

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1993 NOV 16 PM 3:39

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Energy TITLE NUMBER: 38

CITE AUTHORITY West Virginia Code 22A-1A-34

AMENDMENT TO AN EXISTING RULE: YES NO

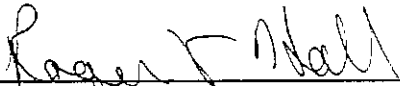
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing the
the Submission and Approval of a Comprehensive Mine Safety Program
for Coal Mining Operators in the State of West Virginia

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: NA

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



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

FILED

DATE: November 16, 1989

1989 NOV 16 PM 3:39

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FROM: West Virginia Department of Energy

LEGISLATIVE RULE 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.

1. Authorizing statute(s) citation _____

Code of West Virginia 22A-1A-34

2. a. Date filed in State Register with Notice of Hearing:

August 31, 1989

b. What other notice, including advertising, did you give of the hearing?

See attached listing

c. Date of hearing(s): October 2, 1989

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

November 16, 1989

f. Name and phone number of agency person to contact for additional information:

Roger T. Hall, Director, Research, Special Projects and

Regulatory Affairs - 348-3500

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

I N D E X

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

General	Section 38.8.1
Authority	1.1
Effective Date	1.2
State Register	1.3
Preamble: Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia	Section 38.8.2
Purpose	2.1
Definitions	Section 38.8.3
Responsibility for Comprehensive Mine Safety Program	Section 38.8.4
Submission of Initial Comprehensive Mine Safety Program	Section 38.8.5
Mine Evaluation for Development of the Initial Comprehensive Mine Safety Program; Submittals to Director	Section 38.8.6
Primary Safety Program Components	Section 38.8.7
Annual Review of the Comprehensive Mine Safety Program	Section 38.8.8
Modifications	Section 38.8.9
Review Procedure	Section 38.8.10
Right of Mine Employees to Review and Comment on the Comprehensive Mine Safety Program; Posting Require- ments	Section 38.8.11
Miscellaneous	Section 38.8.12

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

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 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 2 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.

PUBLIC NOTICE MAILING LIST

1. Clarksburg Publishing Company
Clarksburg Exponent and Telegram
324-326 Hewes Avenue
Clarksburg, West Virginia 26301
2. Inter-Mountain
Post Office Box 1339
Elkins, West Virginia 26241
3. Herald Dispatch
946 Fifth Avenue
Huntington, West Virginia 25720
4. Beckley Newspapers, Inc.
Raleigh Register and Beckley Post-Herald
Post Office Drawer P or R
Beckley, West Virginia 25801
5. The Dominion Post
Greer Building
Morgantown, West Virginia 26505
6. The Ogden Newspapers, Inc.
Wheeling News Register and Intelligencer
1500 Main Street
Wheeling, West Virginia 26003
7. The Charleston Gazette
Post Office Box 2993
Charleston, West Virginia 25330

PUBLIC HEARING RECORD

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

TITLE 38 SERIES 8

October 2, 1989

A public hearing was conducted on amendments to the above-captioned regulations on October 2, 1989 at the Department of Energy Region 6 Office, 322 70th Street, S.E., Charleston, West Virginia beginning at 9:00 a.m.

Conducting the public hearing for the Department of Energy was Roger T. Hall, Director of Research, Special Projects, and Regulatory Affairs and Tony Grbac, Safety and Training Coordinator. Two persons appeared to submit oral and written comments, i.e., Bill Raney, Vice President, West Virginia Mining and Reclamation Association, and Chris Hamilton, Vice-President, West Virginia Coal Association. At the request of both commentators, the Department of Energy granted an extension of the comment period for two additional days to allow for submittal of written comments in typewritten format. The written and oral comments received are described below in summary form with respective responses advanced by the Department of Energy. All written comments are attached and oral comments are available on cassette tape.

Comment

Both commentators sought to have the definition of "Active Mine" amended to conform with the statutory definition in Article 3 of Chapter 22A.

Response

These amendments apply to mines relative to Article 1, 1A, and 2 of Chapter 22A; therefore a definition from Article 3 is inappropriate.

Comment

Both commentators sought to have the term "independent contractor" inserted at paragraph (b) of Subsection 3.1 to make these regulations consistent with Series 30 regulations which addresses independent contractors.

Response

The term "independent contractor" has been inserted at 3.1 (b) as suggested and in other provisions where applicable throughout these regulations.

Comment

Both commentors objected to subsection 5.1, stating that it was in conflict with subsections 5.2 and 5.3. They sought to have subsection 5.1 stricken.

Response

The Department agrees with the commentors and notes that subsection 5.1 was carried over from existing regulations in error.

Comment

Both commentors sought to have subsection 5.2 and 5.3 amended to provide for a transition period during which violations of these provisions would not be cited.

Response

The Department finds that the suggested amendment would defeat the purpose of the regulation, e.g., to enforce the requirement that each mine operator and independent contractor work under an approved mine safety plan.

Comment

Both commentors sought to amend subsection 6.1 to provide that the independent contractor is required to develop a mine safety plan which addressed only the specific type of work performed.

Response

The Department agrees that the suggested amendment is appropriate; however, the amendment is more properly made in subsection 7.1.

Comment

Both commentors sought to amend paragraph 2 of subsection 6.2 to provide for a review of the plan by employees before beginning of mine development.

Response

The Department concurs that such amendment is appropriate.

Comment

Both commentors sought to strike the provision of paragraph 4 of subsection 6.2 which requires the posting of the plan prior to construction.

Response

The Department agrees that such posting cannot be accomplished before the mine is developed.

Comment

Both commentors point out an incorrect citation of the code in subsection 8.1.

Response

The Department concurs.

Comment

Both commentors objected to subsection 11.2 of the proposed amended regulations and sought to have it stricken. They took the position that the provision was overly burdensome because it required the mine operator to provide subcontractor with a copy of the Comprehensive Safety Plan for the mine. It was also stated that the amendment was confusing, an inappropriate intrusion into the management rights of production operators, and needlessly subjected the amended regulations to legal challenge. It was further stated that the amended regulations make a mockery of the Comprehensive Safety Program requirements. Examples given were that a reclamation contractor operating equipment on a surface mine had no reason to be familiar with the Comprehensive Safety Program for an underground mine in the same complex. Another example would be independent trucker who drove his truck to and from a mine would have no need to be familiar with the mines Comprehensive Safety Program since he was not involved in the operational aspects of the mine. Requiring a Comprehensive Mine Safety plan would be pointless and a burdensome obligation to the trucker.

Response

The Department is aware that the proposed amended regulation would place a burden of additional responsibility on the mine operator. However, it is the experience of the Department that mine injuries and fatalities occur more

frequently around mines where no Comprehensive Safety Program exists or workers are not familiar with such programs. Where human life is involved, it is the view of the Department that the burden imposed by the amendment is wholly justified. Also, the operator of a mine monitors and directs the work of independent contractors and should therefore in the interest of safety to employees at the mine and the independent contractors, insure a safety program must be in effect and all persons working at or around the mine should be familiar with it.

The Department rejects the commentor's position and will allow the amendment to stand as proposed.

Comment

The commentors object to the provision of subsection 11.6 on the basis that requiring the mine operator to provide an independent contract with the mine safety program is overly burdensome and places the responsibility of the independent contractor's action on the operator.

Response

While the Department recognizes that the mine operator exercises control over independent contractors only to a certain extent, the operator is ultimately responsible for the safe operation of the mine and the safety of the workers. The independent contractors, although not directly involved in operation of the mine, represents a potential safety hazard simply because of his presence in the working area of the mine. Therefore, the independent contractor should be familiar with the Comprehensive Mine Safety plan, or have developed one of his own. To the extent that the operator cannot require the independent contractor to obtain and adhere to the safety plan for the mine, the operator can at least assure himself that the independent contractor has developed a plan. Therefore, the Department has agreed to modify the amendment to reflect that the independent contractor has a mine safety plan and that the operator assures himself that such a plan exists.

COMMENTS BY WEST VIRGINIA COAL ASSOCIATION TO PROPOSED AMENDMENTS
TO TITLE 38, SERIES 8 REGULATIONS ADDRESSING COMPREHENSIVE MINE SAFETY
PROGRAM DATE

Our principle concern exists with Section 38.8.11, sub-section 11.6. The proposed regulatory arrangement between operators and independent contractors prescribed by this section establishes an unnecessary and unreasonable burden on production operators. As written, this section may place a mandatory requirement on mine operators to provide independent contractors with a copy of the comprehensive safety program approved for their mine. Contractors in turn may either adopt the operators program or develop their own. This section creates considerable confusion, represents an inappropriate intrusion into the management rights of production operators and would needlessly subject these regulations to a multitude of legal challenges. However, we wholeheartedly support extending maximum safety protection to all employees at or around mining operations and contend that this objective may be best accomplished administratively, without further amendment to the existing rules and regulations governing comprehensive mine safety programs. Specifically, independent contractors fall within the statutory definition of operator, and accordingly should be held independently responsible for compliance with all applicable state mining laws, including the design, submission and implementation of safety programs addressing their particular function and responsibilities at a mine site. Under state law, the term "operator" is defined as "any firm, corporation, partnership or individual operating any coal mine or part thereof".

In addition, Section 2.1 of the safety program regulations acknowledge that different types of safety programs may be developed for each mine.

This position is additionally consistent with and supported by the stated intent, purpose and enforcement policy of the Department of Energy contained in Section 2.1(B) and 7.2 within Title 36, Series 21, independent contractors regulations which provide as follows:

(b) These proposed regulations are intended to include "independent contractors" within the definition of "Operator" under Chapter twenty-two A (22A) of the Code and to establish a procedure to allow the director of the West Virginia Department of Energy to enforce the State mine law, and rules and regulations issued thereunder, against independent contractors.

7.2 It is the general enforcement policy of the Department of Energy that the independent contractor will be held responsible for violations committed by the independent contractor or its employees where the production operator has complied with Section four (4) of these regulations.

Consistent with these recommendations, proposed sub-section 11.6 should be deleted in its entirety

Without further revision Section 38.8.5(1) seemingly requires all operators to submit a comprehensive safety program to the Department of Energy for approval within 6 months of the effective date of July 11 regardless of the mine's anniversary date. This conflicts with numerous provisions within the regulations and is at extreme odds with the proposal summary and agencies letter of justification setting forth the reasons that the filing of these amendments constituted an emergency.

Submitted 10/2/87 9:30 AM

Ben Fawcett

UUMRA Vice-President 360 MEMBER COMPANIES
Member - Bd. of Miner TRNG, ED. & CERT.

Suggest changes to proposal:

(1) The language of the proposed rules - seem
SIMPLY TO SET UP A SYSTEM OF
PLACING BLAME SHOULD ACCIDENTS
OCCUR

(2) Make a "Mockery" of the program by
requiring occasional, independent
contractors to review or adopt a
program in effect for a mine
Reclamation contractor - to do seeding - has no
reason to know the mining company's escape
plan for underground operations

(3) By requiring independent contractors
not involved in mining but, nevertheless
necessary, is a tremendous burden on them
and sometimes seems ridiculous - the coal
truck driver, who owns his one & only truck?

-2-

With that in mind I suggest the following

1) To solve the problem of program submission -

→ Coordinate with the Inspection & Enforcement & Permitting Sections of the Division of Mines & Minerals

- Make comprehensive mine program development a permit (Article 3) checklist item.

- This will put you @ the "Front end" of the permitting & operational schedule - also, for "inactive" status.

- Most of the problems with operations not having programs is because they do not know they are required - they will not object to doing them but they are not aware of the need.

2) Section 38.8.3 - 3.1 (a) (1) & (2)

Utilize the statutory definitions of "active" mine for underground as well as surface operations - when appropriate

Consistency

3) 3.1 (b) ^{changed & read as suggested throughout.} - last line change the language to read:

"conducted by the ^{MINE} operator, or independent contractors."

→ Consistent w/ independent contractor concept of Series 30 reg. & MSHA.

3-
4) Section 5.1

Should be eliminated from emergency rules — or you will be unable to enforce these until after 6 months.

Do encourage you to permit a period of at least 30 days for the independent contractors, not now covered but included ^{in these} as well as operators who thought 90 days was provided — ~~to~~ in which to submit their program.

That should be ~~30~~ 30 days from the date of notice by the DOE.

5) Section 5.2 + 5.3

No change
any transition period
defects program says

Don't have any problem with revising the time limits for submission and notification — as long as proper attention is directed to the revisions prior to any enforcement action — there must be a "transition period" —

-4-
c) Section 6.1

see 7.1

Add the following language by making 6.1 a sub item (a) and adding a new sub item (b):

6.1 (b) — ^{if required by the director,} in developing the initial comprehensive safety program, an independent contractor need only address the specific type work to be performed on mining ~~activity~~ operations, and only the portions of these regs which are relevant to the contractor's activities shall apply.

7) Section 6.2 (2) — should be changed to reflect the immediate submission of the program by these changes no longer permits a review by employees prior to submitting it to the Department.

3 see 6.2 (2) — "A statement that the operator will review the approved program with all employees prior to their commencing work at the mine" —

8) 6.2 (4) should ^{be deleted.} be deleted in its entirety

No reason to require posting if there is no mine to post it at!

changed as noted. (7.1)

9) Section 7.1 — should include a reference ~~to~~ to independent contractors similar to my suggestion for section 6.1 (b)

IF programs are required by 7.1 (b) - the director

Create a new sub-item (b) to read as follows:
Comprehensive mine safety programs submitted by independent contractors, ~~shall~~ shall only address the specific type of work to be performed ~~by the contractor~~ on mining operations, and only the portions of these regulations which are relevant to the contractors activities shall apply.

10) Section 8.2 (c) should be ^{as noted,} changed to reflect section 13 of the Code, rather than 34.

11) Section 11.1 should be ^{as noted,} changed to include the "annual review", rather than the initial review since it will be submitted prior to operations beginning and menus being present.

- remove the requirement on page 8, for "such meeting shall be held prior to the submission of the initial program..."

12) Section 11.4 - delete "proposed"

There will not likely be a bulletin board
15 days prior to the submission of the initial
proposed program

13) Section 11.6 - ^{Change as noted} Delete all proposed language and
replace with the following.

11.6 - If required by the Director, ~~any~~ Independent
Contractors, as defined by Title 36, Series 30, ~~Section~~
of the WU Administrative regulations shall have
an approved comprehensive mine safety program,
relevant to their specific activity, prior to
performing any work at the mining operation.

Discretion must be provided to the Director, for instance
~~which~~ where programs make no sense.

Coordinate review > Contractor accident histories
Bel. of Miner & Training, Ed. & Cert.