

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

FILED
1991 MAY -2 PM 2:58
OFFICE OF 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: 22-6-4

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE XX
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

22-6-4c

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 In The State of West Virginia

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 May 2, 1991

Stephen A. Edwards

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY
TITLE 36 SERIES 20

TITLE: RULES AND REGULATIONS GOVERNING INDEPENDENT
CONTRACTORS IN THE STATE OF WEST VIRGINIA

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY

TITLE 36 SERIES 20

TITLE: Rules and Regulations Governing Independent
Contractors

General	Section 36.20.1
Scope	1.1
Authority	1.2
Effective Date	1.3
Effect of Regulations	Section 36.20.2
Definitions	Section 36.20.3
Independent Contractor Register	Section 36.20.4
Service of Documents	Section 36.20.5
Address and Telephone Number	Section 36.20.6
Enforcement of Citations	Section 36.20.7

BOARD OF COAL MINE HEALTH AND SAFETY
ADMINISTRATIVE REGULATIONS
TITLE 36 SERIES 20

TITLE: Rules and Regulations Governing Independent Contractors

Section 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: WV Code 22-6-4

1.3 Effective Date: These rules and regulations were amended and filed with the Office of the Secretary Of State this 2nd day of May, 1991 and become effective on the ~~14th day of June, 1991~~ ^{May 2, 1991}. These rules and regulations were originally filed on the 12th day of March, 1982 and became effective on the 23th of April, 1982.

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 Health Safety and Training Section within the West Virginia Department Division of Energy 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 Health Safety and Training Section within the Division of Energy.

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

(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 Department Division of Energy of such change within 30 days.

(c) Upon receipt of the above information, the Department Division of Energy shall issue a contractor 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 Division 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.

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 Department Division 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 Division 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 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 Section 7.2 and 7.3 of these regulations.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: Dana Martin

AGENCY: Coal Mine Health & Safety

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: January 13, 1992

THE ATTACHED RULE RECENTLY 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: Rules & Regs Governing Independent Contractors

* 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: _____

TITLE OF PERSON SIGNING: _____

DATE: _____