

TITLE 38
LEGISLATIVE RULES
DEPARTMENT OF ENERGY
SERIES 8
RULES AND REGULATIONS GOVERNING THE SUBMISSION AND APPROVAL
OF A COMPREHENSIVE MINE SAFETY PROGRAM FOR COAL MINING OPERATIONS
IN THE STATE OF WEST VIRGINIA

§38-8-1. General.

1.1. Scope. -- Rules and Regulations Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia.

1.2. Authority. -- W. Va. Code §22A-1A-34

1.3. Filing Date. -- March 31, 1982

1.4. Effective Date. -- May 20, 1982

§38-8-2. Preamble - Comprehensive Safety Program for Coal Mining Operations in the State of West Virginia.

2.1. Purpose -- The primary goal of Section 34, Article 1A, Chapter 22A of the Code is to protect the health and safety of this State's coal miners by increasing safety awareness and by providing a safe work place through the development and implementation of comprehensive safety programs for each coal mine in the State. The purpose of these regulations is to implement the mandate of Section 34, Article 1A, Chapter 22A of the Code by requiring each coal operator to develop a comprehensive safety program for each active mine and by detailing the requirements for such programs. In implementing such mandate, it is recognized that different types of safety programs may be developed for each mine, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, and the physical features of the particular mine.

§38-8-3. Definitions

3.1. Unless the context in which a word or phrase

appears clearly requires a different meaning, all terms used in these rules and regulations, which are not defined herein, shall have the meanings set forth in Section 1, Article 1A, Chapter 22A of the Code.

1. Active Mining Operation -- The term "active mining operation" shall mean, when used herein, any active surface mining operation or active underground coal mine which is ventilated and in which miners are extracting coal from its natural deposit.

a. The term "active underground mining operation" shall mean an underground coal mine which is ventilated and in which miners are extracting coal from its natural deposit.

b. The term "active surface mining operation" shall mean a surface coal mine where the operator's direct activity and the miners are extracting coal from its natural deposit.

2. Comprehensive Mine Safety Program -- The term "comprehensive mine safety program" "comprehensive safety program," or "program" shall mean the particular safety program at each mine as required in Section 34, Section 1A, Chapter 22A of the Code, which is developed and submitted by the coal operator, approved by the Commissioner, and includes such level of the safety program components set forth in Section 7.2 of these rules and regulations as the operator deems appropriate. Such program shall include and address the extraction, production, processing and preparation activities of the active mining operation.

3. Code -- The term "code" shall mean the West Virginia Code of 1931, as amended.

4. Commissioner - The "Commissioner" shall

mean the Commissioner of the Department of Energy.

5. Mine -- The term "mine," when used herein, shall mean any surface coal mine or underground coal mine as defined herein.

6. Surface Coal Mine -- The term "surface coal mine" shall mean a surface area of land and all structures, facilities, machinery, tools, equipment, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, which are used in, or to be used in, or resulting from, the work of extracting coal from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities. It is identified by one federal identification number.

7. Underground Coal Mine -- The term "underground coal mine" shall mean a mine as defined in Section 1 (a) (6), Article 1A, Chapter 22A of the Code.

§38-8-4. Responsibility for Comprehensive Mine Safety Program

4.1. The design, development, submission, implementation, evaluation and modification of the comprehensive mine safety program shall be the responsibility of the operator of each mine.

§38-8-5. Submission of Initial Comprehensive Mine Safety Program

5.1. Within six (6) months of the effective date of these rules and regulations, each operator shall submit for approval to the Commissioner a written comprehensive safety program for each active mine.

5.2. All operators of new mines and of inactive mines for which a comprehensive safety program has not been approved are required to notify the Commissioner when active mining ninety (90) days after the initiation or resumption of active mining operations a comprehensive mine safety program; provided, however, that if active mining operations are initiated or resumed within six (6) months of the effective date of these rules and regulations, then the operator shall submit its comprehensive safety program with the six (6) month period or within the ninety (90) calendar day period, whichever is greater.

5.3. After the effective date of these regulations, all mines, which are temporarily inactive but which

have approved comprehensive safety program, shall resume operations under the comprehensive safety program for that mine in effect at the time such mine was temporarily closed. If the operator elects to retain the existing comprehensive safety program, the operator shall notify the Commissioner within thirty (30) calendar days after resuming active mining operations. If the operator elects to modify the existing comprehensive safety program, the operator shall submit such modifications to the Commissioner within 90 calendar days after resuming active resuming active mining operations.

§38-8-6. Mine Evaluation for Development of the Initial Comprehensive Mine Safety Program; Submittals to Commissioner

6.1. In developing the initial comprehensive safety program, the operator shall analyze the various program components, contained in Section seven (7) of these rules and regulations, in conjunction with the evaluation criteria provided in Section 8.2 of these rules and regulations, and shall take into consideration the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, or any other aspect of the particular mine deemed relevant by the operator. Based upon this analysis and evaluation of the type of safety program needed at a particular mine, the operator shall proceed to develop a comprehensive mine safety program composed of the appropriate components contained in section 7 of these rules and regulations and a plan and appropriate procedures for implementing each of the components of the program.

6.2. Each operator shall submit to the Commissioner for approval, a comprehensive mine safety program in accordance with these rules and regulations. In addition each operator shall submit the following:

1. A statement that the analysis and evaluation required by Section 6.1 of these rules and regulations has been completed;

2. A statement indicating which process the operator has selected, consistent with Section 11.1 of these rules and regulations, to permit the employees of the mine an opportunity to review and comment on the proposed program;

3. A list of safety instructors and their certifications, and/or qualifications, who will have primary responsibility for planning and conducting safety

training at the mine;

4. A statement that the proposed comprehensive safety program was posted in accordance with Section 11.4 of these rules and regulations; and

5. The name of the person or persons representing the operator, including his title or position and mailing address or telephone number, who can be notified by the Commissioner for all matters concerning the operator's comprehensive mine safety program.

6.3. Within ninety (90) calendar days after submission of the initial comprehensive safety program, the Commissioner shall either approve the program as submitted, or shall reject and return the program to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the program is rejected, the Commissioner shall give the operator a reasonable length of time to modify and resubmit such program.

§38-8-7. Primary Safety Program Components

7.1. Different types of comprehensive mine safety programs may be developed for each mine, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine or any other aspect of the particular mine deemed relevant by the operator. Depending upon the safety program needs of a particular mine the comprehensive mine safety program may include any of all of the components contained in Section 7.2 of these rules and regulations.

7.2. A comprehensive mine safety program may include:

1. The operator's safety policy for each mine;
2. The operator's policies regarding personal safety protection of each worker (hard hats, shoes, etc);
3. Safety training programs and objectives including any or all of the following:
 - a. Classroom training
 - b. Workplace training
 - c. Safety meetings, and

d. Informal training

4. The operator's practices and procedures for promoting:

- a. Safe working practices for personnel;
- b. Safe working conditions in the mine environment;
- c. Safe working practices for machinery, equipment, and systems

5. The operator's procedures for accident investigation and reporting which may include:

6. The operator's procedures for accident investigation and reporting which may include:

- a. Investigation;
- b. Filing
- c. Analysis; and
- d. Follow-up

7. The operator's practices and procedures for comprehensive mine safety program promotion and enforcement; and

8. Such other components deemed necessary by the operator to effectuate the goals of Section 34, Article 1A, Chapter 22A of the Code.

§38-8-8. Annual Review of the Comprehensive Mine Safety Program

8.1. Each operator shall conduct an annual review of the comprehensive mine safety program in effect at each mine. The purpose of the review shall be to determine the effectiveness of the comprehensive mine safety program by evaluating the components of the program to determine whether modifications to the existing program are necessary and desirable.

1. Each operator shall submit to the Commissioner within thirty (30) days after the anniversary date of the program, a report which shall contain the findings of the annual review, a statement indicating whether as a result of such review modifications to the existing program are submitted, the operator may request, and the Commissioner may issue, temporary

approval of requested modifications pending the Commissioner's final review and approval.

2. The Commissioner will review the annual report submitted by the operator and will either approve the report, or reject the report, stating in detail the reasons for rejection. The reasons for rejection may include proposed changes to the program deemed necessary by the Commissioner and not included by the operator.

3. If rejected, the Commissioner shall give the operator a reasonable period of time to modify and re-submit such report and proposed modifications. If within thirty (30) calendar days subsequent to receipt of the report or proposed modifications by the Commissioner, no action has been taken by the Commissioner, the proposed report and modifications shall be considered approved.

4. The anniversary date of the program shall be the date the initial program was approved by the Commissioner.

8.2. The annual evaluation conducted pursuant to subsection 8.1 of these rules and regulations shall include a review of the following items relating to a particular mine:

1. Accident rate;
2. Accident distributions; and

3. A review of violations written under Section 13a, Article 1A, Chapter 22A of the Code.

8.3. At the discretion of the mine operator, other sources of information may be used to ascertain performance of the safety program in the annual evaluation. They may include, but are not limited to:

1. Mine conditions or changes in mine conditions;
2. Mining methods or equipment or changes in mining methods or equipment at the mine;
3. Number of working sections at a mine or changes in the number of working sections at the mine;
4. Personnel or management, or changes in personnel or management;

5. Instructors responsible for safety training or changes in instructors responsible for safety training; and

6. Findings from safety observations conducted by responsible mine officials.

§38-8-9. Modifications

9.1. The operator, in addition to any revisions or modifications to the mine safety program made in accordance with Section 8.1 of these rules and regulations, may submit at any time, proposed modifications or revisions along with the reasons therefore, to the Commissioner.

9.2. Within thirty (30) days after receipt by the Commissioner of any proposed revisions or modifications to the program, the Commissioner shall either approve the revisions, or reject the revisions, stating in detail the reasons for such rejection. If within thirty (30) days of receipt of such revisions by the Commissioner no action has been taken, the proposed revisions shall be taken as approved.

9.3. When revisions to a program are submitted to the Commissioner, the operator may request and the Commissioner may issue temporary approval of such revisions pending the Commissioner's final review and approval.

§38-8-10. Review Procedure

10.1. If a comprehensive mine safety program, modifications thereto, or an annual report is rejected by the Commissioner pursuant to Sections 6.3, 8.1, or 9.2 of these rules and regulations, the operator shall be entitled to a hearing before the Commissioner to contest such rejection.

10.2. The operator shall notify the Commissioner within fifteen (15) days of the receipt of such rejection that he is requesting a hearing and shall state specifically his reasons thereto. A hearing shall be scheduled within ten (10) days of the receipt of the request for hearing, and shall be held within twenty (20) days of such request.

10.3. Any operator adversely affected by a decision rendered by the Commissioner pursuant to subsection 10.2 of these rules and regulations may appeal such decision in accordance with Sections Five and Six, Chapter 29A of the Code.

§38-8-11. Right of Mine Employees to Review and Comment on the Comprehensive Mine Safety Program; Posting Requirements

11.1. Each employee of the mine shall be afforded an opportunity to review and submit comments to the Commissioner regarding the initial submittal program and the annual report. The operator shall satisfy this requirement by selecting one of the two methods set out in one (1) or two (2) below.

1. The operator may establish a safety committee at the mine. This committee shall consist of at least three (3) non-supervisory employees. Where feasible, the committee should have representation on each working shift. The requirements for such committee may be satisfied with an existing committee for the mine. It shall be the responsibility of the operator to provide this committee with the opportunity to review the initial comprehensive safety program, any modifications or revisions thereto, and the annual report, and to provide written comments and suggestions to the Commissioner with copies to the operator. Such opportunity to review shall be satisfied by compliance with subsection 11.4 of these rules and regulations. It shall be the responsibility of the committee to ensure that all employees of the mine have the opportunity to review and comment on the proposed comprehensive safety program, any proposed modifications or revisions thereto, and the annual report.

2. The operator may hold a meeting for all employees of the mine at which meeting the operator shall provide an in-depth review of each of the components of the comprehensive safety program for the mine. The purpose of such meeting is to provide each employee of the mine the opportunity to review and comment on the proposed comprehensive safety program, any modifications or revisions thereto, and the annual report. Such meeting shall be held prior to the submittal of the initial program, the submittal of any modifications or revisions to such program, and the submittal of the annual report. The operator shall notify the Commissioner and post notice on the mine bulletin board of the time and place of the meeting at

least ten (10) calendar days prior to the meeting. The Commissioner or his authorized representative has the right to attend such meeting.

11.2. If the operator selects a safety committee (11.1(1) to satisfy the requirements of this subsection 11.1, he shall provide a minimum of eight (8) hours annual instruction for each member of the safety committee at each mine, which instruction shall include materials and training relevant to the review and evaluation of the components of the comprehensive safety program. This instruction may be satisfied through other instruction and training programs the operator is required to provide, as approved by the Commissioner.

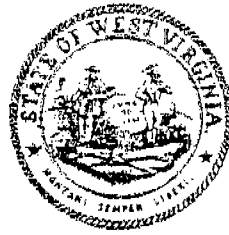
11.3. Notwithstanding which option the operator elects to satisfy the requirements of this section, each employee of the mine has the right to review the proposed comprehensive mine safety program, any modifications or revisions thereto, and the annual report, and to provide comments to the Commissioner.

11.4. A copy of the proposed comprehensive mine safety program, proposed modifications or revisions thereto, and the annual report, shall be posted on the mine bulletin board, as provided in Section 16(a), Article 1A, Chapter 22A of the Code, for at least fifteen (15) days prior to the date of submittal to the Commissioner.

11.5. A copy of the current approved comprehensive mine safety program shall be made available to any employee of the mine upon request and shall also be posted on the mine bulletin board as provided in Section 16(a), Article §A, Chapter 22A of the Code.

§38-8-12. Miscellaneous

12.1. The Commissioner may develop forms and guidelines to facilitate development, review, and approval of the comprehensive safety program submitted by each operator; provided, however, that such forms and guidelines cannot modify or expand the requirements of these rules and regulations.



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ADMINISTRATIVE LAW DIVISION

MONTHLY SUPPLEMENT SERVICE TO THE WEST VIRGINIA CODE OF STATE RULES

MONTH OF OCTOBER 2001

TITLE NO. 131 , VOL. NO. 10

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