

**REGULATORY REVIEW REPORT**

**OF THE**

**WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**

**SUBMITTED TO**

**THE GOVERNOR'S OFFICE**

**AND THE**

**LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**ON**

**OCTOBER 29, 2018**

**OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING RULES  
REGULATORY REVIEW PER EXECUTIVE ORDER 3-18**

Rule No.	Agency	Type/ Status	Description of rule, including date of first promulgation and any subsequent modifications	Should rule be continued w/o change, modified or repealed	Reasoning for such determination
37-01	Board of Appeals (Office of Miners' Health, Safety and Training)	Procedural/ Active	<p>Rules and Procedures Governing Procedures and Practice Before the Board of Appeals</p> <p>This rule provides the procedures to be followed in cases before the Board of Appeals.</p> <p>This rule was filed on April 12, 1982, and became effective on May 13, 1982. There have been no subsequent modifications.</p>	This rule should continue with modifications.	<p>This rule remains necessary because it provides the procedures to be followed in cases before the Board of Appeals.</p> <p>This rule needs modified to conform to statutory changes made to administrative hearing procedures over the past 35 years.</p>
37-02	Board of Appeals (Office of Miners' Health, Safety and Training)	Procedural/ Active	<p>Procedures for Temporary Suspension of Certificates Issued to Persons Pending Full Hearing before the Board of Appeals</p> <p>This rule was promulgated in response to the directions of the West Virginia Supreme Court of Appeals in <i>Perry v. Miller</i>, 171 W. Va. 509, 300 S.E.2d 622 (1983). In that case, the Court directed "the Director of the Department of Mines [nka Office of Miners' Health, Safety and Training] to promulgate a temporary suspension regulation . . ."</p> <p>This rule was filed on August 11, 1983, and became effective September 11, 1983. There have been no subsequent modifications.</p>	This rule should continue; however, the rule needs general cleanup.	This rule is necessary to allow the Director to temporarily suspend a miners's certifications while the case is pending before the Board of Appeals as required by <i>Perry v. Miller</i> , 171 W. Va. 509, 300 S.E.2d 622 (1983).

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56-01	Office of Miners' Health, Safety and Training	Procedural/ Active	<p>Procedures and Practice Before the Department of Energy (nka Office of Miners' Health, Safety and Training)</p> <p>This rule sets forth the procedures that an operator/independent contractor follows to informally contest a Notice of Violation or Order before taking the case to the Board of Appeals. This rule also governs the procedures that must be followed for those hearings that still remain with the Director that were not transferred to the Board of Appeals.</p> <p>The rule was filed on December 30, 1982, and became effective on January 30, 1983. It has not been revised.</p>	This rule needs to continue but needs modified to conform to the many statutory changes that have occurred since 1983.	This rule allows operators and independent contractors to informally challenge Notices of Violation and Orders without resorting to a contested case hearing before the Board of Appeals. The rule also provides the practices and procedures to be used in hearings before the Director.
56-02	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Rules Governing Safety Provisions for Clearing Crews</p> <p>This rule provides safety standards to be followed by clearing crews while on mine property.</p> <p>The rule was filed December 17, 2004, and became effective May 8, 2006. It has not been revised.</p>	This rule should continue without change.	Without this rule there would be no safety standards for clearing crews to follow, which would increase the likelihood of accidents and injuries.

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56-03	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Safety of Those Employed in and Around Surface Mines in West Virginia</p> <p>This rule provides the only safety standards to be followed at a surface coal mine.</p> <p>This rule was filed April 12, 1984, and became effective May 13, 1984. It was amended by a filing on October 5, 1990, which became effective April 29, 1991, and re-filed as an emergency rule and legislative rule on June 19, 2018. The emergency rule was effective July 31, 2018. This rule will go before the Legislature during the 2019 session.</p>	This rule is currently going through the rule-making process and should continue without change.	This rule has been updated and was re-filed on June 19, 2018.

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56-04	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Rules Governing Protective Clothing and Equipment</p> <p>This rule was filed as an emergency rule on February 1, 2006. It was approved as an emergency rule on February 7, 2006. An emergency amendment to the emergency rule was filed February 27, 2006. The rule was filed as a legislative rule on February 28, 2006. An emergency amendment to an emergency rule was filed June 9, 2006. That amendment was approved as an emergency on June 9, 2006. The legislative rule became effective on April 26, 2007. There have been no subsequent revisions.</p>	This rule should continue with some modifications.	This rule contains safety standards to be followed in underground mines. It needs modified to conform to recent statutory changes.
56-05	Office of Miners' Health, Safety and Training	Legislative/ Historical	<p>Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Mines</p> <p>Filed June 30, 1993; effective date July 1, 1993.</p> <p>This rule was repealed by 38 C.S.R. § 2C-1.8, a Legislative Rule of the Division of Environmental Protection.</p>	N/A	<p>Repealed.</p> <p>The responsibility to certify surface blasters was transferred to the Department of Environmental Protection's Office of Explosives and Blasting.</p>

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56-08	Office of Miners' Health, Safety and Training	Emergency/ Active	<p>Rules and Regulations Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia</p> <p>This rule was filed as an emergency rule on July 11, 1989, and filed as a legislative rule on August 31, 1989. An emergency amendment to the emergency rule was filed on November 16, 1989. The effective date of the legislative rule was April 1, 1990. The rule was filed as an emergency rule and legislative rule on May 30, 2018. The effective date of the emergency rule was July 11, 2018. This rule will go before the Legislature during the 2019 session.</p>	This rule is currently going through the rule-making process and should continue without change.	This rule has been updated to conform to the statutory changes made during the 2018 legislative session.

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56-10	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Rules Governing Reporting Requirements for Independent Contractors</p> <p>This rule requires independent contractors registered with the OMHST to report their total number of employees, the number of employee hours worked and any accidents and injuries.</p> <p>This rule was filed as an emergency rule and legislative rule on August 15, 2002. The emergency rule was approved on September 18, 2002. The legislative rule became effective on May 3, 2004. There have been no other revisions to this rule.</p>	This rule should continue with modifications.	This rule needs to be modified to conform to recent statutory changes.

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56-11	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Governing First Aid Training of Shaft and Slope Employees</p> <p>This rule requires all new employees at shaft and slope sites to be trained in first aid.</p> <p>This rule was filed as an emergency rule and legislative rule on March 31, 1993. The legislative rule became effective May 1, 1994. There have been no other revisions to this rule.</p>	This rule should continue without change.	This rule provides safety standards for shaft and slope employees.
56-12	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Assessing Health and Safety Violation Penalties</p> <p>This rule provides the mechanism by which monetary sanctions are assessed to safety violations.</p> <p>This rule first became effective on June 30, 1993. It was amended as a procedural rule on May 31, 2002, effective on July 1, 2002. An amendment was filed as a legislative rule on February 5, 2013, and became effective on July 1, 2014. There have been no other revisions to this rule.</p>	This rule should continue without change.	<p>This rule provides the framework for assessing monetary sanctions on violations.</p> <p>The rule was modified in 2014 to conform to statutory changes and should continue without change.</p>

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56-13	Office of Miners' Health, Safety and Training	Interpretive/ Active	<p>Drug Testing of Mine Inspectors and Mine Safety Instructors</p> <p>This rule was filed as an interpretive rule on August 18, 2006, and became effective on December 31, 2006. There have been no other revisions to this rule.</p>	This rule should continue without change.	This rule provides the authority to drug test mine inspectors and safety instructors.
56-14	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Rules and Regulations Governing the Application Process for the West Virginia Innovative Mine Safety Technology Tax Credit Act</p> <p>This rule was filed as a legislative rule on June 28, 2011, and was effective on May 1, 2012. There have been no other revisions to this rule.</p>	This rule should continue without change.	This rule implements the Innovative Mine Safety Technology Tax Credit Act and remains necessary so long as the tax credit exists.
56-17	Office of Miners' Health, Safety and Training	Procedural/ Active	<p>Rules Governing the Procedures for the Organization and Implementation of a Coal Dust Lab and Coal Dust, Rock Dust Sampling Standards</p> <p>This rule was filed as a procedural rule on February 7, 2013, and became effective on April 25, 2013. There have been no other revisions to this rule.</p>	This rule should continue without change.	This rule provides the procedures OMHST uses to sample coal/rock dusting in mines.

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56-18	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Rules Governing the Program for the Sharing of Information Between Employers</p> <p>This rule provides the method by which OMHST shares with employers the names of miners who have been suspended for failing a drug test.</p> <p>This rule was filed as a legislative rule on June 26, 2013, and became effective on May 14, 2014. There have been no other revisions to this rule.</p>	This rule should continue without change.	This rule provides the method by which OMHST shares the names of miners who have been suspended for failing a drug test with employers.

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56-19	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Substance Abuse Screening, Standards and Procedures</p> <p>This rule provides the procedures for suspending miners' certifications who have failed a drug test. The rule also provides the procedures for a suspended miner to regain his/her certifications.</p> <p>This rule was originally filed as both an emergency and legislative rule on December 27, 2012. An emergency amendment to the emergency rule was filed on April 8, 2013. The modified legislative rule was filed on December 20, 2013, and it became effective on May 10, 2014. This rule was then amended in 2015 when the agency filed another emergency and legislative rule on June 26, 2015. The legislative rule became effective on May 16, 2016. No other revisions have been made to this rule.</p>	This rule should continue without change.	This rule provides the procedures for suspending miners' certifications who have failed a drug test. The rule also provides the procedures for a suspended miner to regain his/her certifications.

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56-20	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Rules Governing the Safety of Those Employed in and Around Quarries in West Virginia</p> <p>This rule was recently promulgated to provide comprehensive safety standards to protect those employed at quarries.</p> <p>This rule was originally filed as a legislative rule on June 25, 2014, and it became effective on July 1, 2015. No other revisions have been made to this rule.</p>	This rule should continue without change.	This rule was recently promulgated to provide comprehensive safety standards to protect those employed at quarries.
56-21	Office of Miners' Health, Safety and Training	Interpretive/ Active	<p>Self-Contained Self-Rescue Device (SCSR) Immediate Reach Interpretative Rule</p> <p>This rule interprets W. Va. Code § 22A-2-55(f)(1), immediate reach standard for how close a miner must keep his SCSR.</p> <p>This rule was filed as an interpretive rule on June 26, 2015, and it became effective September 1, 2015.</p>	This rule should continue without change.	This rule interprets W. Va. Code § 22A-2-55(f)(1), immediate reach standard for how close a miner must keep his/her self-contained self-rescue device.

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56-22	Office of Miners' Health, Safety and Training	Legislative/ Active	<p>Certification, Recertification and Training of EMT-Miners and the Certification of EMT-M Instructors</p> <p>This rule was filed in 2016 to provide the procedure by which individuals become certified as EMT-Miners and EMT-M-Instructors.</p> <p>This rule was originally filed as an emergency and legislative rule on April 29, 2016. An emergency amendment to the emergency rule was filed on June 7, 2016. The emergency amendment was effective June 9, 2016. The modified legislative rule was filed September 6, 2016, and became effective on June 4, 2017.</p>	This rule should continue without change.	This rule was filed in 2016 to provide the procedure by which individuals become certified as EMT-Miners and EMT-M-Instructors.

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56-23	Office of Miners' Health, Safety and Training	Emergency/ Active	<p>Operating Diesel Equipment in Underground Mines in West Virginia</p> <p>This rule provides health and safety standards to be utilized when operating diesel equipment and generators underground.</p> <p>This rule was originally filed as an emergency and legislative rule on June 22, 2017. The emergency rule became effective on July 20, 2017. The legislative rule became effective on April 16, 2018. The agency amended this rule by filing an emergency rule on May 29, 2018, and a legislative rule on May 30, 2018. The emergency rule became effective on July 10, 2018. The legislative rule is currently in the legislative process for passage during the 2019 session.</p>	This rule is currently going through the rule-making process and should continue without change.	This rule was revised and re-filed to conform with S.B. 626 passed during the 2018 legislative session.