



State of West Virginia

Department of Mines

Charleston 25305

JOHN D. ROCKEFELLER, IV.
Governor

WALTER N. MILLER
Director

February 22, 1984

Mr. Robert Jackson
Deputy Secretary of State
Administrative Law Division
Secretary of State's Office
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Jackson:

As per our conversation this morning, please find enclosed the amended page(s) 2 and 3 of the regulations governing Authority, Accountability, and Responsibility of Underground Mine Foremen; Responsibility of Operator in Relation to Mine Foreman; and Regulatory Review Procedures (Series 24) previously submitted on February 21, 1984.

You will also find enclosed a copy of the pages you now have, and the specific change has been highlighted in yellow. This phrase was typed in the final copy, and should have been omitted.

If you need further information regarding the submission of these regulations, please contact me at 348-3937.

Yours for Mine Safety,

A handwritten signature in cursive script that reads "Tina L. Estep".

Tina L. Estep, Steno-Secretary I
West Virginia Department of Mines

Enclosures (3)

cc: Linda Estep, Department of Mines

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

THIS DATE Feb 22, 1984
Administrative Law Division



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TO: All Persons Interested in the Rules and Regulations Constructed by the Board of Coal Mine Health and Safety

FROM: Mark A. Scott, Health and Safety Administrator *MAS*

SUBJECT: Amendments to Series 24, Rules and Regulations Governing the Duty of Mine Foreman to Notify Operator When Unable to Comply with Law; Duty of Operator; and Mine Foremen to Have No Superior Officers

DATE: February 21, 1984

ACTION: Final Rule

AUTHORITY: These amendments are promulgated in accordance with Chapter 22, Article 2A, Section 4 of the West Virginia Code.

SUMMARY:

These amendments revise the existing Series 24 Administrative Regulations of the West Virginia Department of Mines governing the duties of mine foremen and the duty of the operator in relation to the mine foreman. These amendments shall in no way be construed to interfere with the provisions of Code 22-2-21 through 22-2-24 concerning the duties of the fire boss.

The Board has found that:

1. State law places primary responsibility for health and safety in the coal mines with the mine foreman. (See Code 22-2-54(a), 22-2-13, 22-2-14, 22-2-1, 22-2-15, 22-2-16, 22-2-17, 22-2-18, 22-2-21) Department of Mines regulations require that mine foremen shall have no superior officers in performing their statutory duties. (See Administrative Regulations Series 24). The West Virginia Supreme Court has determined that mine foremen and assistant mine foremen are statutory officers and in the performance of their statutory duties are representatives of the State, not of the mine owner, the men who work in the mine, or of the union (See *Algoma Coal & Coke Co., v. Alexander*, 136 W.Va. 521, 66 S.E.2d (1950)).

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2. The person in the mines who has most direct and immediate control over the day-to-day operation in the mine is the section foreman or other immediate supervisor of the work force.
3. Mine foremen regularly receive work orders from the mine superintendent. This occurs because the mine foreman is essentially a middle manager in the organization structure currently in place at most mines. In some instances, depending upon the size of the mine, work orders may be given to the foreman by persons above the mine superintendent. In most cases such work orders are general in nature, and the mine foreman has sufficient discretion to carry them out in a manner consistent with State law.
4. There are punitive measures in the State mining laws, including penalties, fines, and withdrawal of certification, which can be taken against mine foremen for violating the mining laws. (See Codes 22-2-20(a) through (e), and 22-1-30).
5. There are measures in the State mining laws to protect mine foremen from discrimination because of refusal to follow work orders that would result in a violation of the mining laws. (See Code 22-2-21).
6. The Board of Appeals has determined that in at least three decertification cases brought before the Board, the mine foremen involved received work orders from their supervisors which may have resulted in a violation of the mining laws, and that these foremen felt they were in a position of either complying with the orders or losing their jobs.
7. The Board of Appeals and the Board of Coal Mine Health and Safety have determined that not all mine foremen are fully aware of their duties and responsibilities under the law, and the protection from discrimination afforded them under the law.
8. The Board of Miner Training, Education, and Certification has determined that a system is needed to distribute all additions, deletions, revisions, and interpretations of the laws pertaining to coal mining to all persons within the industry.

The Board has made several changes to Series 24 to address these findings. The intent of these changes is: (1) to provide additional protection for the mine foreman in performing those duties required by the State Mining Laws; and (2) to insure that mine foremen are made continuously aware of the laws, regulations, and other State requirements with which they must comply in performing their statutory duties.

The Board made the following changes:

1. Added a provision to strengthen the requirement that no one shall obstruct the foreman in the performance of his statutory duties.
2. Added a provision to insure that the mine foreman and assistant mine foreman are provided with all newly promulgated regulations, changes to regulations, relevant Court decisions, interpretations of regulations, and all

other material deemed pertinent to the foremen's statutory duties by the Director of the Department of Mines.

3. Added a provision requiring the operator to review this material with the foremen and all other persons at each mine site.
4. Changed the title of the regulation to reflect that the scope of the regulation has been expanded.

DISCUSSION OF MAJOR COMMENTS RECEIVED:

On August 19, 1983, the proposed amendments were mailed to interested persons for comment. On September 20, 1983, a public hearing was held in Charleston to receive additional comments on the proposal.

The following is a section-by-section discussion of the major comments received:

Section 1 - General: No comments received

Section 2 - Effect of Regulations: No comments received

Section 3 - Definitions: No comments received

Section 4 - Duties of Mine Foreman and Duty of Operator in Relation to Mine Foreman:

1. A few commenters suggested that provisions be added to Sections 4.01 and 4.02 which identify the mine foreman's statutory authority, accountability, and responsibility. The Board disagreed because it felt that it would be inappropriate to restate the numerous statutory provisions that relate to the mine foreman in this regulation. However, the Board recommended to the Department of Mines that it undertake to make this information available to all current and prospective foremen.
2. Several commenters recommended changes to the provisions requiring the Department of Mines to provide new regulations to the operators.

A few commenters suggested shortening the time period for the Director to provide this material. The Board agreed that this change is needed to make sure all operators are aware of the new regulatory requirements as soon after the effective date as is possible. This section has been changed to require the Director to provide the information no later than two weeks after the effective date.

A few commenters suggested that the Director also provide a copy of any departmental enforcement policy issued for a regulation. The Board felt this change was not needed because the proposed amendments already require that any interpretations by the Director be provided.

3. Several commenters recommended eliminating the requirements that the information be reviewed regularly with the foremen according to a plan approved by the Director. The Board felt that while it is important to make sure the review takes place, the provision of a plan for review approved by the Director would prove to be too cumbersome and could result in too much variation between mines. The Board therefore revised this provision to require that all material be posted and reviewed with all foremen and assistant foremen within thirty (30) days of receipt. The Board also added a requirement that the operator review the material with other persons at the mine site designated by the Director.

ADDITIONAL INFORMATION:

Questions and requests for copies of this regulation should be addressed to:

Mark A. Scott, Health and Safety Administrator
Board of Coal Mine Health and Safety
West Virginia Department of Mines
Room E-151, State Capitol
Charleston, West Virginia 25305
(304) 348-3937

MAS:te

Attachment