not be located within fifteen feet of the last open crosscut and shall be kept at least one hundred fifty feet from pillar workings.~~

~~(81) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings and where they cross other power wires and cables.~~

~~Trolley wires and trolley feeder wires shall be guarded adequately:~~

~~(A) At all points where men are required to work or pass regularly under the wires.~~

~~(B) On both sides of all doors and stoppings.~~

~~(C) At man-trip stations.~~

~~(82) Temporary guards shall be provided where trackmen and other persons work in close proximity to trolley wires and trolley feeder wires.~~

~~(83) Adequate precaution shall be taken to ensure that equipment being moved along haulageways will not come in contact with trolley wires or trolley feeder wires.~~

~~(84) Trolley and feeder wires shall be installed as follows: Where installed on permanent haulage, they shall be:~~

~~(A) At least six inches outside the track gauge line.~~

~~(B) Kept taut and not permitted to touch the roof, rib or crossbars. Particular care shall be taken where they pass through door openings to preclude bare wires from coming in contact with combustible material.~~

~~(C) Installations of trolley wire hangers shall be provided within three feet of each splice in a trolley wire~~ standards established by the U.S. Mine Safety & Health Administration.

§22A-2-42. Telephone service or communication facilities.

Telephone service or equivalent two-way communication facilities shall be provided in all mines ~~at least one of which shall be in service at all times as follows:~~

~~(a) A telephone or equivalent two-way communication facility shall be located on the surface within five hundred feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when miners are underground can hear the facility and respond immediately in the event of an emergency. "Two-way communication facility" shall mean a system maintained to allow voice contact to come in and out of the working section at all times.~~

~~(b) (1) Telephones or equivalent two-way communication facilities provided at each working section shall be located not more than five hundred feet outby the last open crosscut and not more than eight hundred feet from the farthest point of penetration of the working places on such section.~~

~~(2) The incoming communication signal shall activate an audible alarm, distinguishable from the surrounding noise level, or a visual alarm that can be seen by a miner regularly employed on the working section.~~

~~(3) If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in the event the mine electric power fails or is cut off: *Provided,* That where trolley phones and telephones are both used, an alternate source of power for the trolley phone system is not required.~~

~~(4) Telephones or equivalent two-way communication facilities shall be maintained in good operating condition at all times. In the event of any failure in the system that results in loss of communication, repairs shall be started immediately, and the system restored to operating condition as soon as possible.~~

~~(5) Where required by the director, trucks used for haulage of coal, miners, or supplies by an operator shall be equipped with two-way communication instruments.~~

~~(c) On or after January 1, 1978, unless the director for good cause grants a waiver, all such telephones or equivalent two-way communications shall be connected to regular telephonic and other means of communication available in the community so that in the event of an emergency, emergency medical attendants or other personnel can communicate to and from the mine directly to health care facilities.~~

~~(d) Telephone lines and cables shall be carried on insulators installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately. Lightning arrestors shall be provided at the points where telephone circuits enter the~~

~~mine~~ and are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-43. Actions to detect and respond to excess methane.

The ~~following~~ actions ~~are~~ required to detect and respond to excess methane ~~Subsections (a) through (f) of this section pertain to methane testing with hand-held devices:~~

~~(a) *Hand-held testing required.* -- In any mine, no electrical equipment or permissible diesel-powered equipment may be brought in by the last open crosscut until a qualified person tests for methane. If one percent or more methane is present, the equipment may not be taken into the area until the methane concentration is reduced to less than one percent. Thereafter, subsequent methane examinations shall be made at least every twenty minutes while any electrical or diesel-powered equipment is present and energized.~~

~~(b) *Location of tests*. -- Tests for methane concentrations under this section shall be made at least twelve inches from the roof, face, ribs and floor.~~

~~(c) *Working places and intake air courses*. --~~

~~(1) When one percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located or in an area where mechanized mining equipment is being installed or removed:~~

~~(A) Except intrinsically safe atmospheric monitoring systems (AMS), electrically powered equipment in the affected area shall be de-energized and other mechanized equipment shall be shut off.~~

~~(B) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane to less than one percent.~~

~~(C) No other work shall be permitted in the affected area until the methane concentration is less than one percent.~~

~~(2) When one and five-tenths percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located or in an area where mechanized mining equipment is being installed or removed: (A) Except for the mine~~

~~foreman, assistant mine foreman or individuals authorized by the mine foreman or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners' representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.~~

~~(B) Except for intrinsically safe AMS, electrically powered equipment in the affected area shall be disconnected at the power source.~~

~~(d) *Return air split.* --~~

~~(1) When one percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location at which the split is used to ventilate seals or worked-out areas, changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air to less than one percent.~~

~~(2) When one and five-tenths percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location where the split is used to ventilate seals or worked-out areas, except for the mine foreman, assistant mine foreman or individuals authorized by the mine or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners' representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.~~

~~(3) Other than intrinsically safe AMS, equipment in the affected area shall be de-energized, electric power shall be disconnected at the power source and other mechanized equipment shall be shut off.~~

~~(4) No other work shall be permitted in the affected area until the methane concentration in the return air is less than one percent.~~

~~(e) *Return air split alternative*. --~~

~~(1) The provisions of this paragraph may apply if:~~

~~(A) The quantity of air in the split ventilating the active workings is at least twenty-seven thousand cubic feet per minute in the last open crosscut or the quantity specified in the approved ventilation plan, whichever is greater.~~

~~(B) The methane content of the air in the split is continuously monitored during mining operations by an AMS that gives a visual and audible signal on the working section when the methane in the return air reaches one and five-tenths percent and the methane content is monitored as specified in the approved ventilation plan.~~

~~(C) Rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point.~~

~~(2) When one and five-tenths percent or more methane is present in a return air split between a point in the return opposite the section loading point and where that split of air meets another split of air or where the split of air is used to ventilate seals or worked-out areas:~~

~~(A) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air below one and five-tenths percent.~~

~~(B) Except for the mine foreman, assistant mine foreman or individuals authorized by the mine foreman or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners' representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.~~

~~(C) Except for intrinsically safe AMS, equipment in the affected area shall be de-energized,~~

~~electric power shall be disconnected at the power source and other mechanized equipment shall be shut off.~~

~~(D) No other work shall be permitted in the affected area until the methane concentration in the return air is less than one and five-tenths percent.~~

~~(f) *Bleeders and other return air courses*.--~~

~~The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of air, or in a return air course other than as described in subsections (d) and (e) of this section, shall not exceed two percent.~~

~~(g) *Machine-mounted methane monitors.* --~~

~~(1) Approved methane monitors shall be installed and maintained on all face cutting machines, continuous miners, longwall face equipment and other mechanized equipment used to extract coal or load coal within the working place.~~

~~(2) The sensing device for methane monitors on longwall shearing machines shall be installed at the return air end of the longwall face. An additional sensing device also shall be installed on the longwall shearing machine, downwind and as close to the cutting head as practicable. An alternative location or locations for the sensing device required on the longwall shearing machine may be approved in the ventilation plan.~~

~~(3) The sensing devices of methane monitors shall be installed as close to the working face as practicable.~~

~~(4) Methane monitors shall be maintained in permissible and proper operating condition and shall be calibrated with a known air-methane mixture at least once every fifteen days and a record of the calibration shall be recorded with ink or indelible pencil by the person performing the calibration in a book prescribed by the director and maintained on the surface. Calibration records shall be retained for inspection for at least one year from the date of the test. To assure that methane monitors are properly maintained and calibrated, the operator shall use persons properly trained in the maintenance, calibration and permissibility of methane monitors to calibrate and~~

~~maintain the devices.~~

~~(h) *Automatic deenergization of electrical equipment or shut down of diesel equipment*. -- When the methane concentration at any machine-mounted methane monitor reaches one percent, the monitor shall give a warning signal. The warning signal device of the methane monitor shall be visible to a person operating the equipment on which the monitor is mounted. The methane monitor shall automatically deenergize electric equipment or shut down diesel-powered equipment on which it is mounted when:~~

~~(1) The methane concentration at any machine-mounted methane monitor reaches one and five-tenths percent; or~~

~~(2) The monitor is not operating properly.~~

~~The machine may not again be started in that place until the methane concentration measured by the methane monitor is less than one percent~~ are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-43a. Operation of cutting and mining machines; repair and maintenance of same.

~~(a) *Qualified person to operate cutting machine*. -- No person shall be placed in charge of a coal-cutting machine in any mine who is not a qualified person, capable of determining the safety of the roof and sides of the working places and of detecting the presence of explosive gas, unless they are accompanied by a certified or qualified person who has passed such an examination.~~

~~(b) *Operation of mining machines*. -- Machine operators and helpers shall use care while operating mining machines. They shall examine the roof of the working place to see that it is safe before starting to operate the machine. They shall not move the machine while the cutter chain is in motion. Additionally, no person shall operate the cutterhead on any continuous miner while the machine is moving from place to place underground: *Provided,* That a cutterhead may be operated during clean up or when the machine is extracting coal.~~

~~(c) *Repair and maintenance of mining machines.* -- (1) Repairs or maintenance shall not~~

~~be performed on mining machines until the power is off and locked and tagged, if required by law, and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. For purposes of this subsection, the following terms shall have the following meanings:~~

~~(A) "Maintenance" means the labor of keeping machinery in good working order and includes cleaning, clearing jammed material or conducting examinations on or in close proximity to machinery; and~~

~~(B) "Repair" means to fix, mend, or restore to good working order.~~

~~(d) Methods to comply with the standard to prevent inadvertent or unexpected motion include:~~

~~(A) Opening the circuit breaker for the affected machinery, provided no energized parts or conductors are exposed, and placing the run selector switch for startup of the machinery in the "off" position. On longwall machinery, this would include placing the lockout switch in the lockout position in the area were the repair or maintenance is being performed. A qualified electrician is required to de-energize a circuit breaker if there are exposed energized parts or conductors; or~~

~~(B) Opening the circuit breaker at the power center that supplies power for the affected machinery and disengaging the power cable coupler that supplies power to the machinery; or~~

~~(C) Opening a manual visible disconnect switch, either within the circuit or onboard the machinery, and securing the switch against reenergization, as required by law. A control circuit start-stop switch does not constitute a manual disconnect; or~~

~~(D) In cases such as steeply inclined belt conveyors and suspended loads, when removing the power alone will not ensure against unintentional or inadvertent movement, the machinery shall be physically blocked, in addition to removing the power by one of the three methods described above. Physical blocking may be achieved by the use of such devices as bars, chocks or clamps~~ The operation of cutting and mining machines and their repair and maintenance are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-44. Hand-held electric drills and rotating tools; trailing cables.

Electric drills and other electrically operated rotating tools intended to be held in the hand ~~shall have the electric switch constructed so as to break the circuit when the hand releases the switch and shall be equipped with friction or safety clutches~~ are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-45. Installation of lighting.

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~~ are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-46. Welding and cutting.

~~(a) A record shall be kept of oxygen and gas tanks or cylinders taken into a mine and the date shall be recorded when they are removed from the mine. No more tanks or cylinders than necessary to perform the work efficiently shall be permitted underground at one time.~~

~~(b) Propane torches may be used in lieu of blowtorches. Only approved apparatus such as torches, regulators, pressure reducing valves, hoses, check valves and gas cylinders shall be used.~~

~~(c) Welding and cutting may be done in mines: *Provided,* That all equipment and gauges are maintained in safe condition and not abused, that suitable precautions are taken against ignition of methane, coal dust, or combustible materials, that means are provided for prompt extinguishment of fires accidentally started, and that only persons who have demonstrated competency in welding and cutting are entrusted to do this work. Adequate eye protection shall be used by all persons doing welding or cutting, and precautions shall be taken to prevent other persons from exposure that might be harmful to their eyes. A suitable wrench designed for compressed tanks shall be provided to the person authorized to use the equipment.~~

~~(d) Transportation of oxygen and gas tanks or cylinders shall be permitted on self-~~

~~propelled machinery or belt conveyors specially equipped for safe holding of the containers in transportation. In no instance shall such transportation be permitted in conjunction with any mantrip, unless such mantrip is especially equipped with a compartment, lined with at least four inches of foam rubber or the equivalent, and capable of tightly securing the tank inside the manufactured frame of the vehicle.~~

~~(e) Empty oxygen and gas tanks or cylinders shall be marked "empty" and shall be removed from the mine promptly in safe containers provided for transportation of the same.~~

~~(f) When tanks and cylinders are not in use and when they are being transported, valve protection caps and plugs shall be placed on all tanks or cylinders for which caps and plugs are available. No oxygen tanks, gas tanks or cylinders shall be transported with the hoses and gauges attached thereto.~~

~~(g) In all mines a certified person, pursuant to section twelve of this article, shall examine for gas with permissible flame safety lamps or other approved detectors before and during welding or cutting. The safety of the equipment and methods used in such cases shall be subject to approval of the director. If equipment is mobile, it shall be removed outby the last open breakthrough before cutting and welding may be performed on such equipment.~~

All welding and cutting in the state's mines shall meet standards established by the U.S. Mine Safety & Health Administration.

§22A-2-47. Responsibility for care and maintenance of face equipment.

Mine operators shall maintain face equipment in safe operating condition under standards established by the U.S. Mine Safety & Health Administration. Equipment operators shall exercise reasonable care in the operation of the equipment entrusted to them and shall promptly report defects known to them.

§22A-2-48. When respiratory equipment to be worn; control of dust.

Miners exposed for short periods to gas-, dust-, fume- and mist-inhalation hazards shall wear permissible respiratory equipment under standards established by the U.S. Mine Safety &

Health Administration. ~~Dust shall be controlled by the use of permissible dust collectors or other approved methods~~

SAFEGUARDS FOR MECHANICAL EQUIPMENT.

§22A-2-49. Safeguards for mechanical equipment.

~~(a) The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks while such machines are parked or being trammed. Loading machines shall not be trammed with loading arms in motion, except when loading materials.~~

~~(b) Belt, chain or rope drives and the moving parts of machinery which are within seven feet of the floor, ground or platform level, unless isolated, shall be guarded adequately. Repair pits shall be kept covered or guarded at all times when not in use. Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Guards which.h have been removed shall be replaced before the machinery is again put into use. Provision shall be made to prevent accumulations of spilled lubricants.~~

~~(c) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods, and, unless goggles are used, eye shields.~~

~~(d) No person shall stand along the side of the boom, or pass or stand along the loading head or cutting head, on a continuous miner or loading machine in operation.~~

~~(e) Braking devices shall be guarded to prevent accidental release. When required by the director, track-mounted mobile equipment shall be equipped with workable standing devices.~~

~~(f) All battery powered equipment shall be equipped with under-voltage indicator which will indicate when the voltage is less than three-fourths of its rated capacity, at which time such equipment shall be withdrawn from use except for the purpose of returning the vehicle to the recharging station.~~

~~(g) On and after January 1, 1988, all manually operated valves and levers of equipment of the same manufacturer and model shall have the same direction of activation and direction of~~

~~operations.~~

All safeguards for mechanical equipment are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-53. Smoking in and around surface structures.

Smoking in or about surface structures ~~shall be~~ is restricted and governed by standards established by the U.S. Mine Safety & Health Administration. ~~to places where it will not cause fire or an explosion~~

MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

§22A-2-53a. Railroad cars; dumping areas; other surface areas.

(1) Employees handling railroad cars ~~shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. Safety belts shall be worn and properly attached by all car droppers handling railroad cars. 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 ensure the car dropper maintains a safe position while working and traveling around the car. 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 from inside of curves.~~

~~(2) All dumping ramps shall be of a sufficient width to ensure safe operation of vehicles used thereon.~~

~~(3) All access roads leading to and from bath houses, portals, and other areas on which persons are expected to travel to and from work, shall be of sufficient width and be maintained in good condition. On haulage roads, guardrails or berms shall be provided on the outerbank of all elevated roads.~~

~~(4) Mobile surface loading and haulage equipment shall be inspected by a competent person before such equipment is placed into operation. Equipment defects affecting safety shall be corrected before the equipment is used.~~

~~(5) Safety protection, such as safety belts, lifelines, or lanyards to prevent a person from falling shall be provided at all times that miners are working in an area where the potential fall distance exceeds fifteen feet, except that safety belts shall not be used where they are impractical or would pose a greater hazard. Safety nets shall be provided when work places are more than twenty-five feet above the ground where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts are impractical~~ are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-53b. Haulage or surface areas.

~~(1) Traffic directions which differ from standard highways practice shall be posted on signs along the haulage roads at strategic points in letters at least three inches high.~~

~~(2) 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 an extreme grade.~~

~~(3) Traffic rules, signals and warning signs shall be standardized at each mine.~~

~~(4) Where side or overhead clearances on haulage roads or loading or dumping locations are hazardous to mine workers, such areas shall be conspicuously marked and warning devices shall be installed when necessary to ensure the safety of the workers.~~

~~(5) Flashers, flares or other means of signaling shall be used to warn approaching drivers of a hazard created by an obstruction in the roadway.~~

~~(6) Regulatory signs shall be used to indicate the required method of traffic movement.~~

~~(7) Posted warning signs shall be used where necessary to indicate potential hazardous conditions.~~

~~(8) Object marking shall be used to mark physical obstructions in or near the haulageway that presents possible hazards.~~

~~(9) All signs and markings shall be displayed and utilized so as to be as effective as possible.~~

~~(10) Where side or overhead clearance on any haulage road or at any loading or dumping~~

~~location at a surface mine is hazardous to any person, such hazard shall be corrected immediately, and all necessary precautions taken while such hazard is being corrected.~~

~~(11) Haulage roads shall be located an adequate distance from highwalls and spoil banks to minimize the danger of falling material onto personnel and equipment.~~

~~(12) 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.~~

~~(13) Only authorized persons shall be permitted on haulage roads and at loading or dumping locations.~~

~~(14) Berms or guards shall be provided where required on the outer bank of elevating roadways.~~

~~(15) 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.~~

~~(16) Haulage roads shall be constructed of sufficient width to permit the driver to maneuver his vehicle to avoid striking unexpected obstacles on the roadway where reclamation regulations permit.~~

~~(17) Provisions shall be made to adequately drain and remove excessive water from the haulage roads.~~

~~(18) Haulage roads shall be constructed, installed and maintained in a manner consistent with the speed and type of haulage operations being conducted to ensure safe operation. All roads leading to and from work sites on which persons are expected to travel to and from work or to haul coal or supplies, shall be of sufficient width and be maintained in good condition.~~

~~(19) 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.~~

~~(20) All haulage vehicles placed into service after the effective date of this section shall be~~

~~equipped with an approved supplementary emergency braking system.~~

~~(21) All power lines constructed over haulage roads after the effective date of this section shall be maintained at a minimum of twelve feet above all equipment used on haulage roads, including dump trucks in a raised position~~

All haulage and surface areas shall meet standards established by the U.S. Mine Safety & Health Administration.

§22A-2-53c. Ramps; tipples; cleaning plants; other surface areas.

~~(1) *Surface installations generally.*~~ -- Surface installations, all general mine structures, enclosures and other facilities, including custom coal preparation facilities shall be maintained to meet standards established by the U.S. Mine Safety & Health Administration ~~in good condition. In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures. Openings in surface installations through which men or material may fall shall be protected by railings, barriers, covers or other protective devices. Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, switch panels, loading and dumping sites, working areas and parking areas. Materials shall be stored and/or stacked in a manner to prevent stumbling or falling. Compressed and liquid gas cylinders shall be secured in a safe manner. Adequate ventilation shall be provided in tipples and preparation plants. Coal dust in or around tipples or cleaning plants shall not be permitted to exist or accumulate in dangerous amounts.~~

~~(2) *Machinery guards.* -- Gears, sprockets, chains, drive head, tail and takeup pulleys, flywheels, couplings, shafts, sawblades, fan inlets and similar exposed moving machine parts with which persons may come in contact shall be guarded adequately. Except when testing is necessary, machinery guards shall be secured in place while being operated. Belt rollers shall not be cleaned while belts are in motion.~~

~~(3) *Fire protection*. -- Where cutting or welding is performed at any location, a means of~~

~~prompt extinguishment of any fire accidentally started shall be provided. Adequate firefighting facilities, required by the office of miners' health, safety and training, shall be provided on all floors. At least two exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of this section. 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. Smoking or an open flame in or about surface structures shall be restricted to locations where it will not cause fire or an explosion.~~

~~(4) *Repairs of machinery*. -- Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations. Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary. Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.~~

~~(5) *Stairs, platforms, etc.* -- Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements. Where required, elevated platforms and stairways shall be provided with toeboards. They shall be kept clear of refuse and ice and maintained in good condition.~~

~~(6) *Belts, etc*. -- Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters. Belt dressing shall not be applied while in motion. Belts, chains and ropes shall not be guided into power-driven moving pulleys, sprockets or drums with the hand except with equipment especially designed for hand feeding.~~

~~(7) *Conveyors and crossovers*. -- 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. Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction, with rails, and maintained in good condition. Moving conveyors shall be crossed only at designated crossover points. A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tipple equipment is to be started. Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation. Guards, nets or other suitable protection shall be provided where tramways pass over roadways, walkways or buildings. Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.~~

~~(8) *Ladders*. -- All ladders shall be securely fastened. Permanent ladders more than ten feet in height shall be provided with backguards. Ladders shall be of substantial construction and maintained in good condition. Wooden ladders shall not be painted. Fixed ladders shall not incline backward at any point unless equipped with backguards. Fixed ladders shall be anchored securely and installed with at least three inches of toe clearance. Side rails of fixed ladders shall project at least three feet above landings, or substantial handholds shall be provided above the landing. No person shall be permitted to work off of the top step of any ladder. Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor. The maximum length of a step ladder shall be twenty feet and an extension ladder sixty feet.~~

~~(9) *Hoisting*. -- Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted. Persons shall stay clear of hoisted loads. 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.~~

~~(10) *Railroad track construction and maintenance.* --~~

~~(a) All parts of the track haulage road under the ownership or control of the operator shall~~

~~be strictly constructed and maintained. Rails shall be secured at all points by means of plates or welds. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately. Appropriate bolts shall be inserted and maintained in all bolt holes. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.~~

~~(b) All points shall be installed and maintained so as to prevent bad connections. Varying weights of rail shall not be joined without proper adapters. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.~~

~~(c) Tracks shall be gauged so as to conform with the track mounted equipment. Curves shall not be constructed so sharp as to put significant pressure on the tracks of the track-mounted equipment.~~

~~(d) Severely worn or damaged rails and ties shall be replaced immediately.~~

~~(e) When mining operations are performed within any twenty-four hour period, operations shall be inspected at least every twenty-four hours to assure safe operation and compliance with the law and rules. The results of which inspection shall be recorded.~~

~~(f) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten feet shall be provided with back guards. Walkways around thickeners that are less than four feet above the walkway shall be adequately guarded. Employees required to work over thickener shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided~~

§22A-2-55. Protective equipment and clothing.

(a) ~~Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards~~ All protective equipment and clothing used in mines in

this state are governed by standards established by the U.S. Mine Safety & Health Administration.

~~(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.~~

~~(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.~~

~~(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: *Provided,* That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings.~~

~~(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.~~

~~(f) (1) A self-contained self-rescue device approved by the director shall be worn by each person underground or kept within his or her immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of the device and refresher training courses for all underground employees shall be held once each quarter. Quarters shall be based on a calendar year.~~

~~(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with~~

~~reflective material at twenty-five foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache and each lifeline cord or other similar device to ensure operability.~~

~~(3)~~ (b) Any person ~~that~~ who, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or lifeline cord from the mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord or knowingly tampers with or attempts to tamper with the device or lifeline cord ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years or fined not less than $10,000 nor more than $100,000, or both fined and imprisoned.

~~(g) (1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground: *Provided*, That if a miner's wireless emergency communications device shall malfunction or cease to operate then such miner shall be assigned to be in sight or sound of a certified miner until such time an operating device shall be delivered. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine~~

~~(2)~~ (c) Any person ~~that~~ who, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment, from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment ~~shall be~~ is guilty of a felony and, upon conviction shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years or fined not less than

$10,000 nor more than $100,000, or both fined and confined.

~~(h) (1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: *Provided,* That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground~~

~~(2)~~ (d) Any person ~~that~~ who, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment ~~shall be~~ is guilty of a felony and, upon conviction shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years or fined not less than $10,000 nor more than $100,000, or both fined and confined.

~~(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code~~

§22A-2-55a. Safety helmets.

All surface mine employees shall ~~be required to~~ wear safety helmets governed by standards established by the U.S. Mine Safety & Health Administration. ~~when working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns: *Provided,* That such employees shall not be required to wear such safety helmet while operating machinery equipped with a falling object protective structure which satisfies the impact and penetration requirements established by the American National~~

~~Standards Institute, Safety Requirements for Industrial Head Protection, Standard Z89.1, unless the director finds that the dangers set forth herein may be present: *Provided, however,* That such employees shall be required to wear safety helmets while not operating such equipment including period of travel to and from such equipment~~.

~~The safety helmets required hereunder shall meet the specifications for such helmets as prescribed by the mine health and safety administration~~

§22A-2-56. Checking systems.

Each mine shall have a check-in and check-out system which will provide positive identification of every person underground and will provide an accurate record of the persons in the mine kept on the surface in a place that will not be affected in the event of an explosion. ~~Said~~ The record shall bear a number or name identical to the identification check that is securely fastened to the lamp belt of all persons underground. The identification check shall be made of a rust-resistant metal of no less than sixteen gauge and governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.

(a) No miner, worker or other person ~~shall~~ may knowingly injure any shaft, lamp, instrument, air course, or brattice, or obstruct or throw open airways, or carry matches or open lights in the places worked by safety lights, or disturb any part of the machinery or appliances, open a door closed for directing ventilation and not close it again, or enter any part of a mine against caution, or disobey any order of any mine foreman or assistant mine foreman given in carrying out any of the provisions of this section.

(b) Open lights, smoking and smokers' articles, including matches, are prohibited in all mines. No person ~~shall~~ may at any time enter mines with or carry therein any matches, pipes, cigars, cigarettes or any device for making lights or fire not authorized or approved. The operator shall at frequent intervals search, or cause to be searched, any person, including his or her

clothing and material belongings, entering or about to enter the mine, or inside the mine, to prevent such person from taking or carrying therein any of the above-mentioned articles. Searches used to comply with standards established by the U.S. Mine Safety & Health Administration meet the requirements of this section.

(c) No person ~~shall~~ may at any time carry into any mine any intoxicants or enter any mine while under the influence of intoxicants.

§22A-2-58. Fire protection.

(a) Suitable fire protection shall be provided at surface installations of fans, shops, tipples and preparation plants, substations, hoist rooms and compressor stations governed by standards established by the U.S. Mine Safety & Health Administration.

~~(b) Fire drills and demonstration of various types of available firefighting equipment shall be held for employees at least every six months.~~

~~(c) The location of pipelines, location of valves and fire taps shall be shown on a map of the mine and kept available at the mine office at all times.~~

~~(d) Each coal mine shall be provided with suitable firefighting equipment adapted for the size and condition of the mine. Firefighting equipment required under this article shall meet the following requirements:~~

~~(1) Waterlines shall be capable of delivering fifty gallons of water at a nozzle pressure of fifty pounds per square inch.~~

~~(2) A portable water car shall be of at least one thousand gallons capacity, and shall have at least three hundred feet of fire hose with nozzles. A portable water car shall be capable of providing a flow through the hose of fifty gallons of water per minute at a nozzle pressure of fifty pounds per square inch.~~

~~(3) A portable chemical car shall carry enough chemicals to provide a fire extinguishing capacity equivalent to that of a portable water car.~~

~~(4) A portable foam-generating machine shall have facilities and equipment for supplying~~

~~the machine with thirty gallons of water per minute at thirty pounds per square inch for a period of thirty-five minutes.~~

~~(5) A portable fire extinguisher shall be either a multipurpose dry chemical type, containing a nominal weight of five pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two and one- half gallons of foam-producing liquid and enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters Laboratories, Inc. or Factor Mutual Laboratories, carrying appropriate labels as to type and purpose shall be used after July 1, 1971, and all new portable fire extinguishers acquired for use in a coal mine shall be of the multipurpose dry chemical type, having a 2A 10BC or higher rating.~~

~~(6) The fire hose shall be rubber-lined, mildew-proof and the cover shall be of flame-resistant qualities, meeting requirements for hose in Bureau of Mines Schedule 2G, except that the test flame shall be applied to the outer surface rather than to an open end. The bursting pressure shall be at least four times higher than the static water at the mine location; the maximum water pressure in the hose nozzle shall not exceed 100 p.s.i.g.~~

~~(e) Each working section of coal mines producing three hundred tons or more per shift shall be provided with two portable fire extinguishers and two hundred forty pounds of bagged rock dust or equivalent; waterlines shall extend to each section loading point and be equipped with enough fire hose to reach each working face unless the section loading point is provided with one of the following: (1) Two portable water cars; or (2) two portable chemical cars; or (3) one portable water car or one portable chemical car and either a portable foam-generating machine or a portable high-pressure rock-dusting machine, fitted with at least two hundred fifty feet of hose and supplied with at least sixty sacks of rock dust.~~

~~(f) In all coal mines, waterlines shall be installed parallel to the entire length of belt conveyors and shall be equipped with fire hose outlets with valves at three-hundred-foot intervals along each belt conveyor and at tailpieces. At least five hundred feet of fire hose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic~~

~~locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry. Each working section of coal mines producing less than three hundred tons of coal per shift shall be provided with two portable fire extinguishers, two hundred forty pounds of bagged rock dust and at least five hundred gallons of water and at least three pails of ten-quart capacity. In lieu of the five hundred gallon water supply, a waterline with sufficient hose to reach the working places, a portable water car of five hundred fifty gallons capacity, or a portable all-purpose dry powder chemical car of at least one hundred twenty-five pounds capacity may be provided.~~

~~(g) In mines producing three hundred tons of coal or more per shift, waterlines shall be installed parallel to all haulage tracks using mechanized equipment in the track or adjacent entry and shall extend to the loading point of each working section. Waterlines shall be equipped with outlet valves at intervals of not more than five hundred feet, and five hundred feet of fire hose with fittings suitable for connection with such waterlines shall be provided at strategic locations. Two portable water cars, readily available, may be used in lieu of waterlines prescribed under this subsection.~~

~~(h) In mines producing less than three hundred tons of coal per shift, there shall be provided at five-hundred-foot intervals in all main and secondary haulage roads: (1) A tank of water of at least fifty-five gallon capacity with at least three pails of not less than ten-quart capacity; or (2) not less than two hundred forty pounds of bagged rock dust.~~

~~(i) Each track or off-track locomotive, self-propelled man-trip car, or personnel carrier shall be equipped with one portable fire extinguisher.~~

~~(j) Two portable fire extinguishers shall be provided at each permanent electrical installation. One portable fire extinguisher and two hundred forty pounds of rock dust or equivalent shall be provided at each temporary electrical installation.~~

~~(k) Two portable fire extinguishers and two hundred forty pounds of rock dust or equivalent shall be provided at each permanent underground oil storage station. One portable fire~~

~~extinguisher shall be provided at each working section where twenty-five gallons or more of oil are stored in addition to extinguishers required under subsection (e) of this section.~~

~~(l) One portable fire extinguisher or two hundred forty pounds of rock dust or equivalent and water shall be provided at locations where welding, cutting, or soldering with arc or flame is being done.~~

~~(m) At each wooden door through which power lines pass there shall be one portable fire extinguisher or two hundred forty pounds of rock dust or equivalent within twenty-five feet of the door on the intake air side~~

~~(n)~~ (b) At each mine producing 300 tons of coal or more per shift, there shall be readily available the following materials at locations not exceeding two miles from each working section:

(1) One thousand board feet of brattice boards.

(2) Two rolls of brattice cloth.

(3) Two handsaws.

(4) Twenty-five pounds of 8 dwt nails.

(5) Twenty-five pounds of 10 dwt nails.

(6) Twenty-five pounds of 16 dwt nails.

(7) Three claw hammers.

(8) Twenty-five bags of wood fiber plaster or 10 bags of cement (or equivalent material for stoppings).

(9) Five tons of rock dust.

(o) At each mine producing less than 300 tons of coal per shift, the above materials shall be available at the mine: *Provided,* That the emergency materials for one or more mines may be stored at a central warehouse or building supply company and ~~such~~ the supply must be the equivalent of that required for all mines involved and within one hour's delivery time from each mine. This exception ~~shall~~ may not apply where the active working sections are more than two miles from the surface.

§22A-2-59. First-aid equipment.

(a) Each operator of an underground coal mine shall maintain a supply of first-aid equipment governed by standards established by the U.S. Mine Safety & Health Administration. ~~at each of the following locations:~~

~~(1) At the mine dispatcher's office and on the surface in close proximity to the mine entry.~~

~~(2) At the bottom of each regularly traveled slope or shaft; however, where the bottom of such slope or shaft is not more than one thousand feet from the surface, such first-aid supplies may be maintained on the surface at the entrance of the mine.~~

~~(3) At a point in each working section not more than five hundred feet outby the active working face or faces.~~

~~(b) The first-aid equipment required to be maintained shall include at least the following:~~

~~(1) One stretcher.~~

~~(2) One broken-back board.~~

~~(3) Twenty-four triangular bandages.~~

~~(4) Eight four-inch bandage compresses.~~

~~(5) Sixteen two-inch bandage compresses.~~

~~(6) Twelve one-inch adhesive compresses.~~

~~(7) One foille.~~

~~(8) Two cloth blankets.~~

~~(9) One rubber blanket.~~

~~(10) Two tourniquets.~~

~~(11) One one-ounce bottle of aromatic spirits of ammonia.~~

~~(12) Two inflatable plastic arm splints.~~

~~(13) Two inflatable plastic leg splints.~~

~~(14) Six small splints, metal or wooden.~~

~~(15) Two cold packs.~~

~~(16) One automated external defibrillator (AED) unit.~~

~~(c) All first-aid supplies required to be maintained under the section shall be stored in suitable sanitary, dust-tight, moisture-proof containers and such supplies shall be accessible to the miners.~~

~~(d) No first-aid material shall be removed or diverted without authorization, except in case of accident in or about the mine.~~

~~(e) On all occasions when a person becomes sick or injured underground to the extent that he or she must go to the surface, he or she shall be accompanied by one or more persons~~

§22A-2-60. Accessible outlets; safe roadways for emergencies; accessibility of first aid equipment; use of special capsule for removal of personnel.

~~(a) No operator or mine foreman of any coal mine shall employ any person to work in such mine, or permit any persons to be in the mine for the purpose of working therein unless they are provided with two openings or outlets to each seam, separated by natural strata, such openings to be not less than three hundred feet apart, if the mine be worked by shaft; if the mine be worked by shaft and slope, such openings shall be separated by one hundred feet of natural strata; and not less than fifty feet apart at the outlets, if worked by slope or drift; but this requirement of a distance of three hundred feet between openings or outlets to shaft mines shall not apply where such openings or outlets have been made prior to July 1, 1971.~~

~~(b) At least two separate and distinct travelable passageways designated as escapeways shall be maintained to ensure passage at all times to any person, including disabled persons. The escapeway openings to the surface shall be separated in such manner as shall be prescribed by the director. If at least two escapeways are not available for any reason, all miners in the affected area other than those requisite to remedy the situation shall be withdrawn from the affected area until such time as the escapeway is made passable. Where the height of the coal bed is more than five feet, the escapeways shall be maintained at a height of at least five feet excluding necessary roof support, and the travelway in such escapeway shall be maintained at a width of~~

~~at least six feet, excluding necessary roof support and in those situations where the height of the coal bed is less than five feet the escapeway should be maintained to the height of the coal bed excluding any necessary roof support, and the travelway in such escapeway shall be maintained at a width of at least six feet. At least one escapeway ventilated with intake air, maintained to the last open crosscut, shall be provided from each working section continuously to the nearest available opening on the surface, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of floodwater. Escape facilities approved by the director, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in event of an emergency. Return airways entries designated as escapeways shall be provided with permissible two-way communication systems to the surface, and such systems shall be located at points not to exceed every four thousand feet. On or after April 1, 1978, each operator shall provide lifeline cords, with reflective material at twenty-five foot intervals, from the last open crosscut to the surface along a designated escapeway ventilated by return air: *Provided,* That in case of a shaft mine such lifeline cords shall extend from the last open crosscut to the bottom of the designated escape shaft. Such lifeline cord shall be of durable construction sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency.~~

~~(c) Escapeways shall be inspected and traveled at least once each week by a certified mine examiner who shall place his initials and the date in a conspicuous place or places and who shall file a written report thereon which shall be kept on the surface.~~

~~(d) When new coal mines are opened, not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such connections shall be made as soon as possible.~~

~~(e) When only one opening is available because of final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine~~

~~opening and working face shall not exceed five hundred feet.~~

~~(f) First-aid materials and such other equipment as the director may require shall be maintained within five hundred feet of each area in which miners are regularly working to which they may have access in case of an emergency and for protection against hazards.~~

~~(g) Each working area of the mine not serviced by track-mounted or rubber-tired vehicles which uses conveyor belts for removal of coal shall be equipped with a special capsule in which an injured person can be placed and transported on the belt to the surface or to other transportation facilities. The director shall within nine months of July 8, 1977, promulgate standards and guidelines, or allow to continue in effect any present standards and guidelines, as to what such "special capsule" as used in this subsection shall include. Each section of the mine using or serviced by track-mounted or rubber-tired equipment shall have readily available a vehicle which can be used to promptly remove a person in case of injury~~

Accessible outlets; safe roadways for emergencies; accessibility of first aid equipment; use of special capsule for removal of personnel are governed by standards established by the U.S. Mine Safety & Health Administration.

§22A-2-61. Coal storage bins; recovery tunnels; coal storage piles.

~~(a)~~ Coal storage bins, recovery tunnels, coal storage piles are governed by standards established by the U.S. Mine Safety & Health Administration. ~~hereafter constructed with vertical sides fifty 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.~~

~~(b) 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 rock-dusted.~~

~~(c) A qualified person shall test for methane with a methane detector prior to and during cutting and welding operations inside or underneath a coal storage bin.~~

~~(d) Electric motors, switches and controls for coal storage bins hereafter acquired shall be of dust-tight construction.~~

~~(e) Repairs to electric equipment shall not be made when the surrounding atmosphere contains dangerous amounts of gas or dust.~~

~~(f) Where electric lights are used in recovery tunnels of over one hundred feet in length, the wiring shall be in rigid conduit and shall be enclosed in waterproof receptacles.~~

~~(g) An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty inches in diameter and where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.~~

~~(h) 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~~

§22A-2-62. Thermal coal dryers and plants.

Thermal coal dryer plants shall be hereafter constructed, maintained and operated in compliance with ~~the following provisions~~ standards established by the U.S. Mine Safety & Health Administration.

~~(1) Good housekeeping shall be practiced in and around thermal dryer plants.~~

~~(2) Adequate firefighting facilities shall be provided on all floors.~~

~~(3) When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate firefighting apparatus shall be readily available during the operation.~~

~~(4) Only qualified persons shall be permitted to operate dryers; however, this provision shall not prohibit qualified persons from training other persons to become qualified operators.~~

~~(5) Dryer control panels shall be provided with audible and visible alarm devices; such devices should be adjusted to function at somewhat less than maximum dryer temperature.~~

~~(6) A bypass or relief stack equipped with an automatically operated damper shall be provided for bypassing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.~~

~~(7) Thermal coal dryers hereafter installed shall not be enclosed except that roofs may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fireproof structure.~~

~~(8) Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.~~

~~(9) Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.~~

~~(10) Dryers shall be equipped with quick-response heat control devices which, in the event of superelevated temperatures, will automatically divert the hot inlet gases into a bypass stack, thereby bypassing the drying chamber and at the same time stopping the fuel from being supplied to the air heater.~~

~~(11) All dryers, conveyors and other fine coal transporting machines shall be constructed as dust-tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.~~

~~(12) Dryers shall be examined thoroughly after normal and emergency shutdown for fires and coal dust accumulations.~~

~~(13) Dryer controls, valves and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.~~

~~(14) The gauges of temperature control instruments shall be of the recording type.~~

~~(15) Operating rules suitable for the characteristics of each dryer system and the materials~~

~~processed shall be developed and shall be available at the control panel.~~

~~(16) Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.~~

~~(17) Adequate illumination shall be provided.~~

~~(18) Dryers shall not be operated beyond their rated evaporation capacity.~~

~~(19) Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.~~

~~(20) After shutdowns, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding startups.~~

~~(21) Thermal coal dryers previously installed in a tipple or cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.~~

~~(22) When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer system bins or any other dusty areas, permissible cap lamps shall be used for illumination~~

§22A-2-63. No mine to be opened or reopened without prior approval of the Director of the Office of Miners' Health, Safety and Training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.

(a) No mine may be opened or reopened unless prior approval has been obtained from the Director of the Office of Miners' Health, Safety and Training. The director may not unreasonably withhold approval. The operator shall pay a fee of $100 for the approval, which shall be tendered with the application for approval: *Provided,* That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than 50 tons a year.

Within 30 days after January 1, of each year, the holder of a permit to open a mine shall

apply for the extension of the permit for an additional year. The permit, evidenced by a document issued by the director, shall be granted as a matter of right for a fee of $100 if, at the time application is made, the permit holder is in compliance with ~~the provisions of~~ §22A-2-77 of this code ~~and has paid or otherwise appealed all coal mine assessments issued to the mine if operated by the permit holder and imposed under article one of this chapter~~ Applications for extension of permits not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of $100.

(b) Permits issued pursuant to this section are not transferable.

(c) If the operator of a mine is not the permit holder as defined in subsection (a) of this section, then the operator shall apply for and obtain a certificate of approval to operate the mine on which the permit is held prior to commencing operations. The operator shall pay a fee of $100, which payment shall be tendered with the application for approval. The approval, evidenced by a certificate issued by the director, shall be granted if, at the time application is made, the applicant is in compliance with ~~the provisions of~~ §22A-2-77 of this code and has paid or otherwise appealed all coal mine assessments imposed on the applicant for the certificate of approval under §22A-1-1 *et seq.* of this code.

~~(d) In addition to the director's authority to file a petition for enforcement under subdivision (4), subsection (a), section twenty-one, article one of this chapter, if an operator holding a certificate of approval issued pursuant to subsection (c) of this section, has been assessed a civil penalty in accordance with section twenty-one, article one of this chapter, and its implementing rules, and the penalty has become final, fails to pay the penalty within the time prescribed in the order, the director or the authorized representative of the director, by certified mail, return receipt requested, shall send a notice to the operator advising the operator of the unpaid penalty. If the penalty is not paid in full within sixty days from the issuance of the notice of delinquency by the director, then the director may revoke the operator's certificate of approval: *Provided,* That the operator to whom the delinquency notice is issued has thirty days from receipt of the delinquency~~

~~notice to request, by certified mail, return receipt requested, a public hearing held in accordance with the procedures of section seventeen, article one of this chapter, and its implementing rules, including application for temporary relief. Once the operator's certificate of approval is revoked pursuant to this subsection, the operator may not obtain any certificate of approval under the provisions of this section to operate any other mine until that operator pays the delinquent penalties that have become final~~

~~(e)~~ (d) Every firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine is considered to be an operator and shall apply for and obtain a certificate of approval prior to commencing operations: *Provided,* That these persons ~~shall~~ may only be required to obtain one certificate annually: *Provided, however,* That persons such as, but not limited to, consultants, mine vendors, office equipment suppliers and maintenance and delivery personnel are excluded from this requirement to obtain a certificate of approval. Operators who are required to obtain a certificate of approval pursuant to the provisions of this subsection shall pay a fee of $100 which shall be tendered with the application for approval. Approval evidenced by a certificate issued by the director, shall be granted if, at the time the application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant under article one of this chapter.

Within 30 days after January 1, of each year, the holder of a certificate of approval shall apply for the extension of that approval for an additional year. Applications for extension shall be accompanied by a fee of $100. ~~An extension shall be granted if, at the time application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant under article one of this chapter. All delinquent assessments which have been imposed upon a certificate of approval holder or applicants under this section may not be imposed upon any permit holder or certificate of approval holder or any applicant pursuant to subsection (a) or (c) of this section~~

~~(f)~~ (e) The provisions of this section shall be printed on the reverse side of every permit

issued under subsection (a) of this section and certificate of approval issued under subsection (e) of this section.

~~(g)~~ (f) The district mine inspector shall conduct a preinspection of the area proposed for underground mining prior to issuance of any new opening permit approval.

~~(h)~~ (g) All moneys collected by the office of miners' health, safety and training for the approval fees set forth in subsections (a), (c) and (e) of this section shall be deposited with the treasurer of the State of West Virginia to the credit of the general administration--operating permit fees fund. The operating permit fees fund shall be used by the director who is authorized to expend the moneys in the fund for the administration of this chapter.

§22A-2-64. Sealing permanently closed or abandoned mines.

(a) After July 1, 1971, when any coal mine is worked out or indefinitely closed, ~~such~~ the mine openings shall be properly sealed ~~within ninety days after the mine is abandoned~~ or abandoned under standards established by the U.S. Mine Safety & Health Administration.

~~(b) Mines temporarily inactive for less than ninety days shall be adequately fenced with conspicuous signs prohibiting the possible entrance of unauthorized persons.~~

~~(c) Shaft openings shall be effectively capped or filled. Filling shall be for the entire depth of the shaft. Caps shall consist of a six inch thick concrete cap or other equivalent means approved by the director.~~

~~(d) Caps shall be equipped with a vent pipe at least two inches in diameter extending for a distance of at least fifteen feet above the surface shaft~~

§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.

(a) ~~For the purposes of this section, the term accident means:~~

~~(1) The 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) The entrapment of an individual;~~

~~(4) The unplanned inundation of a mine by a liquid or gas;~~

~~(5) The unplanned ignition or explosion of gas or dust;~~

~~(6) The unplanned ignition or explosion of a blasting agent or an explosive;~~

~~(7) An unplanned fire in or about a mine not extinguished within five 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 hour;~~

~~(10) An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the 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 minutes; and~~

~~(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~~ An accident ~~a~~s defined in standards established by the U.S. Mine Safety & Health Administration shall be reported to the State of West Virginia Office of Miner's Health Safety and Training within 15 minutes of reporting the incident to MSHA.

(b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, ~~it is the duty of~~ the operator or the mine foreman in charge of the mine ~~to~~ shall give notice, within 15 minutes of ascertaining the occurrence of an accident and reporting it to the U.S. Mine Safety & Health Administration, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to ~~the provisions of~~ §15-5B-1 *et seq.* of this code stating the particulars of the accident: *Provided,* That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in §15-5-8 of this code, or the

appropriate local emergency telephone system operator as defined in §24-6-1 *et seq.* of this code: *Provided, however*, That if, immediately upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of the mine provides notice to the local organization for emergency services as defined in §15-5-8 of this code, or the appropriate local emergency telephone system operator as defined in §24-6-1 *et seq.* of this code, then, in order to comply with this subsection, the operator or mine foreman in charge of the mine shall also give notice to the Mine and Industrial Accident Emergency Operations Center at the statewide number identified in this subsection within 15 minutes of completing the telephone call to the local organization for emergency services or the appropriate local emergency telephone system operator, as applicable: *Provided further,* That nothing in this subsection ~~shall~~ may be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of up to $100,000 on the operator if it is determined that the operator or the mine foremen in charge of the mine failed to give immediate notice as required in this section. The director may later amend the assessment of a penalty under this section if so warranted: *Provided,* That the director may waive imposition of the civil administrative penalty at any time if he or she finds that the failure to give immediate notice was caused by circumstances wholly outside the control of the operator: *Provided, however,* That the assessment of the civil administrative penalty set forth in this subsection may be appealed to the Board of Appeals, and the Board of Appeals may, by a vote of two Board of Appeals Members, reduce the amount of the civil administrative penalty upon a finding of mitigating circumstances warranting the imposition of a lesser amount.

(d) If anyone is fatally injured, the inspector shall immediately go to the scene of the accident and make recommendations and render assistance as he or she may ~~deem~~ determine necessary for the future safety of the men and investigate the cause of the explosion or accident and make a record. He or she shall preserve the record with the other records in his or her office.

The cost of the investigation records shall be paid by the Office of Miners' Health, Safety and Training. A copy shall be furnished to the operator and other interested parties. To enable him or her to make an investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

§22A-2-70. Shafts and slopes.

The construction of shafts and slopes is governed by standards established by the U.S. Mine Safety & Health Administration.

~~(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 ~~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-2-72. Long wall and short wall mining.

Long wall and short wall mining in West Virginia are governed by standards established by the U.S. Mine Safety & Health Administration.

~~(a) The Legislature finds that new methods of extracting coal known as long wall or short wall mining are being used in this state. The board of coal mine health and safety shall investigate or cause to be investigated the technology, procedures and techniques used in such mining methods and shall promulgate by January 1, 1981, and continuously update the same, rules governing long wall and short wall mining, which rules shall have as their paramount objective,~~

~~the health and safety of the persons involved in such operations, and which said rules shall include, but not be limited to, the certification of personnel involved in such operation.~~

~~(b) The director may modify the application of any provision of this section to a mine if the director determines that an alternative method of achieving the result of such provision exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such provision, or that the application of such provision to such mine will result in a diminution of the health of, or safety to, the miners in such mine. The director shall give notice to the operator and the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he or she deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of such operator or representative or other interested party, to enable the operator and the representative of miners in such mine or other interested party to present information relating to the modification of such provision. The director shall issue a decision incorporating his or her findings of fact therein, and send a copy thereof to the operator and the representative of the miners, as appropriate. Any such hearing shall be of record~~

§22A-2-74. Control of respirable dust.

The control of respirable dust is governed by standards established by the U.S. Mine Safety & Health Administration.

~~Each operator shall maintain the concentration of respirable dust in the mine atmosphere during each shift to which miners in active workings of such mine are exposed below such level as the board may establish. The board may promulgate rules governing respirable dust, including, but not limited to, dust standards, sampling procedures, sampling devices, equipment and sample analysis by using the data gathered by the federal Mine Safety and Health Administration and, or the federal Bureau of Mines.~~

~~Any operator found to be in violation of such standards shall bring itself into compliance with such standards and rules of the board or the director may thereafter order such operator to~~

~~discontinue such operation.~~

§22A-2-75. Coal operators -- Procedure before operating near oil and gas wells.

The rules and procedures for operating near oil and gas wells in this state are governed by standards established by the U.S. Mine Safety & Health Administration.

~~(a) Before a coal operator conducts underground mining operations within five hundred feet of any well, including the driving of an entry or passageway, or the removal of coal or other material, the coal operator shall file with the Office of Miners' Health, Safety and Training and forward to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within five hundred feet of the well, together with a notice, on a form furnished by the director, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section.~~

~~Once these mining maps and plans are filed with the office, the coal operator may proceed with its underground mining operations in the manner and as projected on such plans or maps, but shall not remove, without the consent of the director, any coal or other material or cut any passageway nearer than two hundred feet of any completed well or well that is being drilled. The coal operator shall, at least every six months while mining within the five hundred foot area, update its mining maps and plans and file the same with the director and the well operator.~~

~~(b) Application may be made at any time to the director by a coal operator for leave to conduct underground mining operations within two hundred feet of any well or to mine through any well, by petition, duly verified, showing the location of the well, the workings adjacent to the well and the mining operations contemplated within two hundred feet of the well or through such well, and praying the approval of the same by the director and naming the well operator as a respondent. The coal operator shall file such petition with the director and mail a true copy to the well operator by certified mail, return receipt requested.~~

~~The petition shall notify the well operator that it may answer the petition within five days~~

~~after receipt, and that in default of an answer the director may approve the proposed operations as requested if it be shown by the petitioner or otherwise to the satisfaction of the director that such operations are in accordance with the law and with the provisions of this article. If the well operator files an answer which requests a hearing, one shall be held within ten days of such answer and the director shall fix a time and date and give both the coal operator and well operator five days' written notice of the same by certified mail, return receipt requested. At the hearing, the well operator and coal operator, as well as the director, shall be permitted to offer any competent and relevant evidence. Upon conclusion of the hearing, the director shall grant the request of the coal operator or refuse to grant the same, or make such other decision with respect to such proposed underground operation as in its judgment is just and reasonable under all circumstances and in accordance with law and the provisions of this article: *Provided,* That a grant by the director of a request to mine through a well shall require an acceptable test to be conducted by the coal operator establishing that such mining through can be done safely.~~

~~If a hearing is not requested by the well operator or if the well operator gives, in writing, its consent to the coal operator to mine within closer than two hundred feet of the specified well, the director shall grant the request of the coal operator within five days after the petition's original five day answer period if the director determines that such operations are just, reasonable and in accordance with law and the provisions of this article.~~

~~The director shall docket and keep a record of all such proceedings. From any such final decision or order of the director, either the well operator or coal operator, or both, may, within ten days, appeal to the circuit court of the county in which the well subject to said petition is located. The procedure in the circuit court shall be substantially as provided in section four, article five, chapter twenty-nine-a of this code, with the director being named as a respondent. From any final order or decree of the circuit court, an appeal may be taken to the Supreme Court of Appeals as heretofore provided.~~

~~A copy of the document or documents evidencing the action of the director with respect to~~

~~such petition shall promptly be filed with the chief of the office of oil and gas of the Division of Environmental Protection.~~

~~(c) Before a coal operator conducts surface or strip mining operations as defined in this chapter, within two hundred feet of any well, including the removal of coal and other material, the operator shall file with the director and furnish to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within two hundred feet of the well, together with a notice, on a form furnished by the director, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum coverage required by article three, chapter twenty-two of this code, and the rules promulgated thereto and thereunder.~~

~~Once these mining maps and plans are filed with the director, the coal operator may proceed with its surface or strip mining operations in the manner and as projected on such plans or maps, so long as such surface mining operations do not unreasonably interfere with access to, or operation of, the well or do not damage the well.~~

~~(d) The filing of petitions and notices with the director as herein provided may be complied with by mailing such petition or notice to the director by certified mail, return receipt requested~~

§22A-2-78. Examinations to determine compliance with permits.

(a) Whenever permits are issued by the Office of Miners' Health, Safety and Training, ~~frequent~~ examinations shall be made by the mine inspector during the tenure of the permit to ~~determine that~~ provide compliance assistance with the requirements and limitations of the permit are complied with. The director shall determine the rate of compliance assistance to visits to particular mines.

(b) When an inspector finds conditions that violate standards set by the U.S. Mine Safety & Health Administration or other standards in this chapter, the inspector, in addition to imminent danger withdrawal orders, may issue a Notice of Correction to the operator to correct any condition that does not create an imminent danger.

A Notice of Correction shall set a time for the condition to be abated. The office shall also help the operator with compliance assistance in resolving the issues found.

While Notices of Correction may not be assessed, they may be used in discipline of any state certified person and may be appealed by the Operator to the Board of Appeals.

§22A-2-80 Existing regulations to be revised.

By August 31, 2018, all existing state rules or regulations under the authority of this article shall be revised to reflect the changes enacted during the 2018 Regular Session of the Legislature.

NOTE: The purpose of this bill is to provide that all procedures previously followed for miners' health, safety and training and underground mines are to be subject to standards established by the U.S. Mine Safety & Health Administration. The bill does not change; civil and criminal penalties for violations of this article. It provides that by August 31, 2018, all existing state rules or regulations under the authority of this article be revised to reflect the changes in this bill. Sections that are otherwise subject to U.S. Mine Safety & Health Administration standards are repealed. The bill provides that the Office of Miners' Health, Safety and Training staff mine rescue teams. It amends various definitions. It deals with underground safety compliance visits and education relating to coal mines and provides for additional duties of inspectors. The director is required to propose rules for legislative approval relating to safety compliance assistance visits and enforcement of state mine certifications. The bill provides for Individual Penalty Assessments (IPAs) and civil and criminal penalties for violations. It provides for the; procedure and exceptions to charges of discrimination. And, it requires that all existing state regulations under the authority of §22A-1-1 through §22A-1-43 of this code be revised by August 31, 2018, to reflect the changes in this bill. The bill also deals with the powers and duties of the Office of Coalfield Community Development, including a community impact review; determining the community assets that may be developed, and determining the land and infrastructure needs in the general area of the surface mining operations. The bill amends the "List of approved innovative mine safety technology" by providing that detection devices, cameras and underground safety shelters and the refurbishing thereof shall qualify and be on the list whether required or not under the West Virginia Innovative Mine Safety Technology Tax Credit Act. It deals with the list of approved innovative mine safety technology under that tax credit act and provides that the tax credit terminates December 31, 2025. The bill deals with the permit application requirements and contents under the Surface Coal Mining And Reclamation Act and provides that a copy of an applicant's public notice information to be distributed by the director to the public on the division's Internet-based public notice

mailing list. And, the bill states when a certification is granted under the Water Pollution Control Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

§5B-2A-6 has been rewritten; therefore it has been completely underscored.

§22-11-7a has been rewritten; therefore it has been completely underscored.