

**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. -- Rules and regulations governing independent contractors

1.2. Authority. -- W.Va. Code §22-6-4

1.3. Filing Date. -- February 19, 1982

1.4. Effective Date. -- March 24, 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 one A (1A), Chapter twenty-two A (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 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.

**§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 one (1), Article one A (1A), Chapter twenty-two A (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.

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

**§36-20-4. Independent Contractor Register**

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

(1) The independent contractor's 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 at the mine the work is to be performed; and

(3) 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.

**§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 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.**

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 or that the documents could not be 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 twenty-two A (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 violations committed by the independent contractor or its employees where the production operator has complied with Section four (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 twenty-two (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 a 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.