

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

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2007 OCT -2 PM 2: 19

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Board of Coal Mine Health and Safety TITLE NUMBER: 36

CITE AUTHORITY: W.Va. Code 22A-6-4

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO _____


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing Unused and Abandoned Parts of Mine

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS November 1, 2007


Authorized Signature

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TITLE 36
LEGISLATIVE RULE
BOARD OF COAL MINE HEALTH AND SAFETY
SERIES 17
RULES AND REGULATIONS GOVERNING UNUSED AND
ABANDONED PARTS OF MINE

OFFICE OF THE CLERK
SECRETARY OF STATE

§36-17-1. General.

- 1.1. Scope. -- Rules and regulations governing unused and abandoned parts of mine
- 1.2. Authority. -- W. Va. Code §22-6-4 and §22A-2-5.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§36-17-2. Effect of Regulations.

2.1. These rules and regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of Article one A, Chapter twenty-two A, of the Code relative to enforcement are applicable to the enforcement of these rules and regulation.

§36-17-3. Definitions.

All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in Section one, Article one A, Chapter twenty-two A of the Code.

§36-17-4. Unused And Abandoned Parts Of Mine.

4.1.

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

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

sealed areas, temporary or permanent, are reopened, the director shall be notified.

(c) No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent are reopened, the Director of the Department of Energy shall be notified.

4.2.

(a) A professional engineer registered with the Board of Registration for Professional Engineers pursuant to Article Thirteen, Chapter Thirty of the West Virginia Code shall certify the design of all new seals as meeting the criteria of the final requirements of 30CFR75:335.

(1) For each basic seal design, the following criteria shall be considered:

- minimum requirements for the seal location, including strength, configuration and preparation;
- quality and strength requirements for each material involved in constructing the seal;
- details on the size and configuration of the seal and its structural elements; and
- quality control measures and minimum testing requirements to ensure that the seal meets the design requirements.

(b) Every seal design shall have the Professional Engineer's certificate and signature, in addition to his or her seal in the following form "I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations".

(c) Certifications required in this section along with design documents, construction or as-built reports and/or drawings shall be kept at the mine by the operator for the life of such mine or life of the seal shall be available for review by state inspection personnel as well as representatives of the miners.

(d) Each phase of new seal construction shall be observed and inspected by a mine foreman-fire boss to assure that such phase has been constructed pursuant to the approved design, but in no event shall a mine foreman-fire boss observe/inspect the seal construction less than once every two hours. Results of such inspections and observations shall be recorded in a book kept on the surface for that purpose.

(e) The operation shall, prior to construction of the final seal in a set notify the director, who shall cause an inspection to be made of the seals before the area is finally sealed.

4.3.

(a) Protocols for the inspection of the physical condition of seals and the atmospheric measurement (sampling) developed pursuant to the final requirements of 30CFR75:335.

(b) In all mines containing workings using seals constructed in accordance with the provisions of 30CFR75.335(a)(2) as published prior to May 22, 2007, which are constructed of cementaceous foam blocks the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals, constructing new seals, or other means.

(c) When seal enhancement is necessary according to 4.3(b) above of these rules such seals must have the capability to withstand a minimum of 50psi overpressure.

(d) If the director determines that any seal(s) described in subsection (b) is incapable of being remediated in a safe and effective manner, the director shall order that the mine foreman-fire boss, shall at least every twenty-four hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. In addition the operator shall maintain areas behind these seals inert pursuant to the final requirements of 30CFR75:335(b)(3)-(b)(7).

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 36-17 Rules and Regulations Governing Unused and Abandoned Parts of Mine

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Coal Mine Health and Safety

Address: 1615 Washington Street, East
Charleston, WV 25311

Phone Number: 304 957-2306 Email: jim_bennett@mines.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule will have no financial effect on this Board's budget.
 All evaluations and reviews will be accomplished through the Board members and staff.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: 36 CSR 17

Rule Title: 36-17 Rules and Regulations Governing Unused and Abandoned Parts of Mine

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: Oct 1, 2007

Signature of Agency Head or Authorized Representative

James P. Bennett

**UNITED MINE WORKERS OF AMERICA
COMMENTS ON
LEGISLATIVE RULE
TITLE 36, SERIES 17
RULES AND REGULATIONS GOVERNING
UNUSED AND ABANDONED PARTS OF MINE**



The United Mine Workers of America (UMWA or Union) is pleased to have the opportunity to offer these comments on the Board of Coal Mine Health and Safety Title 36, Series 17 Rules and Regulations Governing Unused and Abandoned Parts of Mine.

The Union has historically expressed concern with the standard practice of the industry for sealing abandoned or worked out areas of the mine. These concerns were heightened in 1992 when MSHA approved the use of alternate seals and seal materials. Unfortunately, the Union's protests went largely ignored by industry, MSHA and West Virginia Miners' Health Safety and Training until the tragedies of 2006. We recognize that West Virginia has addressed many of the concerns the Union has raised over the years. We also understand that a proactive approach two (2) years ago may have saved the lives of all the miners at Sago and Darby.


§4.2 states, in part, that a professional engineer registered with the Board of Registration for Professional Engineers shall certify the design of all new seals as meeting the criteria of the Final Requirements of 30 C.F.R. 75.335. We feel the Final Rule and Regulation should also require a professional engineer to conduct or have oversight of the seal installation and certify that the provisions in the approved seal design have been addressed. A copy of the certification shall be submitted to the Director.

§4.3(b) states that in all mines containing workings using seals constructed in accordance with the provisions of 30 C.F.R. 75.335(a)(2) as published prior to May 22, 2007 which are constructed of cementaceous form blocks, the operator shall, pursuant to the plan submitted to and approved by the Director, remediate the seals by either enhancing the seals, constructing new seals, or other means based on a complete risk assessment of the mine. The requirements of this section are being met to the extent that West Virginia Miners' Health Safety and Training is requiring routine inspections and oversight of the construction and repair of

seals by the mine operator. However, we believe that West Virginia Miners' Health Safety and Training must also include routine inspection and oversight of these tasks by an authorized representative of the Director. To do less could permit this section to become little more than paperwork compliance on the part of the mine operator.

The Director or his authorized representative must inspect all seals during their construction to ensure the operator is complying with the approved seal construction plan. The Director should develop an inspection protocol to assist in inspection. Remediating seals, enhancing seals, or constructing new seals must be done in order to protect miners' lives.

In closing, I would ask that the language (*a complete risk assessment of the mine*) should be taken out of the proposed Rule and Regulation. This language could be used to reduce the safety standard in §4.3(b).



Gary Trout
International Safety Representative
UNITED MINE WORKERS OF AMERICA



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

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To: All Persons Interested in Rules and Regulations Constructed by
The Board of Coal Mine Health and Safety

From: James P. Bennett, Health and Safety Administrator

Subject: Rules and Regulations Governing Unused and Abandoned Parts of Mine

Date: October 1, 2007

Action: Proposed Rule- Title 36, Series 17, Section 4

Authority: WV Code §22A-6-4

The Board of Coal Mine Health and Safety is created pursuant to WV Code §22A-6-1.

Background:

In April of 2007 Senate Bill 68 was signed by Governor Joe Manchin III authorizing the Board of Coal Mine Health and Safety to promulgate rules specifying protocols for appropriate methods of inspecting the physical conditions of seals, measuring the mine atmosphere in sealed workings, and inerting the mine atmosphere behind the seals, where appropriate. A 30 day comment period was recognized by the Board and received 1 written comment. The comment resulted in a change in the original language of the proposed rule, specifically Section 4.3(b). The Board passed the proposed rule as amended.

The comment received from the UMWA states that the language included in Section 4(b) [a complete risk assessment of the mine] might reduce the safety standard of the section. It is the UMWA's belief that the Director should develop an inspection protocol to assist in the inspection of the seal construction, remediation or enhancement to ensure that the operator is complying with the approved seal construction plan.