



State of West Virginia

Joe Manchin III, Governor

WV Office of Miners' Health, Safety & Training
Ronald L. Wooten, Director
1615 Washington Street East • Charleston, West Virginia • 25311-2126
Telephone 304-558-1425 • Fax 304-558-1282
www.wvminesafety.org

Memorandum

TO: All Underground Coal Operators

FROM: Board of Coal Mine Health and Safety (Board) *RLW*

DATE: October 3, 2007

RE: Final Rule 36-17, Section 4.2 and 4.3

Pursuant to Sections 22A-2-25 and 22A-6-4 of the West Virginia Code there follows the final "Rules and Regulations Governing Unused and Abandoned Parts of Mine". The proposal was made by the "Board" on August 7, 2007 and a period of thirty days was afforded interested parties to offer comments. The final regulations reflect the "Boards'" deliberation on such comments.

The "Board" did not include submittal dates for certain requirements. Accordingly the Director, who also serves as Chairman of this Board consulted with the Attorney General's office regarding these dates. It was determined that:

- A reasonable time for submittal of protocols developed pursuant to the final requirements of 30CFR75.335 is within 45 days of such publication in the Federal Register; and
- A reasonable time for submittal of Remediation Plans is 30 days from the effective date of these regulations.

These submittal dates are highlighted in **bold** print in the regulation explanation.

RLW:ks
Attachments (2)

**INFORMATION TO ACCOMPANY THE FINAL RULE
36-17, Section 4.2 and 4.3**

EXPLANATION OF THE RULE

Section 4.2 (a) requires that a certified engineer must certify the design of all new seals.

Section 4.2(a) (1) lists criteria that must be considered in the design as follows:

- Minimum requirements for the seal location, including strength, configuration and preparation;
- Quality and strength requirements for each material involved in constructing the seal;
- Details on the size and configuration of the seal and its structural elements; and
- Quality control measures and minimum testing requirements to ensure that the seal meets the design requirements.

Section 4.2(b) requires that the PE must include his/her certificate, signature and seal on each seal design. The certification shall be in the following form “I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations”.

Section 4.2(c) requires that all seal certifications shall be kept at the mine for the life of the seal or mine whichever comes first and available for examination by state or federal inspection personnel and the representatives of the miners.

Section 4.2(d) requires that a mine foreman/fireboss must observe and inspect each phase of new seal construction to assure that construction was performed pursuant to the certified design. This section also requires that a mine foreman/fireboss must observe and inspect the seal construction at least on every two hour interval. This leads to the certification by a mine foreman/fireboss as required in 22A-2-5(d)(1). Such certification will be required in the final regulation.

Section 4.2(e) requires that the mine notify the Director prior to construction of the final seal in a set so that an inspection of the seals may be made on both the inby and outby sides.

Section 4.3(a) requires that protocols developed pursuant to the final requirements of 30 CFR 75:335 shall be submitted to the Director for approval. **THESE SUBMITTALS ARE DUE IN YOUR REGIONAL OFFICE OF THE OFFICE OF MINER’S HEALTH, SAFETY AND TRAINING WITHIN 45 DAYS OF PUBLICATION OF THE FINAL REQUIREMENTS OF 30CFR 75:335 IN THE FEDERAL REGISTER.**

Section 4.3(b) and (c) requires that all alternatively constructed seals of cementaceous foam blocks must be remediated by enhancement, new seal construction, or other means. Such remediation must be completed pursuant to a plan filed by the operator and approved by the Director. Where seal enhancement is necessary, all such seals shall be enhanced to withstand a minimum of 50psi overpressure. **REMEDICATION PLANS ARE DUE IN YOUR REGIONAL OFFICE OF THE OFFICE OF MINER'S HEALTH, SAFETY AND TRAINING WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THESE REGULATIONS.**

Section 4.3(c) authorizes the Director to require inspection and atmospheric measuring on a minimum of every twenty four (24) hours when it is determined that seal remediation cannot be accomplished in a safe and effective manner. This section further requires that the operator must maintain the atmosphere behind these seals inert pursuant to the final requirements of 30CFR75:335(b)(3)thru(b)(7).

NOTE: It is the intention of the Board to promulgate requirements that do not conflict with those requirements published by The Mine Safety and Health Administration (MSHA) in its Emergency Temporary Standard (ETS) or those that will be published by MSHA in its final rule. 22A-2-5(i) of the West Virginia Code requires that the Board and the Director provide recommendations to the Governor regarding enactment, repeal or amendment of any statute or rules within thirty (30) days of the publication of MSHA's final rule on seals.

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE 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: W.Va. Code 22A-6-4

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO _____


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing Unused and Abandoned Parts of Mine

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS November 1, 2007


Authorized Signature

**TITLE 36
LEGISLATIVE RULE
BOARD OF COAL MINE HEALTH AND SAFETY**

**SERIES 17
RULES AND REGULATIONS GOVERNING UNUSED AND
ABANDONED PARTS OF MINE**

§36-17-1. General.

- 1.1. Scope. -- Rules and regulations governing unused and abandoned parts of mine
- 1.2. Authority. -- W. Va. Code §22-6-4 and §22A-2-5.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§36-17-2. Effect of Regulations.

2.1. 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 as law. All provisions of Article one A, Chapter twenty-two A, of the Code relative to enforcement are applicable to the enforcement of these rules and regulation.

§36-17-3. Definitions.

All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in Section one, Article one A, Chapter twenty-two A of the Code.

§36-17-4. Unused And Abandoned Parts Of Mine.

4.1.

(a) In any mine, all workings which are abandoned after the first day of July, one thousand nine hundred seventy-one, shall be sealed or ventilated. If the workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be considered to be abandoned until such panel is abandoned.

(b) Air that has passed through an abandoned area or area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any working mine, unless permission is granted by the director with unanimous agreement of the technical and mine safety review committee. Air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. Air which has been used to ventilate an area from which the pillars have been removed shall not be used to ventilate any working place in a mine, except that the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before

sealed areas, temporary or permanent, are reopened, the director shall be notified.

(c) No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent are reopened, the Director of the Department of Energy shall be notified.

4.2.

(a) A professional engineer registered with the Board of Registration for Professional Engineers pursuant to Article Thirteen, Chapter Thirty of the West Virginia Code shall certify the design of all new seals as meeting the criteria of the final requirements of 30CFR75:335.

(1) For each basic seal design, the following criteria shall be considered:

- minimum requirements for the seal location, including strength, configuration and preparation;
- quality and strength requirements for each material involved in constructing the seal;
- details on the size and configuration of the seal and its structural elements; and
- quality control measures and minimum testing requirements to ensure that the seal meets the design requirements.

(b) Every seal design shall have the Professional Engineer's certificate and signature, in addition to his or her seal in the following form "I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations".

(c) Certifications required in this section along with design documents, construction or as-built reports and/or drawings shall be kept at the mine by the operator for the life of such mine or life of the seal shall be available for review by state inspection personnel as well as representatives of the miners.

(d) Each phase of new seal construction shall be observed and inspected by a mine foreman-fire boss to assure that such phase has been constructed pursuant to the approved design, but in no event shall a mine foreman-fire boss observe/inspect the seal construction less than once every two hours. Results of such inspections and observations shall be recorded in a book kept on the surface for that purpose.

(e) The operation shall, prior to construction of the final seal in a set notify the director, who shall cause an inspection to be made of the seals before the area is finally sealed.

4.3.

(a) Protocols for the inspection of the physical condition of seals and the atmospheric measurement (sampling) developed pursuant to the final requirements of 30CFR75:335.

(b) In all mines containing workings using seals constructed in accordance with the provisions of 30CFR75.335(a)(2) as published prior to May 22, 2007, which are constructed of cementaceous foam blocks the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals, constructing new seals, or other means.

(c) When seal enhancement is necessary according to 4.3(b) above of these rules such seals must have the capability to withstand a minimum of 50psi overpressure.

(d) If the director determines that any seal(s) described in subsection (b) is incapable of being remediated in a safe and effective manner, the director shall order that the mine foreman-fire boss, shall at least every twenty-four hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. In addition the operator shall maintain areas behind these seals inert pursuant to the final requirements of 30CFR75:335(b)(3)-(b)(7).