

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Administrative; CITE AUTHORITY 22-6-4

AMENDMENT TO AN EXISTING RULE: YES X 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 PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 9, 1990 AT 4:30 P.M.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Department of Energy
Attn: Tina Lilly
1615 Washington Street, East
Charleston, West Virginia 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

RESCHEDULING
NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

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

RULE TYPE: Administrative; CITE AUTHORITY 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 PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: October 1, 1990 TIME: 10:00 AM

LOCATION OF PUBLIC HEARING: Air Pollution control Building

1558 Washington Street, East

Charleston, West Virginia 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH XX

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Bd. of Coal Mine H & S

Attn: Stephen A. Edens

1615 Washington Street

Charleston, WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Stephen A. Edens

BOARD OF COAL MINE HEALTH AND SAFETY
TITLE 36 SERIES 20

TITLE: RULES AND REGULATIONS GOVERNING INDEPENDENT
CONTRACTORS

BOARD OF COAL MINE HEALTH AND SAFETY

TITLE 36 SERIES 20

TITLE: Rules and Regulations Governing Independent Contractors

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Section 36.20.1 General

1.1 Scope. These rules and regulation shall govern independent contractor in the State of West Virginia.

1.2 Authority. These rules and regulations are promulgated under the authority of WV Code Chapter 22, Article 6, Section 4.

1.3 Filing Date. These rules and regulations are promulgated under the authority of WV Code Chapter 22, Article 6, Section 4.

1.4 Effective Date.

Section 36.30.2 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 West Virginia Department of Energy to enforce the State mine law, and rules and regulations issued thereunder, against independent contractors.

Section 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

Title 36, Series 20
section 3.1(b)

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.

Section 36.20.4 Independent Contractor Register

4.1 ~~(a) -- Each independent contractor shall provide the production operator, in writing, the following information:~~

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 of Energy 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 Department of Energy the following information on forms provided by the Department:

(1) The independent contractors trade name, business address, and business telephone;

~~(2) -- A description of the nature of the work to be performed by the independent contractor and where the mine work is to be performed; and~~

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

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

~~(b) -- Each production operator shall maintain in writing at the mine the information required by paragraph (a) of this section for each independent contractor at the mine. The production operator shall provide the above information to an authorized representative of the director upon the beginning of a regular inspection.~~

Title 36, Series 20
Section 4.2(b)

(b) If any of the above information changes, the independent contractor shall advise the Department of Energy of such change within 30 days.

(c) Upon receipt of the above information, the Department of Energy shall issue a contractors identification number. Prompt issuance of the contractor identification number shall not be unreasonably withheld.

4.3 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 his Department of Energy contractor identification number.

4.4 Each production - operator shall maintain in writing at the mine the information required by subsection 4.3 for each independent contractor at the mine. The production - operator shall provide the above information to an authorized representative of the director upon the beginning of any inspection.

Section 36.20.5 Service of Documents; Independent Contractors

Service of notices, orders and other documents upon independent contractors shall be completed upon delivery to the independent contractors 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.

Section 36.20.6 Address of Record and Telephone Number; Independent Contractors

The address and telephone number required under this part shall be the independent contractor's official address and telephone number for purposes of Chapter 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.

Title 36, Series 20
Section 7.1

Section 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 Department of energy 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 Department of Energy 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 need 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.

Title 36, Series 20
Section 7.4

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 Section 7.2 and 7.3 of these regulations.



STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
Board of Coal Mine Health & Safety
Charleston 25311

M E M O R A N D U M

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

From: Stephen A. Edens, Health and Safety Administrator *Stephen A. Edens*

Date: June 8, 1990

Subj: Rules and Regulations Governing Independent
Contractors

On Saturday, March 10, 1990, the West Virginia Legislature enacted legislation authorizing the Department of Energy to promulgate the recent revisions to Title 38, Series 8 Administrative regulations governing Comprehensive Mine Safety Programs. A copy of said regulations accompanied a January 31, 1990 explanatory memorandum from this office.

The principal change focused on Independent Contractors requiring them to have an approved comprehensive mine safety program if they are engaging in production, extraction, preparation or processing activities at coal mines.

In order to administer these requirements in a uniform and consistent manner, the Board of Coal Mine Health and Safety has filed emergency amendments (enclosed) to Title 36, Series 20 Administrative Regulations Governing Independent Contractors. The amendments are intended to establish a system to register independent contractors with the DOE by requiring an application (enclosed) to be completed by all contractors and a contractor identification number issued by the DOE. Ninety (90) days following the effective date, this emergency amendment requires all independent contractors to register with the DOE. On that date, all independent contractors must have a contractor identification number issued by the DOE before they commence any work at mine sites. As part of this procedure, the DOE will advise the contractor of his obligation to comply with all applicable state mining laws and regulations, including compliance with comprehensive mine safety programs if applicable, based on their particular type of work. Please note that the deadline for submitting comprehensive mine

safety programs by affected independent contractors has been extended to July 1, 1990, in order to correspond with the emergency amendments to Administrative Regulation Title 36, Series 20.

This emergency amendment is further intended to make independent contractors independently and solely responsible for compliance with all applicable mining laws and effectively removes the obligation placed on mine operators, by virtue of the aforementioned January 31 memo, to ensure that independent contractors have approved safety programs. Accordingly, paragraphs five and six of the January 31 memorandum are rescinded and superceded by this action. However, mine operators will be required to maintain at the mine site, pertinent information on all contractors working at the mine, including their contractor identification number. This memorandum does not precondition or relieve production - operators of their overall compliance responsibility as provided for in Administrative Regulation Title 36, Series 20.

A comment period and public hearing on the enclosed amendments to Title 36, Series 20 governing independent contractors will soon be scheduled to receive relevant comments and information. In the meantime if you have any questions, or need additional information, please contact Stephen A. Edens at 348-3500.

INDEPENDENT CONTRACTORS

Findings of Fact

1. The Coal Mine Safety and Technical Review Committee (Committee) is created pursuant to WV Code &22-6-4(c).

2. The purposes of the Committee are to:

(a) Assist the Board of Coal Mine Health and Safety (Board) in the development of technical data relating to mine safety issues, including related mining technology;

(b) Provide suggestions and technical data to the Board and propose rules and regulations with general mining industry application;

(c) Accept and consider petitions submitted by individual mine operators or miners seeking site specific rulemaking pertaining to individual mines and make recommendations to the Board concerning such rulemaking; and

(d) Provide a forum for the resolution of technical issues encountered by the Board.

WV Code &22-6-4c (1)(a)-(d).

3. The Committee may review any matter relative to mine safety and mining technology, and may pursue development and resolution of issues related thereto. The Committee may make recommendations to the Board for the promulgation of rules and regulations with general mining industry application. WV Code &22-6-4c (5).

4. Any Committee adopted rule or regulation "shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and regulations." WV Code &22-6-4c (5).

5. The Board of Coal Mine Health and Safety (Board) is created pursuant to WV Code &22-6-1 et seq.

6. The Board is empowered to:

(a) Review rules and regulations governing the coal mining industry in West Virginia and to revise the same or develop and promulgate new rules and regulations dealing with Coal Mine Health and Safety;

(b) Develop, promulgate and revise rules and regulations necessary to effectuate the purposes of WV Code &22A-2-1 et seq.

WV Code &22-6-4(b) (c).

7. The rules and regulations developed, promulgated or revised by the Board may expand protections afforded by WV Code &22A-1-1 et seq. notwithstanding specific language therein, and such rules and regulations may deal with subject areas not covered by &22A-1-1 et seq. to the end of affording the maximum possible protection to the health and safety of miners. WV Code &22-6-4(c)(1).

8. Any rule or regulation promulgated by the Board shall not reduce or compromise the level of safety of protection afforded miners below the level of safety or protection afforded by &22A-1-1 et seq. WV Code &22-6-4(c)(2).

9. The Board shall consider all regulations proposed by the Committee and adopt or reject, without modification, except as approved by the Committee, such rules and regulations. WV Code &22-6-4c (7).

10. The rules or regulations promulgated by the Board pursuant to the Committee's recommendations shall supersede the provisions of applicable statutes or regulations, notwithstanding the provisions of such applicable statutes and regulations. WV Code &22-6-4c (5).

11. West Virginia Administrative Regulations Title 38, Series 8 relating to rules and regulations governing the submission and approval of a comprehensive mine safety program were amended on December 1, 1989, pursuant to authority granted under WV Code &22A-1A-3-4. These amendments referenced independent contractors to insure that independent contractors, as well as operators, will submit comprehensive mine safety programs for approval consistent with statutory and regulatory requirements.

12. Currently, independent contractors are not required to register with the Department of Energy and therefore are difficult to identify. The difficulty in identification results in difficulty in enforcing requirements of state mine safety laws and regulations required to be complied with by independent contractors including the submission of a comprehensive mine safety program.

13. The registration and identification of independent contractors with the Department of energy will assist in enforcement and communication efforts between the Department of Energy and independent contractors.

14. By clearly identifying independent contractors, the Department of Energy will be in a better position to advise the independent contractor of his obligation to comply with all applicable state mining laws and regulations including compliance with comprehensive mine safety program submission.

15. Identification of independent contractors will aid enforcement and compliance by providing a mechanism whereby independent contractors can be held independently and solely responsible for compliance with all applicable mine safety laws and regulations. Enforcement enhances accountability and is consistent with the goal of safety legislation to make the safety of miners the first priority and concern in the coal mining industry. WV Code &22-6-1(a)(1).

16. Identification of independent contractors will assist the Department of Energy in assigning or charging accident, injuries, violations, or other reportable incidents to the responsible independent contractors.

17. Pursuant to its statutory authority, the Committee proposes the attached regulatory amendments for consideration by the Board.

18. The Committee has reviewed the issues regarding the benefits of maintaining an independent contractor register by the Department of Energy and issuing independent contractor identification numbers.

19. The Committee unanimously recommends that the attached regulations be approved by the Board of Coal Mine Health and Safety for all the reasons set forth previously and because the regulation will enhance safety by facilitating enforcement, communication, and emphasizing accountability of independent contractors for compliance with safety laws and regulations.

Conclusions of Law

1. The proposed amendment to the Administrative Regulation Title 36, Series 20 will not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by the current regulatory provisions.

2. The proposed regulatory amendments enhance safety by identifying independent contractors subject to Mine Safety Act jurisdiction to the Department of Energy and by facilitating enforcement, communication, and enhancing accountability of independent contractors for compliance with safety laws and regulations.

3. The proposed regulation Title 36, Series 20 expands the protections afforded miners under current Title 36, Series 20 and supersedes the current regulation.

4. Notice of the proposed regulatory amendments shall be issued by the Commissioner of the Department of Energy in accordance with WV Code &22-6-4(c)(4)-(7).