

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED

JAN 9 9 37 AM '95

OFFICE OF THE
SECRETARY OF STATE

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

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

CITE AUTHORITY: West Virginia Code 22-6-4

RULE TYPE: PROCEDURAL YES INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE YES

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

West Virginia Code 22-6-4

AMENDMENT TO AN EXISTING RULE: YES XX, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 20

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing
Independent Contractors

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

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS April 1, 1995

Ronald L. Harris

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 36-20 Rules and Regulations Governing Independent Contractors

Type of Rule: Legislative Interpretive XX Procedural

Agency Board of Coal Mine Health and Safety

Address 1615 Washington Street, E.
Charleston, WV 25311

1. Effect of Proposed Rule

N/A

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ N/A	\$	\$	\$	\$
PERSONAL SERVICES	N/A				
CURRENT EXPENSE	N/A				
REPAIRS & ALTERATIONS	N/A				
EQUIPMENT	N/A				
OTHER	N/A				

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

These rules were promulgated as a result of a multiple mine fatality. The objective of these rule changes is to prevent a re-occurrence of this type of fatal mine accident.

Rule Title: 36-20 Rules and Regulations Governing Independent Contractors

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: January 9, 1995

Signature of Agency Head or Authorized Representative

Ronald L. Harris

Summary

In March 1992 there was a methane gas explosion which fatally injured four workers at a northern West Virginia Mine. The explosion occurred while the workers were attempting to seal an air shaft at the mine. The company had employed contractors to come onto the mine property and perform the sealing of the air shaft. Of the four fatalities, one involved an employee of the company and the other three were employees of the contractor.

After reviewing the fatal accident the Board voted to promulgate these new rules and regulations with the intention of preventing a re-occurrence of this type of fatal mining accident.

36 CSR 20

TITLE 36
LEGISLATIVE RULES
BOARD OF COAL MINE HEALTH & SAFETY

SERIES 20
RULES AND REGULATIONS GOVERNING INDEPENDENT CONTRACTORS

§36-20-1. General.

1.1. Scope.--This Regulation Amends Title 36, Series 20, Section 1, by permitting and setting forth the requirements for Independent Contractors in the State of West Virginia.

1.2 Authority.--W. Va. Code §22-6-4.

1.3. Filing Date.-- January 9, 1995

1.4. Effective Date.-- April 1, 1995

§36-20-2. Effect of Regulations

2.1.

(a) 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 of law. All provisions of Article 1A, Chapter 22A of the Code relative to enforcement are applicable to the enforcement of these rules and regulations.

(b) These proposed regulations are intended to include "independent contractor" within the definition of "operator" under Chapter 22A of the Code, and to establish a procedure to allow the Director of the Office of Miners' Health, Safety and Training to enforce the State mine law, and rules and regulations issued thereunder, against independent contractors.

§36-20-3. Definitions.

3.1. All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in Section 1, Article 1A, Chapter 22A of the Code.

(a) The term "operator" shall mean any firm, corporation, partnership, or individual operating any coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine, and shall include any independent contractor at a coal mine.

(b) The term "Independent Contractor" shall mean any firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine, excluding mine vendors, office equipment suppliers, service or delivery personnel.

(c) The term "production operator" means any owner, lessee, or other person who operates, controls, or supervises a coal mine.

(d) The term "Director" shall mean the Director of the Office of Miners' Health, Safety and Training.

§36-20-4. Independent Contractor Register.

4.1.

(a) Ninety (90) days following the effective date, all independent contractors as defined in subsection 3.1(b) of these rules and regulations shall register with the ~~department~~ Office of Miners' Health, Safety and Training and receive a contractor identification number before performing services or construction work at coal mines in this state.

4.2.

(a) To register, all independent contractors shall provide the Office of Miners' Health, Safety and Training the following information on forms provided by the Office of Miners' Health, Safety and Training:

(1) The independent contractor's trade name, business address, and business telephone;

(2) A general description of the nature of the work to be performed by the independent contractor; and

(3) The independent contractor's address of record for service of citations, or other documents involving the independent contractor.

(b) If any of the above information changes, the independent contractor shall advise the Office of Miners' Health, Safety and Training of such change within 30 days.

(c) Upon receipt of the above information the Office of Miners' Health, Safety and Training shall issue a contractor identification number. Prompt issuance of the contractor identification number shall not be unreasonably withheld.

4.3.

(a) Prior to performing work at the mine, each independent contractor shall provide the production-operator the information contained in subsection 4.2(a), along with a valid contractor certificate of approval.

(b) Prior to performing construction work as defined by 36-23-3.8 at each mine, the independent contractor shall notify the regional office of the Office of Miners' Health, Safety and Training for the region in which such mine is located, and provide the following information:

(1) The name and address of the operator for whom the services or construction are being performed;

(2) The type of work the independent contractor will be performing;

(3) The location of the work site;

(4) The scheduled starting date the independent contractor will begin the work; and

(5) The approximate length of time to complete the project.

(c) In the event contractors are needed to perform emergency work, the Office of Miners' Health Safety and Training will be notified when practical, but notification will not exceed 24 hours.

4.4. Each production-operator shall maintain in writing at the mine the information required by subsections 4.3 and 8.1 for each independent contractor at the mine. The production-operator shall provide upon request, the above information to an authorized representative of the director and representative of miners or interested parties.

§36-20-5. Service of Documents; Independent Contractors.

5.1. Service of notices, orders and other documents upon independent contractors shall be completed upon delivery to the independent contractor at the work site and mailed to the independent contractor's address of record. A copy of all notices, orders, and other required documents shall be posted on a conspicuous bulletin board at the work site.

§36-20-6. Address of Record and Telephone Number; Independent Contractors.

6.1. The address and telephone number required under this part shall be the independent contractor's official address and telephone number for purposes of Chapter twenty-two A (22a) of the Code and these regulations. Service of documents upon independent contractors may be proved by a post office return receipt showing that the documents were delivered to the address of record because the independent contractor is no longer at that address and has established no forwarding address; because delivery was not accepted at that address; or because no such address exists. Independent contractors may request service by delivery to another appropriate address of record provided by the independent contractor.

§36-20-7. Enforcement of Citations and Orders.

7.1. These regulations shall not be construed to limit the basic compliance responsibilities of production-operators. Overall compliance responsibility of production-operators under Chapter 22A of the Code shall include assuring compliance with the Code provisions and regulations which apply to the work being performed by independent contractors at the mine.

7.2. It is the general enforcement policy of the Office of Miners' Health, Safety and Training that the independent contractor will be held responsible for violation committed by the independent contractor or its employees where the production-operator has complied with Section 4 of these regulations.

7.3.

(a) Enforcement action against production-operators for violations which involve independent contractors may be taken by the Office of Miners' Health, Safety and Training where the production-operator has contributed to the existence of a violation, or the production-operator's miners are exposed to the hazard, or the production-operator has control over the existence of the hazard.

(b) A production-operator may be properly cited for a violation of Chapter 22A of the regulations involving an independent contractor where:

1. The production operator has contributed by either an act or an omission to the occurrence of violation in the course of an independent contractor's work, or

2. The production-operator has contributed by either an act or omission to the continued existence of a violation committed by an independent contractor, or

3. The production-operator's miners are exposed to the hazard, or

4. The production-operator has control over the condition that needs abatement.

(c) In addition to the provisions of Section 7.3(b) of these regulations, the production-operator may also be required to assure continued compliance with the Code and regulations applicable to an independent contractor at the mine until the contractor is fully able to assume compliance responsibility.

7.4. Whenever a mine inspector finds a violation or imminent danger in an area where an independent contractor is operating, such inspector shall make a determination whether to issue the appropriate notice of violation or order to either the production-operator or the independent contractor, or both, based upon the criteria set out in Sections 7.2 and 7.3 of these regulations.

§36-20-8. Hazard Training.

8.1 Prior to the commencement of any job by an independent contractor, the production-operator shall provide the contractor with documentation of known hazard(s) in the contractor's work area on mine property. Upon receipt of such documentation from said operator, each independent contractor shall provide training of such hazards to all persons who will enter the contractor's work area.



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Ron Harris

AGENCY: Coal Mine Health & Safety

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 9, 1995

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 20 TITLE: 36 Coal Mine Health & Safety

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Ronald L. Harris

TITLE OF PERSON SIGNING: Administrator - Board of Coal Mine Health & Safety

DATE: 5-15-95

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.