

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

**SERIES 8  
RULES AND REGULATIONS GOVERNING THE RIGHT  
OF A MINER TO REFUSE TO OPERATE ALLEGED UNSAFE EQUIPMENT**

**§36-8-1. General.**

1.1. Scope. -- Rules and regulations governing the right of a miner to refuse to operate alleged unsafe equipment.

1.2. Authority. -- W. Va. Code §22-6-4.

1.3. Filing Date. -- October 8, 1980.

1.4. Effective Date. -- December 1, 1980.

**§36-8-2. Definitions.**

As used in this series:

(a) Unsafe Equipment: The term "Unsafe Equipment" shall mean any equipment designed to be operated by a miner that has a defect which is covered by state law, or rule or regulation, and that creates a condition which involves a potential hazard that could reasonably be expected to cause a miner in the vicinity to be placed in danger of injury or death.

(b) Safety representative: The term "Safety Representative" shall mean any safety representative of the miners at the mine affected.

**§36-8-3. No Miner Shall Be Required To Operate Unsafe Equipment.**

3.1. Miner's procedure when equipment is believed to be unsafe--When a miner believes the equipment he or she is operating, or is assigned to operate, is unsafe, the miner shall cease or refuse to operate the alleged unsafe equipment and promptly inform his or her immediate supervisor as to the identity of the alleged unsafe equipment and the particular alleged defect causing the

equipment to be unsafe.

**§36-8-4. Equipment Examination: Immediate Supervisor-Miner.**

4.1. Prior to the alleged unsafe equipment being placed back into operation after a miner has alleged it to be unsafe, the immediate supervisor shall examine, or have examined by maintenance personnel, the alleged unsafe equipment with regard to each alleged defect noted by the miner. If the alleged defects are corrected the equipment may be placed back into operation.

**§36-8-5. Dispute Procedures: Immediate Supervisor-Miner.**

5.1.

(a) When the immediate supervisor fails to have the alleged defects corrected, the alleged unsafe equipment may be parked in a manner that will allow the movement of other equipment; and the alleged unsafe equipment shall be de-energized, locked-out, and suitably tagged so as to keep the alleged unsafe equipment from being operated by any person.

(b) No miner shall be discriminated against for refusing to operate alleged unsafe equipment.

**§36-8-6. Operator's Procedure If Dispute Remains Unsettled.**

6.1.

(a) If the allegations of the miner are disputed, the immediate supervisor shall notify at least one safety representative and a maintenance

(b) The operator's application charging the miner shall be mailed by certified mail to the Director, the charged miner, and the safety representative, if any.

8.2. Upon receiving a charge from an operator, the Director shall promptly cause such investigation as he deems appropriate and schedule a hearing within twenty (20) days after receiving the charge, allowing the operator and the miner an opportunity to be heard.

(a) Notice of hearing; Contents of notice.

(1) Unless waived by the operator and the miner involved in the dispute, no hearing shall be conducted under these Rules and Regulations unless the miner and operator shall have received at least ten (10) days' written notice.

(2) Each written notice of the hearing shall contain the date, time and place of the hearing and a short and plain statement of matters which are to be the subject of or asserted at the hearing. Such notice shall be given by certified mail.

(b) Date, time and place of hearing. The date, time and place of the hearing shall be determined by the Director.

(c) Representation at hearings. The miner involved in the dispute may represent himself, be represented by a safety representative or be represented by an attorney at law admitted to practice before the courts of any state or the District of Columbia. The operator may be represented by a full-time employee or an attorney at law admitted to practice before the courts of any state or the District of Columbia.

(d) Applicability of Administrative Procedures Act. All of the pertinent provisions of Article 5, Chapter 29A of the West Virginia Code shall apply to and govern hearings conducted under these Rules and Regulations with like effect as if the provisions of said Article 5 were set forth herein. If any provision of these rules of practice

and procedure contained in Section 8 herein are inconsistent with any pertinent provisions of said Article 5, the provisions of said Article 5 shall control.

(e) Waiver of evidentiary presentation.

(1) Any party who desires to submit written pleadings, comments or information in lieu of an evidentiary hearing may submit such documents prior to the hearing date, for the Director's or Deputy Director's, as the case may be, consideration in the matter in the event hearing is waived as provided in subsection (e) (2) of this Section.

(2) Parties entitled to an evidentiary hearing may waive such right in writing, but unless all entitled parties file timely waivers, a hearing will be conducted. Such waivers must be unequivocal and request the Director or Deputy Director, as the case may be, to decide the matter at issue on the materials submitted in subsection (e) (1) of this Section and any stipulations the parties might enter into.

(3) When a hearing is waived under the provisions of this subsection, the written record in the case shall be submitted to the Director or Deputy Director, as the case may be, for decision.

(f) Burden of proof. In proceedings under these Rules and Regulations, the operator making application to the Director under subsection 8.1. (a) of this Section shall have the burden of proving his case by a preponderance of the evidence.

(g) Proposed findings, conclusions and orders. The Director or Deputy Director, as the case may be, may request the submission by parties of the proposed findings of fact, conclusions of law and orders, together with a supporting brief: Provided, That such documents shall be submitted within twenty (20) days after their request. Such proposals and briefs shall be served upon all parties, and shall contain adequate references to the record and authorities relied