

## Chapter 18

### Legislation By Mine Plan: Can Laws Be Created at the District Level?

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#### § 18.01. Introduction.

In addition to the requirements found in the Federal Mine Safety and Health Act<sup>1</sup> (the Mine Act) and its regulations,<sup>2</sup> the Mine Safety and Health Administration (MSHA) has significant authority to mandate certain details of how a particular mine is run, especially in regard to ventilation and roof control issues. Before mining activity is conducted, a mining operation is required to have a roof control plan and a ventilation plan approved by the MSHA district manager. The requirements of these plans are enforceable as if they were mandatory safety standards.<sup>3</sup> The federal court of appeals has held:

While the plan must . . . be approved by the Secretary [of Labor]’s representative, who may on that account have some significant leverage in determining its contents, it does not follow that he has

<sup>1</sup> 30 U.S.C. § 801 *et seq.* (1977).

<sup>2</sup> 30 C.F.R. § 75.

<sup>3</sup> *Zeigler Coal Co. v. Kleppe*, 536 F.2d 398, 409 (D.C. Cir. 1976).

anything close to unrestrained power to impose those terms. For even where the agency representative is adamant in his insistence that certain conditions be included, the operator retains the option to refuse to adopt the plan in the form required.<sup>4</sup>

And yet, many mine operators find themselves backed into a corner by the agency's insistence on inclusion of objectionable provisions in "the operator's" mine plans. This chapter will address resolution of mine plan disputes and will detail the authority that the Secretary of Labor (the Secretary) has to, in effect, create legal requirements while bypassing typical legislative and administrative procedural safeguards.

### § 18.02. Mine Plans.

Mine operators are required to create plans addressing specific subjects such as roof control and ventilation. Section 302(o) and 303(o) of the Mine Act provide that roof control and ventilation plans, respectively, that are suitable to the conditions and the mining system of the coal mine and are approved by the Secretary shall be adopted by the operator.<sup>5</sup>

There are also regulations pertinent to the development of such mine plans. Title 30, section 75.220 of the Code of Federal Regulations requires each mine operator to develop and follow a roof control plan approved by the district manager. Section 75.222 sets forth the approval criteria and states that additional measures in roof control plans may be required by the district manager. Section 75.223 provides that revisions to the roof control plan shall be proposed by the operator when conditions at the mine indicate that it is not suitable for controlling the roof and ribs or when accidents or injuries indicate that it is inadequate. The roof control plan shall be reviewed by MSHA every six months. Similar provisions for ventilation plans are found at Title 30, sections 75.370 and 75.371.<sup>6</sup> More recently, section 2 of the MINER Act requires underground coal mine operators to develop and submit for approval and periodic review an emergency response and preparedness

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<sup>4</sup> *Id.* at 406-07.

<sup>5</sup> 30 U.S.C. §§ 862(o) and 863(o).

<sup>6</sup> *See also* 30 C.F.R. § 77.216-2 (impoundment plans).