



STATE OF WEST VIRGINIA
 OFFICE OF THE SECRETARY OF STATE
 CHARLESTON 25305

A. JAMES MANCHIN
 SECRETARY OF STATE

STATE REGISTER FILING

I, Walter D. Miller, Director,
 Title or Position

of the Department of Mines, hereby submit to record in
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

proposed rules and regulations concerning topics of material not covered by existing rules and regulations;

proposed rules and regulations superseding rules and regulations already on file;

notice of hearing;

findings and determinations;

rules and regulations; or

other - specify (Emergency Procedural Regulations).

This filing pertains to

Chapter 29 A
 Article 3
 Series 38 Tina Espo
 Section 3 and 15
 Page No. _____

FILED IN THE OFFICE OF
 A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE 3/3/83
 Administrative Law Division

proposed rules and regulations are required to go to Legislative Rule Making Committee;

proposed rules and regulations are excluded from Legislative Rule Making Committee;

March 3, 1983
 Date Submitted

[Signature]
 Signature of Person Authorizing
 this Filing



State of West Virginia

Department of Mines

Charleston 25305

JOHN D. ROCKEFELLER, IV.
Governor

WALTER N. MILLER
Director

TO: Office of the Secretary of State

FROM: Walter N. Miller, Director
West Virginia Department of Mines W.C.C.

RE: Notice of Filing of Emergency Procedural Regulations and
statement of facts and circumstances constituting emer-
gency.

DATE: March 3, 1983

The Department of Mines is, this date, filing emergency rules and regulations relating to 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. In response to a writ of Mandamus issued by the Supreme Court of Appeals on January 28, 1983 in the case of State ex rel. Perry v. Miller, No. 15655, these regulations are made effective this date in order to effectuate the provisions of said writ.

There are now pending several cases before the Board of Appeals where the Director has charged a certified person with neglect and/or failure to perform statutory duties and such certified persons continue to hold and utilize state certificates. The immediate promulgation of this rule is necessary to more closely supervise state certified persons charged with serious health and safety violations and lessen the risk to the lives and safety of the persons protected by the statute.

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A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 3/3/83
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

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

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

FILED IN THE OFFICE OF
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THIS DATE 3/3/83
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

Series 38

EMERGENCY PROCEDURAL REGULATIONS

RE: 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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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

EMERGENCY PROCEDURAL REGULATIONS

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 3/3/83
Administrative Law Division

RE: 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 promulgated pursuant to Chapter 29A, Article 3, Section 3 and Chapter 29A, Article 3, Section 15 of the Code of West Virginia, 1931, as amended.

1.02 Filing - These emergency regulations were filed with the Office of the Secretary of State on the 3rd day of March, 19 83 and are effective upon filing.

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 Issued to Persons Pursuant to Chapter 22 of the Code of West Virginia Pending Full Hearing Before the Board of Appeals

2.01 Finding of Probable Cause by the Board of Appeals. No temporary suspension of the certificate of a certified person shall be made by the Director unless and until a finding of probable cause that such person has violated statutory duties has been made by the Board of Appeals according to the provision of Chapter 22, Article 1, Section 30(b) of the West Virginia Code.

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 if an investigation by authorized representatives of the Director reveals that:

- (a) The certified person was active in the capacity which required or requires, the certification issued by the Director; or
- (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.

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 in writing by personal service or certified mail that such person's certificate is temporarily suspended stating the reasons for such suspension.

2.04 Request for Modification. Any certified person whose certificate has been suspended pursuant to this regulation may request, in writing to the Board of Appeals, that the Director's suspension order be modified at any time after the finding of probable cause by the Board of Appeals.

2.05 Prior Proceedings. These regulations shall be applicable to all cases pending before the Board of Appeals on the date of promulgation, unless otherwise ordered by the Board of Appeals. Except when ordered by the Board of Appeals, no reissuance of any pleading, documents or requests shall be required in such a proceeding.