



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

10/13/2020 9:28:16 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Coal Mine Health And Safety

TITLE-SERIES: 36-20

RULE TYPE: Legislative Exempt      Amendment to Existing Rule: Yes      Repeal of existing rule: No

RULE NAME: Rule Governing Independent Contractors

CITE STATUTORY AUTHORITY: §§22A-6-4 and 22A-6-5.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/16/2020 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Mallory Yates Hicks

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Charleston, WV 25311

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Rule governing independent contractors.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Pursuant to the regulatory review and reform initiatives established in W. Va. Code § 29A-3-20 (2016) and Executive Order No. 3-18, this proposed legislative-exempt rule modifies and updates 36 C.S.R. 20 to cross-reference the correct authorizing portions of the West Virginia Code and corrects typographical errors including errors in paragraph numbering.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This proposed legislative-exempt rule is not anticipated to impact the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This proposed legislative-exempt rule is not anticipated to impact special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

This proposed legislative-exempt rule is not anticipated to economically impact the State or its residents.

D. FISCAL NOTE DETAIL:

| Effect of Proposal             | Fiscal Year                            |                                        |                                              |
|--------------------------------|----------------------------------------|----------------------------------------|----------------------------------------------|
|                                | 2020<br>Increase/Decrease<br>(use "-") | 2021<br>Increase/Decrease<br>(use "-") | Fiscal Year (Upon<br>Full<br>Implementation) |
| 1. Estimated Total Cost        | 0.00                                   | 0.00                                   | 0.00                                         |
| Personal Services              | 0.00                                   | 0.00                                   | 0.00                                         |
| Current Expenses               | 0.00                                   | 0.00                                   | 0.00                                         |
| Repairs and Alterations        | 0.00                                   | 0.00                                   | 0.00                                         |
| Assets                         | 0.00                                   | 0.00                                   | 0.00                                         |
| Other                          | 0.00                                   | 0.00                                   | 0.00                                         |
| 2. Estimated Total<br>Revenues | 0.00                                   | 0.00                                   | 0.00                                         |

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Wesley H White -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 36  
LEGISLATIVE EXEMPT RULE  
BOARD OF COAL MINE HEALTH AND 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~~ rule sets forth the requirements for Independent Contractors in the State of West Virginia.

1.2. Authority. -- W. Va. Code ~~§22-6-4~~ §§22A-6-4 and 22A-6-5.

1.3. Filing Date. -- ~~January 9, 1995~~ \_\_\_\_\_.

1.4. Effective Date. -- ~~July 1, 1995~~ \_\_\_\_\_.

**§36-20-2. Effect of Regulations.**

2.1. ~~(a) These rules and regulations~~ This rule 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~~ W. Va. Code §22A-1-1 et seq. relative to enforcement are applicable to the enforcement of ~~these rules and regulations~~ this rule.

2.2. ~~(b) These proposed regulations are intended to include~~ This Series includes "independent contractor" within the definition of "operator" under ~~Chapter 22A of the Code~~ W. Va. Code §22A-1-2(a)(8), and ~~to establishes~~ 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~~ this rule, not defined herein, shall have the meanings set forth in ~~Section 1, Article 1A, Chapter 22A of the Code~~ W. Va. Code 22A-1-2.

3.2. ~~(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.

3.3. ~~(b)~~ The term "~~Independent Contractor~~ 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.

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

3.5. ~~(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.~~

~~4.1. (a)~~ Ninety (90) days following the effective date, all independent contractors as defined in ~~subsection 3.1(b)~~ Subsection 3.3. of these rules and regulations this Series shall register with the 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.~~

~~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:

~~4.2.1. (1)~~ The independent contractor's trade name, business address, and business telephone;

~~4.2.2. (2)~~ A general description of the nature of the work to be performed by the independent contractor; and

~~4.2.3. (3)~~ The independent contractor's address of record for service of citations; or other documents involving the independent contractor.

~~4.3. (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 thirty (30) days.

~~4.4. (c)~~ Upon receipt of the above information the Office of Miners' Health, Safety and Training shall issue a contractor ~~identification number~~ certificate of approval. Prompt issuance of the contractor ~~identification number~~ certificate of approval shall not be unreasonably withheld.

### ~~4.3.~~

~~4.5. (a)~~ Prior to performing work at the mine, each independent contractor shall provide the production-operator the information contained in ~~subsection 4.2(a)~~ Section 4.2., along with a valid contractor certificate of approval.

~~4.6. (b)~~ Prior to performing construction work as defined by ~~36-23-3.8~~ 36 CSR 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:

~~4.6.1. (1)~~ The name and address of the operator for whom the services or construction are being performed;

~~4.6.2. (2)~~ The type of work the independent contractor will be performing;

~~4.6.3. (3)~~ The location of the work site;

~~4.6.4. (4)~~ The scheduled starting date the independent contractor will begin the work; and

~~4.6.5. (5)~~ The approximate length of time to complete the project.

~~4.7. (c)~~ In the event contractors are needed to perform emergency work, the Office of Miners' Health Safety and Training will be notified by the operator when practical, but notification ~~will not exceed~~ shall be made within twenty-four (24) hours.

~~4.8. 4.4.~~ Each production-operator shall maintain in writing at the mine the information required by ~~subsections~~ Sections 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~~ 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 or by mailing~~ to the independent contractor's address of record. Service of documents on independent contractors by mail shall be considered legally sufficient if the documents are sent by certified mail to the last known address of record on file with the Office of Miners' Health, Safety and Training.

5.2. 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.~~

#### **~~§36-20-6. §36-20-7. Enforcement of Citations and Orders.~~**

~~6.1. 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.

~~6.2. 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 violations committed by the independent contractor or its employees where the production-operator has complied with Section 4 of these regulations.

~~7.3:~~

~~6.3. (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.

~~6.4. (b)~~ A production-operator may be properly cited for a violation of ~~Chapter 22A of the regulations~~ W. Va. Code §22A-1-1 et seq. involving an independent contractor where:

6.4.1. ~~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

6.4.2. ~~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

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

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

6.5. ~~(c)~~ In addition to the provisions of Section ~~7.3(b) of these regulations~~ 6.4 of this rule, the production-operator may also be required to assure continued compliance with ~~the West Virginia Code and regulations applicable to an independent contractor at the mine until the contractor is fully able to assume compliance responsibility.~~

6.6. ~~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 6.2., and 7.3 6.3. and 6.4. of these regulations~~ this Series.

**§36-20-7. ~~§36-20-8.~~ Hazard Training.**

7.1. ~~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.