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**SECRETARY OF STATE**  
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**ADMINISTRATIVE LAW DIVISION**

Form #8

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**NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE**

AGENCY: West Virginia Department of Energy TITLE NUMBER: 38

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 11, 1989

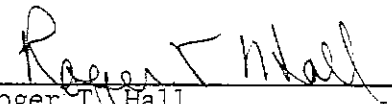
IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:  
Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:  
No

DATE OF FIRST EMERGENCY AMENDMENT: N/A

SERIES NUMBER OF RULE: 8 TITLE OF RULE Rules and Regulations  
Governing the Submission and Approval of a Comprehensive Mine Safety Program  
for Coal Mine Operations in the State of West Virginia.

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS  
EMERGENCY AMENDMENT BECOMES EFFECTIVE UPON FILING.

  
\_\_\_\_\_  
Roger T. Hall  
Director, Research, Special  
Projects, and Regulatory Affairs

Note: Filing of this emergency amendment is necessary to correct issues raised  
in the public hearing on these rules proposed as a legislative rule.

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
DEPARTMENT OF ENERGY  
TITLE 38 . SERIES 8

TITLE: RULES AND REGULATIONS GOVERNING THE SUBMISSION AND  
APPROVAL OF A COMPREHENSIVE MINE SAFETY PROGRAM FOR  
COAL MINING OPERATIONS IN THE STATE OF WEST VIRGINIA

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# I N D E X

TITLE: Rules and Regulation Governing the Submission and Approval of  
a Comprehensive Mine Safety Program for Coal Mining Operations  
in the State of West Virginia

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
DEPARTMENT OF ENERGY  
TITLE 38 SERIES 8

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TITLE: Rules and Regulations Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia

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Section 38.8.1 General

1.1 Authority - These rules and regulations are issued under authority of West Virginia Code Chapter 22A, Article 1A, Section 34.

1.2 Effective Date - These rules and regulations were promulgated on the \_\_\_\_\_ day of \_\_\_\_\_, 1989, and became effective on the \_\_\_\_\_ day of \_\_\_\_\_, 1989.

1.3 State Register - These rules and regulations were published in the State Register in the Office of the Secretary of State on the \_\_\_\_\_ day of \_\_\_\_\_, 1989.

Section 38.8.2 Preamble: Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia

2.1 Purpose. The primary goal of Chapter 22A, Article 1A, Section 34 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 Chapter 22A, Article 1A, Section 34 of the Code by requiring each coal operator or independent contractor to develop a comprehensive safety program for each active mine, and by detailing the requirements for such programs. In implementing such mandate, it is recognized that different types of safety programs may be developed for each mine, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, and the physical features of the particular mine.

Section 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 Chapter 22A, Article 1A, Section 1 of the Code.

(a) Active Mining Operation: The term "active mining operation" shall mean, when used herein, any active surface mining operation or active underground mining operation.

(1) 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.~~ employed.

(2) The term "active surface mining operation" shall mean a surface coal mine where ~~the operator's direct activity and the miners' direct work is for the recovery of coal from its natural deposit.~~ miners are employed.

(b) 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 Chapter 22A, Article 1A, Section 34 of the Code, which is developed and submitted by the coal operator or independent contractor, approved by the Director, and includes such level of the safety program components set forth in Section 38.8.7 (7.2) of these rules and regulations as the operator or independent contractor deems appropriate. Such program shall include and address the extraction, production, processing and preparation activities of the active mining operation conducted by the mine operator, or independent contractors.

(c) Code: The term "Code" shall mean the Code of West Virginia of 1931, as amended.

(d) Director: The term "Director" shall mean the Director of the Division of Health, Safety and Training of the West Virginia Department of Energy. ~~Department of Mines.~~

(e) Mine: The term "mine," when used herein, shall mean any "surface coal mine" or "underground coal mine" as defined herein.

(f) 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.

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

#### Section 38.8.4 Responsibility for Comprehensive Mine Safety Programs

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

Section 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 Director 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 Director within 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 within the six (6) month period or within the ninety (90) calendar day period, whichever is greater. All operators of new mines shall submit a comprehensive mine safety program, and have such program approved by the Director prior to commencement of work or operations by miners at the mine site.~~

5.3 <sup>2</sup> After the effective date of these regulations, all mines, which are temporarily inactive but which have an approved comprehensive safety program, shall resume operations under the comprehensive safety program for that mine in effect at the time such mine was temporarily closed. If the operator or independent contractor elects to retain the existing comprehensive safety program, the operator or independent contractor shall notify the Director within thirty (30) calendar days after resuming active mining operations prior to the resumption of work by miners at the mine. If the operator or independent contractor elects to modify the existing comprehensive safety program, the operator or independent contractor shall submit such modifications to the Director within 90 calendar days after resuming active mining operations.

Section 38.8.6 Mine Evaluation for Development of the Initial Comprehensive Mine Safety Program; Submittals to the Director

6.1 In developing the initial comprehensive safety program, the operator or independent contractor shall analyze the various program components, contained in Section 38.8.7 of these rules and regulations, in conjunction with the evaluation criteria provided in Section 8.2 of these rules and regulations, and shall take into consideration the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, or any other aspect of the particular mine deemed relevant by the operator or independent contractors. Based upon this analysis and evaluation of the type of safety program needed at a particular mine, the operator or independent contractor shall proceed to develop a comprehensive mine safety program composed of the appropriate components contained in Section 38.8.7 of these rules and regulations, and a plan and appropriate procedures for implementing each of the components of the program.

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

(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;~~

A statement indicating which process the operator or independent contractor has selected consistent with Section 11.1 of these rules and regulations, to ensure that all employees at the mine are aware of all components of the comprehensive mine safety program prior to the commencement of work at the mine.

(3) A list of safety instructors and their certifications, and/or qualifications, who will have the primary responsibility for planning and conducting safety training at the mine; and

~~(4) A statement that the proposed comprehensive mine 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, or independent contractor, including his title or position and mailing address or telephone number, who can be notified by the Director for all matters concerning the operator or independent contractor's comprehensive mine safety program.~~

6.3 Within ~~ninety (90)~~ thirty (30) calendar days after submission of the initial comprehensive safety program, the Director shall either approve the program as submitted, or shall reject and return the program to the operator or independent contractor for modification and resubmission, stating in detail the reasons for such rejection. If the program is rejected, the Director shall give the operator or independent contractor a reasonable length of time to modify and resubmit such program.

#### Section 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 or all of the components contained in Section 7.2 of these rules and regulations.~~

Depending upon the safety program needs of a particular mine or independent contractor, the comprehensive mine safety program may include any or all of the components contained in Section 7.2 of these rules and regulations. Comprehensive mine safety programs submitted by independent contractors shall address only the specific type of work to be performed by the contractor.

7.2 A comprehensive mine safety program may include:

- (1) The operator or independent contractor's safety policy for each mine;
- (2) The operator or independent contractor'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 or independent contractor's practices and procedures for promoting:
  - (a) Safe working practices for personnel,
  - (b) Safe working conditions in the mine environment, and
  - (c) Safe working practices for machinery, equipment, and systems.
- (5) The operator or independent contractor's emergency provisions and procedures at the mine;
- (6) The operator or independent contractor's procedures for accident investigation and reporting, which may include:
  - (a) Investigation;
  - (b) Filing;
  - (c) Analysis; and
  - (d) Follow-up
- (7) The operator or independent contractor's practices and procedures for comprehensive mine safety program promotion and enforcement; and
- (8) Such other components deemed necessary by the operator or independent contractor to effectuate the goals of Chapter 22A, Article 1A, Section 34 of the Code.

Section 38.8.8 Annual Review of the Comprehensive Mine Safety Program

8.1 Each operator or independent contractor shall conduct an annual review of the comprehensive mine safety program in effect at each mine.

The purpose of the review shall be to determine the 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.

(a) Each operator or independent contractor shall submit to the Director within thirty (30) days after the anniversary date of the program, a report which shall contain the findings of the annual review, a statement indicating whether as a result of such review, modifications to the existing program are necessary, and if applicable, proposed modifications to the existing program. When modifications to the existing program are submitted, the operator or independent contractor may request, and the Director may issue, temporary approval of requested modifications pending the Director's final review and approval.

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

(c) If rejected, the Director shall give the operator or independent contractor a reasonable period of time to modify and resubmit such report and proposed modifications. If within thirty (30) calendar days subsequent to receipt of the report or proposed modifications by the Director, no action has been taken by the Director, the proposed report and modifications shall be considered approved.

(d) The anniversary date of the program shall be the date the initial program was approved by the Director.

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

- (a) Accident rate;
- (b) Accident distribution;
- (c) A review of violations written under Chapter 22A, Article 1A, Section ~~34~~ 13 of the Code; and
- (d) Fatal accidents and serious injuries as defined by Title 36, Series 19, Section 3.2(2).

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

- (a) Mine conditions or changes in mine conditions;
- (b) Mining methods or equipment or changes in mining methods or equipment at the mine;
- (c) Number of working sections at a mine or changes in the number of working sections at the mine;
- (d) Personnel or management, or changes in personnel or management;

- (e) Instructors responsible for safety training or changes in instructors responsible for safety training; and
- (f) Findings from safety observations conducted by responsible mine officials.

#### Section 38.8.9 Modifications

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

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

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

9.4 The Director may require modifications to a comprehensive mine safety program at any time following the investigation of a fatal accident or serious injury, as defined by Title 36, Series 19, Section 3.2(2), if such modifications are warranted by the findings of the investigation.

#### Section 38.8.10 Review Procedure

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

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

10.3 Any operator or independent contractor adversely affected by a decision rendered by the Director pursuant to subsection 10.2 of these rules and regulations, may appeal such decision in accordance with Chapter 29A, Section(s) 5 and 6 of the Code.

Section 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 Director regarding the ~~initial-submittal-annual review~~ to the comprehensive mine safety program, any modifications or revisions to the program and the annual report. The operator or independent contractor shall satisfy this requirement by selecting one of the two methods set out in (a) or (b) below.

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

(b) The operator or independent contractor may hold a meeting of all employees of the mine at which meeting the operator or independent contractor shall provide an in-depth review of each of the components of the comprehensive safety program for the mine. The purpose of such meeting is to provide each employee of the mine, the opportunity to review and comment on the proposed comprehensive safety program, any modifications or revisions thereto, and the annual report. Such meeting shall be held prior to the submittal of the initial program, the submittal of any modifications or revisions to such program, and the submittal of the annual report. The operator or independent contractor shall notify the Director and post notice on the mine bulletin board of the time and place of the meeting at least ten (10) calendar days prior to the meeting. The Director or his authorized representative has the right to attend such meeting.

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

11.3 Notwithstanding which option the operator or independent contractor elects to satisfy the requirements of this section, each

employee of the mine has the right to review the proposed comprehensive mine safety program, any modifications or revisions thereto, and the annual report, and to provide comments to the Director.

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

11.5 A copy of the current approved comprehensive mine safety program shall be made available to any employee of the mine upon request, and shall also be posted on the mine bulletin board as provided in Chapter 22A, Article 1A, Section 16(a) of the Code.

11.6 Independent contractors, as defined by Title 36, Series 20, Section 3.1(b) of the West Virginia Administrative Regulations, shall have an approved Comprehensive Mine Safety Program before they are allowed to perform any work at the mine site.

#### Section 38.8.12 Miscellaneous

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