



State of West Virginia

Department of Mines

Charleston 25305

JOHN D. ROCKEFELLER, IV.
Governor

WALTER N. MILLER
Director

August 11, 1983

The Honorable A. James Manchin
Office of the Secretary of State
State Capitol, Main Unit
Charleston, West Virginia 25305

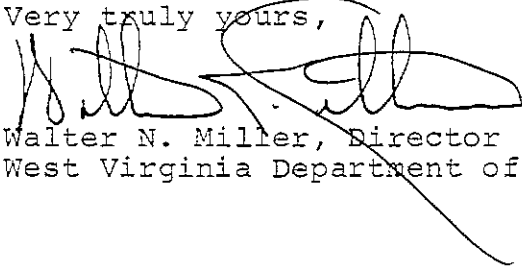
Re: Notice of Final Adoption of Procedural Rules
Administrative Law Division

Dear Mr. Manchin:

Please accept for filing in the State Register the enclosed final procedural rules, entitled, Procedures for Temporary Suspension of Certificates Issued to Persons Pursuant to Chapter 22 of the Code of West Virginia Pending Full Hearing Before the Board of Appeals. This letter constitutes the notice of final adoption of these procedural rules pursuant to Code §29A-3-8. The public comment period on these rules was closed on May 10, 1983. Also enclosed is a summary, fiscal note and analysis of comments.

These procedural rules shall be effective thirty days after this date of filing and supersede emergency regulations on this subject filed in the State Register on March 3, 1983.

Very truly yours,


Walter N. Miller, Director
West Virginia Department of Mines

WNM/cao

Enclosure

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Aug. 11, 1983
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

SERIES ~~35-38~~¹⁶

(1983)

*According to telephone call
from Tina Estep 9/16/83 rwd*

SUBJECT: PROCEDURES FOR TEMPORARY SUSPENSION OF CERTIFICATES ISSUED TO
PERSONS PURSUANT TO CHAPTER 22 OF THE CODE OF WEST VIRGINIA
PENDING FULL HEARING BEFORE THE BOARD OF APPEALS

P R O C E D U R A L
R E G U L A T I O N S

**FINAL
REGULATION**

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 8/11/83
Administrative Law Division

I N D E X

SUBJECT: Procedures for Temporary Suspension of Certificates Issued to Persons Pursuant to Chapter 22 of the Code of West Virginia Pending Full Hearing Before the Board of Appeals

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Notification	Section 2.03
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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

SERIES 28 16

(1983)

SUBJECT: Procedures for Temporary Suspension of Certificates Issued to
Persons Pursuant to Chapter 22 of the Code of West Virginia
Pending Full Hearing Before the Board of Appeals

Section 1. General

1.01 Authority - These procedural rules are adopted pursuant to Chapter 29A, Article 3, Section 8 of the Code of West Virginia, 1931, as amended.

1.02 Filing - These regulations were filed with the Office of the Secretary of State on the 11th day of August, 1983 and are effective on the 11th day of September, 1983.

1.03 Definitions - Unless the context in which a word or term is used requires a different meaning, the definitions set out in Chapter 22, Article 1, Section 1 apply to these regulations.

Section 2. Procedures for Temporary Suspension of Certificates

2.01 Notice of Intent to Suspend. The Director shall give notice to the charged person, at the time of filing a charge of breach of duty with the Board of Appeals under Code 22-1-30(a), that he intends to temporarily suspend such certificate upon finding of probable cause by the Board. A temporary suspension shall not be valid unless such notice is given. A charged person so notified may make a request for a preliminary hearing before the Board of Appeals within

ten (10) days of the filing of the charge by the Director. Such preliminary hearing shall be held before the Board within twenty days of the filing of the charge. The rules of practice and procedure before the Board of Appeals shall apply to such a hearing.

2.02 Temporary Suspension of Certificates. The Director may order the temporary suspension of the certificate of any person certified pursuant to Chapter 22 of the Code of West Virginia, pending a full evidentiary hearing before the Board of Appeals provided that:

- (1) A finding of probable cause that such person has violated statutory duties has been made by the Board of Appeals according to the provisions of West Virginia Code 22-1-30(b); and
- (2) An investigation by authorized representatives of the Director reveals that:
 - (a) The certified person was acting in the capacity which required, or requires, the certifications issued by the Director; or that
 - (b) Such certified person is, or was, assigned by the operator or operator's agent to perform duties set out in the Code or regulations; and
 - (c) Such certified person failed and/or neglected to perform such statutory or regulatory duties; and
 - (d) Such failure and/or neglect of duty resulted in a finding by an authorized representative of the Director of a violation of a health and safety standard of the Code or regulations; and
 - (e) Such violation of a health and safety standard resulted in the occurrence or a high likelihood of the occurrence of the event against which the standard is directed or designed to prevent; and
 - (f) The temporary suspension of such certified person's certificate will lessen the risk to the lives and safety of the persons protected by the provisions of Chapter 22 of the Code of West Virginia.

The temporary suspension shall be effective upon issuance by the Director and shall remain effective until modified or terminated by the Director or the Board of Appeals.

2.03 Notification. The Director, or his authorized representative, shall notify the certified person and such person's employer in writing by personal service or certified mail that such person's certificate is temporarily suspended stating the reasons for such suspension.

2.04 Expedited Hearing. A person whose certificate has been suspended pursuant to these regulations may make a written request for a prompt evidentiary hearing before the Board of Appeals. If requested such hearing shall be held within thirty (30) days of the effective date of the suspension. If such expedited hearing is not held within thirty days of the suspension due to delay caused by either the Board of Appeals or the Director, the temporary suspension shall terminate.