

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 42

TITLE OF RULE BEING PROPOSED: Rules and Regulations Requiring
The Temporary Decertification Of Those Persons Working Or
Going Inby Roof Support.

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 September 6, 1990 AT 4:30 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

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

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

Stephen A. Edens

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRIGNIA ADMINISTRATIVE REGULATIONS
BOARD OF COAL MINE HEALTH AND SAFETY

TITLE 36 SERIES 42

TITLE: RULES AND REGULATIONS REQUIRING THE TEMPORARY
DECERTIFICATION OF THOSE PERSONS WORKING OR GOING
INBY ROOF SUPPORT

TITLE 36
LEGISLATIVE RULES
BOARD OF COAL MINE HEALTH AND SAFETY
SERIES 42

TITLE: RULES AND REGULATION REQUIRING TEMPORARY DECERTIFICATION OR PERSONS GOING INTO UNSUPPORTED AREAS OF COAL MINES AND/OR ORDERING OR KNOWINGLY PERMITTING SUCH UNSAFE ACTS.

36.42.1 General:

1.1 Scope: Rules And Regulations Governing Temporary Decertification Of Persons Going Into Unsupported Areas Of Coal Mines And/Or Ordering Or Knowingly Permitting Such Unsafe Acts. These Rules And Regulations Apply To All Mining Operations In The State Of West Virginia.

1.2 Authority: WV Code 22-6-4

1.3 Filing Date These Rules And Regulation Were Filed With The Secretary Of State This _____ Day of _____ 1990.

1.4 Effective Date

36.30.2 Effect Of Regulations:

2.1 These rules and regulations shall have the same effect of law and violations shall be deemed a violation of the law and so cited with the same effect as law. All provisions of Chapter 22A, Article 2, of the Code relative to enforcement are applicable to the enforcement of the rules and regulations.

36.40.3 Definitions:

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

36.40.4 Special Roof Control Requirements; Penalties; Procedures for Suspending Mining Certificates.

4.1 The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

4.2 The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof plan and absence of such support will not pose a hazard to the miners.

4.3 No person shall proceed beyond the last permanent support, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

4.4 Any action taken against a miner due in whole or in part to his refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to West Virginia Code Section 22A-1A-29. Upon a finding of discrimination to the appeals board pursuant to West Virginia Code Section 22A-1A-29(b), the miner shall be awarded by the appeals board all reliefs achievable pursuant to West Virginia Code Section 22A-1A-29(b)&(c).

4.5 Where the State Board of Appeals has issued a finding of probable cause in accordance with West Virginia Code 22A-1A-29(b) against any certified person who has been cited for violating subsection 4.3 of these rules and regulations, that person's miner or mine foreman's certification shall be temporarily suspended pending a full evidentiary hearing before the State Board of Appeals. All citations issued for violations of all sections of these rules and regulations shall be promptly forwarded by the Commissioner of the Department of Energy to the State Board of Appeals for immediate action in accordance with West Virginia Code 22A-1A-29(b).

4.6 Any person that is found by the State Board of Appeals to bring false charges against another individual for a violation of subsection 4.1, 4.2, 4.3, or 4.4, of these rules and regulations shall be subjected to the penalties as outlined in WV Code 22A-1A-19(d).

4.7 All proceedings pursuant to these rules and regulations shall be conducted in accordance with Department of Energy Administrative Regulations Title 37, Series 1 and 2.

4.8 The WV Department of Energy and Coal Operations within the State shall jointly undertake an educational program during the implementation of these rules and regulations to advise the states workforce of the contents of such rules and regulations consistent with WV Administrative Regulations Title 36, Series 13.

PRESENTED TO THE BOARD OF COAL MINE HEALTH & SAFETY ON MAY 24, 1990 FROM THE MINE SAFETY & TECHNICAL REVIEW COMMITTEE UNDER THE AUTHORITY OF WV CODE 22A-6-4(C) IN SUPPORT OF PROPOSED RULES REQUIRING TEMPORARY DECERTIFICATION OF THOSE PERSONS GOING INBY OR WORKING UNDER AN UNSUPPORTED ROOF

The West Virginia Mine Safety & Technical Review Committee has recently concluded a study and long term trend analysis of roof fall fatalities in West Virginia underground coal mines. The analysis expanded a ten year period from 1980 through 1989. During this decade a total of fifty four (54) fatal accidents resulting from fall of the roof face and ribs were reported to the State Department of Energy and its predecessors agency the Department of Mines. While these regrettable mine accidents occurred in various locations and stages of the mining cycle-involving a wide range of miner occupations--one startling finding stands also and precipitates a cause for action. A total of twenty-three (23) of the fifty-four reviewed involved the victim being under unsupported mine roof or going inby adequately supported roof. Equally alarming is the fact that this type of mine fatality represents 42% of the 54 roof fall fatalities and 19% of all mine related fatal accidents over the past 10 years in West Virginia mines. Of the 7 underground accidents occurring thus far this year, two (2) roof fall fatalities occurred to victims being exposed to unsupported roof areas on mines. This is unacceptable and serves as the basis for the regulatory proposal advanced by the Mine Safety & Technical review Committee which sets forth into West Virginia law the most severe sanctions possible for violators of Sections 22A-2-25 & 26 of the State Mine Act.

In most instances it is believed that these unsafe acts, whether they result from economic or productivity pressures, negligence, or just plain taking of short cuts, represents a willful and blatant disregard for all applicable state and federal laws, rules, and regulations, established policy, good mining practices and good common sense. This tragic and needless loss of life must stop!!

It is clear that ample regulatory safeguards designed to prevent such unsafe acts are in place and it is equally clear that industry mine training and safety program more than adequately address safe procedures surrounding unsupported roof areas of the mines.

The Mine Safety & Technical Review Committee is of the belief that the continuance of proceeding inby or working under unsupported roof is not reflective of a knowledge of training problem-but more so that of individual negligence or accountability. It is the intent of the Mine Safety & Technical Review Committee and general purpose of these rules and regulations to remove from the work-place and perhaps the mining industry those individuals that unnecessarily place themselves or others at such extreme risk to exposure of unsupported roof.

ROOF FALL FATALS
1980-1989

A TOTAL OF 54 ROOF FALL FATALITIES WERE REPORTED TO THE WEST VIRGINIA DEPARTMENT OF ENERGY BETWEEN 1980 AND 1989. ACCORDING TO THE INVESTIGATIVE REPORTS PERTAINING TO THOSE FATALS, A TOTAL OF 23 (43%) OF THE VICTIMS WERE WORKING INBY SUPPORTED ROOF AT THE TIME OF THE ACCIDENT.

<u>YEAR</u>	<u>NUMBER OF FATALS</u>	<u>PERCENTAGE</u>
1980	08	15%
1981	06	11.1%
1982	12	22.2%
1983	04	7.4%
1984	02	3.7%
1985	07	13%
1986	06	11.1%
1987	03	5.5%
1988	03	5.5%
1989	<u>03</u>	<u>5.5%</u>
TOTAL	54	100%

MINER OPERATOR/HELPER.....	16	29.6%
ROOF BOLT OPER/HELPER.....	17	31.4%
JACKSETTER/LABORER.....	07	13%
SHUTTLE CAR OPER.....	01	2%
SCOOP OPERATOR.....	03	5.5%
SUPERVISORY PERS.....	07	13%
MAINT./ELECTRICIAN.....	<u>03</u>	<u>5.5%</u>
TOTAL	54	100%

TEMPORARY DECERTIFICATION REQUIREMENTS (36.42.1)

Findings of Fact

1. The Coal Mine Safety & Technical Review Committee (Committee) is created pursuant to W. Va. Code 22-6-4c.
2. The purpose 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 miner 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.

W. Va. 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. W. Va. 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." W. Va. Code 22-6-4c (5).
5. The proposed regulation was adopted by the Committee on May 23, 1990.
6. The Board of Coal Mine Health and Safety (Board) is created pursuant to W. Va. Code 220601 et seq.
7. The Board is empowered to:
 - (a) Review rules and regulation governing the coal mining industry in West Virginia and to revise the same or develop and promulgated 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 W. Va. Code 22A-2-1 et seq.

W. Va. Code 22-6-4 (b) (c)

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

9. Any rule or regulation promulgated by the Board shall not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by W. Va. Code 22-6-4c (7).

10. 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. W. Va. Code 22-6-4c (7).

11. 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. W. Va. Code 22-6-4c (5).

12. Acting within its statutory authority, the committee has proposed the following regulations for consideration by the Board of Coal Mine Health and Safety on May 24, 1990 and were adopted as proposed rules by the Board on June 28, 1990.

36.42.4 Special Roof Control Requirements; Penalties; Procedures for Suspending Mining Certificates.

4.1 The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

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4.3 No person shall proceed beyond the last permanent support, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

4.4 Any action taken against a miner due in whole or in part to his refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to W. Va. Code Section 22A-1A-29. Upon a finding of discrimination to the appeals board pursuant to W. Va. Code Section 22A-1A-29(b), the miner shall be awarded by the appeals board all reliefs achievable pursuant to W. Va. Code Section 22A-1A-29(b) & (c).

4.5 Where the State Board of Appeals has issued a finding of probable cause in accordance with W. Va. Code 22A-1A-29(b) against any certified person who has been cited for violation subsection 4.3 of these rules and regulations, that person's miners or mine foreman's certification shall be temporarily suspended pending a full evidentiary hearing before the State Board of Appeals. All citations issued for violations of sections 3.1, 3.2, and 3.3 of the rules and regulations shall be promptly forwarded by the Commissioner of the Department of Energy to the State Board of Appeals for immediate action in accordance with W. Va. Code 22A-1A-29(b).

4.6 Any person that is found by the State Board of Appeals to bring false charges against another individual for a violations of subsection 3.1, 3.2, or 3.3 of these rules and regulations shall be subjected to the penalties as outlined in W. Va. Code 22A-1A-19(d).

4.7 All proceedings pursuant to these rules and regulations shall be conducted in accordance with Department of Energy Administrative Regulations Title 37, Series 1 and 2.

4.8 The West Virginia Department of Energy and Coal Operations within the State shall jointly undertake and educational program during the implementation of these rules and regulations to advise the states workforce of the contents of such rules and regulations consistent with WV Administrative Regulation Title 36, Series 13.

Conclusions of Law

1. The proposed regulation Title 36, Series 42 will not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by W. Va. Code.

2. The proposed regulation Title 36, Series 42 enhances safety by expanding the protection of working or traveling inby permanent roof support.

2. The proposed regulation Title 36, Series 42 enhances safety by expanding the protection of working or traveling inby permanent roof support.

3. Proposed regulation Title 36, Series 42 was adopted by the Committee on May 23, 1990 and proposed to the Board on May 24, 1990.

4. The regulations were adopted as proposed regulation by the Board on June 28, 1990.

5. Notice of proposed regulation Title 36, Series 42 shall be issued by the Commissioner of the Department of Energy in accordance with W. Va. Code 22-6-4(c) (4)-(7).



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

1615 Washington Street E. • Charleston, WV 25311 • (304) 348-3500

M E M O R A N D U M

To: All Persons Interested In Rules And Regulations
Constructed By The Board Of Coal Mine Health And
Safety.

From: Stephen A. Edens, Health and Safety Administrator

Subj. Proposed Rules And Regulations For All West
Virginia Coal Mines

Date: July 23, 1990

ACTION : Notice Of Public Hearing Scheduled To Be Held On
Thursday September 6, 1990 For The Following Proposed Rules
And Regulations.

AUTHORITY:

The Attached Regulations Are Submitted In
Accordance With Chapter 22, Article 6, Section 4 Of The
West Virginia Code.

1. Proposed Rules And Regulations Requiring The
Temporary Decertification Of Those Persons
Working Or Going Inby Roof Support. (Title 36,
Series 42, Section 1).
2. Proposed Rules And Regulations Governing The Use
Of Sheath Explosive Units For The Construction Of
Shaft And/Or Slope Mines. (Title 36, Series 1,
Section 12.6).
3. Proposed Rules And Regulations Governing The Use
Of Sheath Explosive Units In All West Virginia
Underground Coal Mines. (Title 36, Series 40,
Section 1).
4. Proposed Rules And Regulations Governing The
Ventilation Of Mines In General. (Title 36,
Series 41, Section 1).
5. Proposed Rules And Regulations Governing Remote
Controlled Or Deep-Cut Mining Operations. (Title
36, Series 43, Section 1).

PUBLIC HEARING DATE:

A public hearing will be held beginning at 10:00 a.m. on Thursday September 6, 1990 in the Air Pollution Control Commission's Conference Room, located at 1558 Washington Street East, in Charleston West Virginia, to accept comments on the proposed regulations only. Persons wishing to make comments are asked to provide a written copy of such comments to the Administrator at the conclusion of the hearing.

If you have any questions, or need additional information, please contact Stephen A. Edens, Administrator, Board Of Coal Mine Health And Safety at 348-3500.