

*Title 36
Legislative Rules
Board of Coal Mine Health & Safety*

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

~~DEPARTMENT OF MINES~~

~~CHAPTER 22-4~~

Series 27-24

(1983)

SUBJECT: Rules and Regulations Governing the Record Keeping of All Certified Persons Employed in All Mines Throughout the State of West Virginia

Section 1. General *1.1 Scope - issue*

1.01 Authority - These rules and regulations are issued under authority of Section 4, Article 6, Chapter 22 of the Code. *Files, D. K.*

1.02 Effective Date - These rules and regulations were promulgated on the 22nd day of April, 19 83, and became effective on the 5th day of June, 19 83.

1.03 Findings and Conclusions. (a) Findings of Fact. *22A*

- (1) Certification of miners employed in coal mines in West Virginia is required by Chapter 22 of the West Virginia Code to insure that only competent, qualified persons are employed to act as underground or surface miners or in specific miner occupations.
- (2) Since 1980 there have been at least ten civil and criminal prosecutions of persons in the coal industry purporting to be certified by the State as miners or for particular miner occupations who either possess bogus certificates or do not possess certificates for these occupations.
- (3) Persons acting as miners or in particular miner occupations who are not properly certified as required by law create a safety hazard in the mines because such persons have not demonstrated their competency or qualifications under State law for these occupations.

- (4) In order for the Department of Mines to know at any given time the certifications of persons working in the mines, a current listing is needed at each mine location of persons employed at that location and their certifications, if any.
- (5) Such records can be made most readily and efficiently available through the employers of persons holding State certifications, since the employers have access to and knowledge of those persons who work for them.

(b) Conclusions of Law.

- (1) THEREFORE, the Board of Coal Mine Health and Safety promulgates the following regulation to require all employers of persons certified pursuant to Chapter ~~22~~ ^{22A} and currently employed in West Virginia mines to set up and maintain records on these persons and their certifications.
22A-1A-21
- (2) The regulation is consistent with the requirements of Code ~~22-1-22~~ that operators of coal mines shall maintain such records, make such reports and provide such information as the Director may reasonably require from time to time to enable him to perform his functions under the law.
- (3) The regulation will not reduce the level of safety or protection afforded miners below the level of safety or protection afforded by Chapter ~~22~~ ^{22A}.
- (4) The regulation is necessary ^{22A} and proper to effectuate the purposes of Chapter ~~22~~ and to prevent the circumvention and evasion thereof.

Section 2. Effect of Regulations

2.01 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 ~~1~~ ^{1A}, Chapter ~~22~~ ^{22A} of the Code relative to enforcement are applicable to the enforcement of these rules and regulations.

Section 3. Definitions

All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in Section ~~1~~ ¹, Article ~~1~~ ^{1A}, Chapter ~~22~~ ^{22A} of the Code.

(a) Code: The term "Code" when following a reference to a specific section, article, and chapter, shall mean the West Virginia Code of 1931, as amended.

(b) Miner's certification: The term "Miner's certification" shall mean any, and all types of certification mandated and required for any occupation at the present time, or may become mandated in the future, by the West Virginia Department of Mines.

(c) Parties Responsible for Record Keeping: The term "Parties responsible for record keeping" shall mean all coal mine operators in the mining industry, construction companies, shaft operators, manufacturing companies, private consultants, and, or any other company, persons, or firms associated with the mining industry, who have in their employ persons who are certified in accordance with Chapter ~~22~~^{22A} of the Code.

Section 4. System for Record Keeping

4.01 Six months after the effective date of these rules and regulations, parties responsible for record keeping, except as otherwise provided in Section 4.02, shall maintain a file on the state certifications of all current employees on their payroll. The file shall contain the name, social security number, current certification(s) and certification number(s) for each individual employee possessing a state certification.

4.02 New mines opened after the effective date of this regulation and temporarily inactive mines, shall maintain such records within six months of the date on which such mines are activated and/or reactivated.

Section 5. Availability of Records

5.01 Unless otherwise approved by the Director of the Department of Mines, all records required in Section 4.01 of these rules and regulations shall be

made available to the Director of the Department of Mines, or his authorized representative, and to designated auditors of the Department of Mines for compliance audit purposes, within five (5) days after a request is made for the need of such records.

Section 6. Individual Responsibility

6.01 After the effective date of these rules and regulations, any person employed by parties responsible for record keeping shall, upon request, provide to the parties responsible for record keeping, all necessary information pertaining to state certifications and all types of certifications that they hold.

6.02 All persons possessing miner certifications and employed by parties responsible for record keeping shall provide in writing to the parties responsible for record keeping any change in the information required in Section 4 of these rules and regulations, including additional miner certifications, within four (4) days subsequent to such change.