



STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
DIVISION OF MINES AND MINERALS
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Charleston, West Virginia 25311
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ARCH A. MOORE, JR.
Governor


FILED
1995 MAY 21 PM 3:50
OFFICE OF THE SECRETARY OF STATE

NOTICE OF EMERGENCY RULE

RULE TITLE: Standards for Certification of Coal Mine Electricians

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

SEE ATTACHED STATEMENT



Kenneth R. Faerber
Commissioner
West Virginia Department of Energy

BACKGROUND ON FILING AMENDMENTS TO
DEPARTMENT OF ENERGY ADMINISTRATIVE REGULATION SERIES 14
EMERGENCY REGULATIONS

1. This emergency regulation amends Department of Energy Administrative Regulation Series 14, Section 2.1 by expanding the definition of "electrical work" to specify the types of electrical work which may be done only by a certified electrician, and work which may be done by a non-certified person.

Section 2.1 currently defines electrical work as work consisting primarily of electrical construction, installation, testing, inspection, maintenance and repair tasks on electrical coal mining equipment, apparatus, circuits, and/or distribution circuits used in or around a coal mine.

The Department has determined that certain types of work on electrical equipment do not pose unusual safety hazards and therefore do not require training and certification as an electrician. However, the current definition of electrical work is sufficiently vague that it has resulted in differing interpretations about who can do electrical work, resulting in compliance and enforcement problems.

The Department therefore seeks, through the attached amendment, to clarify and standardize when work on electrical equipment requires certification.

This change has been unanimously endorsed by the State Board of Miner Training, Education, and Certification.

2. This emergency regulation also amends Series 14, Section 6.3 to permit persons who are not certified by the State as mining electricians to do certain types of electrical work at coal mines.

Series 14 currently provides that coal mine electrical work may be done only by persons certified as electricians or apprentice electricians by the State. Series 14 further establishes standards and procedures for certifying electricians.

Under this requirement, trained maintenance persons employed by an equipment manufacturer are prohibited from performing any electrical work on their company's equipment installed at a mine, unless those persons are certified by the State as mine electricians. The Department has determined that this requirement is unreasonable because (1) company-trained mechanics are often more qualified to perform electrical work on their company's equipment than certified mine electricians, because they are required to undergo more vigorous and intensive training that focuses exclusively on that specific equipment; (2) company-trained mechanics should not be required to become certified electricians because they are not trained in other mine electrical work and do not perform such work; and (3) equipment manufacturers are in an unfair legal position because they are liable for the safe construction and maintenance of their equipment, but are prohibited by State law from directing their service personnel to perform any electrical work on that equipment, unless they are certified electricians.

Because of the nature of mining operations, specialized equipment requiring periodic maintenance and repair is used at nearly every mining operation in the State. There are several pending enforcement actions by the Department of Energy against mining equipment manufacturers because of this problem.

The attached amendment to Series 14 changes Section 6.3 of the regulation to permit mining equipment manufacturer service representatives who are not certified as mine electricians or apprentices to do electrical work on equipment which is manufactured or serviced by the company they represent. This provision is subject to certain restrictions. The change is being made to provide a greater level of safety to miners who must rely on such equipment, and to provide immediate relief to equipment manufacturers who are currently in violation of Series 14 when they must service their own equipment.

This change has been unanimously endorsed by the State Board of Coal Mine Health and Safety, and the State Board of Miner Training, Education and Certification.

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
CHAPTER 22-1

SERIES 14
(AMENDED)

SUBJECT: STANDARDS FOR CERTIFICATION OF COAL MINE ELECTRICIANS

*Underlines indicate language to be added



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 Governor

FILED
 1986 MAY 21 PM 3:58
 OFFICE OF THE REGISTER
 SECRETARY OF STATE

Date: May 19, 1986
 To: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 From: West Virginia Department of Energy
 Kenneth R. Faerber, Commissioner *KRF*

Emergency Rule Title: Standards for Certification of Coal Mine Electricians

1. Date of filing May 19, 1986
2. Statutory authority for promulgating the emergency rule WV Code 22-1-15
3. Date of filing of proposed legislative rule N/A
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule? Amend existing Department of Energy Administrative Regulation Series 14
5. Has the same or similar emergency rule previously been filed and expired? No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
Existing regulation creates compliance and enforcement problems -- see attached statement.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or Federal statute or regulation, cite the Code provision, Federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Existing regulation creates compliance and enforcement
problems -- see attached statement.

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
CHAPTER 22-1

SERIES 14

Title: Standards for Certification of Coal Mine Electricians

- Section 1: General
- Section 2: Definitions
- Section 3: Categories of Electrical Certification
- Section 4: Categories of Certification
- Section 5: Examinations
- Section 6: Certification Procedures
- Section 7: Criteria for Apprentice Electrical Training Program
- Section 8: Annual Training

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF ENERGY
CHAPTER 22-1
SERIES 14

Title: Standards for Certification of Coal Mine Electricians

Section 1. General

- 1.1 Scope - This legislative rule establishes standards for certification of persons performing electrical work in coal mines.
- 1.2 Authority - WV Code 22-1-15
- 1.3 Filing Date -
- 1.4 Effective Date -

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE May 21, 1986
ADMINISTRATIVE LAW DIVISION

Section 2. Definitions

2.1 Electrical work: The term "electrical work" shall mean work consisting primarily of electrical construction, installation, testing, inspection, maintenance and repair tasks on electrical coal mining equipment, apparatus, circuits, and/or distribution circuits used in or around a coal mine.

(a) Listed below are examples of work that is required to be performed by a certified electrician or an apprentice electrician:

- 1) Locating faults in cables;
- 2) Installation of couplers on the end of cables;
- 3) Repair of electric components of electrically powered portable, mobile or stationary equipment;
- 4) Installation of electric wiring;
- 5) Electrical maintenance of permissible equipment;
- 6) Any type of work performed inside rooms, vaults, substations and other similar enclosures where energized parts or conductors are exposed;
- 7) Any type of work performed inside transformers, power centers, rectifiers, switch boxes, switch houses, panels and other enclosures of electric equipment or conductors;

- 8) Electrical troubleshooting and testing;
- 9) Handling energized high-voltage power cables.

(b) Listed below are examples of work that is not required to be performed by a certified electrician or an apprentice electrician:

- 1) Operation of electric equipment;
- 2) Normal operation of control switches, switch boxes, or circuit breakers, provided no energized parts or conductors are exposed;
- 3) Operation of cutout switches in trolley circuits;
- 4) Hanging or removing fuse nips on or from trolley wires;
- 5) Changing bits;
- 6) Lubrication;
- 7) Handling energized trailing cables;
- 8) Inserting low- and medium-voltage cable couplers from receptacles;
- 9) Transportation of electric equipment and cables;
- 10) Mechanical repairs on electrically-powered equipment provided no energized parts or conductors are exposed;
- 11) Installation and repair of equipment and circuits in which shock hazards do not exist (having a normal rating of 40 volts or less when energized) provided such equipment is not required to be permissible;
- 12) Installation, repair, and guarding of trolley feeder wires when deenergized;
- 13) Reinsulate or tape cables when there are no conductors or bare wires showing, and
- 14) Replace blown fuses in trolley poles and nips, provided that such persons have received training the the following six areas:
 - a) hazards of electricity
 - b) location of where fuses can be installed or replaced (fuse nips and trolley poles)
 - c) conductor ampacity
 - d) fuse rating and types
 - e) de-energizing of circuit
 - f) installation of fuse holders (load or line side)

- 2.2 Work Area: The term "work area" shall mean within 500 feet in any direction of the area in a mine where electrical work is being performed.
- 2.3 Certified Electrician: The term "certified electrician" shall mean an individual who is qualified as a mine electrician who has passed an examination administered by the Department of Energy, or has at least three (3) years of experience in performing electrical work underground in a coal mine, in a non-coal mine, in the mine equipment manufacturing industry or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the Department of Energy. (Refer to WV Code Chapter 22A, Article 1A, Section 1(d)(2)).
- 2.4 Direct Supervision: The term "direct supervision" shall mean the supervision of an apprentice electrician by a certified electrician in the work area where electrical work is being performed.
- 2.5 Immediate Supervision: The term "immediate supervision" shall mean the physical presence of a certified electrician with the apprentice electrician.
- 2.6 Certified Person: The term "certified person" when used to designate the kind of person to whom the performance of duty in connection with the operation of a mine shall be assigned, shall mean a person who is qualified under the provisions of the law to perform such duty. (Refer to WV Code Chapter 22A, Article 1A, Section 1).
- 2.7 Qualified Person: The term "qualified person" shall mean a person who has completed an examination and is considered qualified on record by the Department of Energy. (Refer to WV Code Chapter 22A, Article 1A, Section 1).
- 2.8 Approved: The term "approved" shall mean in strict compliance with mining law, or in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject. (Refer to WV Code Chapter 22A, Article 1A, Section 1).

- 2.9. Apprentice Electrician: The term "apprentice electrician" shall mean an individual who is the holder of an apprentice electrician's card, and is in training to perform maintenance work on electrical circuits or electrically operated equipment.
- 2.10 Certification Examinations: The term "certification examinations" shall mean the examinations in specific categories within these regulations which have been approved by the Board of Miner Training, Education, and Certification and administered by the Department of Energy.

Section 3. Categories of Electrical Certification

- 3.1 Categories of Certification: After the effective date of these rules and regulations, electrical certification shall be in the following categories:
- (1) Electrician (Low, medium and high voltage)
 - (2) Electrician (Low and medium voltage)

Apprentice electricians may become certified electricians in any or all of the above categories by the methods of certification as provided in Section 4 of these rules and regulations.

Section 4. Categories of Certification

- 4.1 Apprentice Electrician. A person becoming an apprentice electrician to be trained to perform work on electrical circuits or electrically operated equipment shall be issued an apprentice electrician's card by the West Virginia Department of Energy upon verification by the employer that the individual has attended an eight (8) hour classroom training course in the hazards of electricity, and is to be trained in accordance with these rules and regulations for the next twelve (12) months.
- (a) During the twelve (12) month training period the apprentice electrician shall complete an approved 40 hour classroom training program concerning the subjects of:

- (1) State and Federal mining laws which apply to electricity
 - (2) Permissibility
 - (3) AC and DC theory
 - (4) Basic electricity
 - (5) Schematic reading
 - (6) Gas detection and fire prevention
 - (7) National Electric Code
- (b) Twenty percent (20%) of the twelve (12) month training period shall be directly involved with electrical work.
- (c) All types of training experience shall be logged and kept by the operator specifically for apprentice experience with the operator and apprentice both validating the experience by signatures. Records verifying apprentice's electrical experience shall be presented prior to electrical certification.
- (d) All electrical work performed by an apprentice electrician in the work area shall be examined by a certified electrician prior to the circuits or equipment being energized and returned to service. Testing and/or trouble-shooting electrical problems on energized electrical circuits may be performed by an apprentice electrician under the immediate supervision of a certified electrician.
- 4.2 Electrician (Low and medium voltage). A person may become certified as a low and medium voltage electrician when such person has at least twelve (12) months of experience in performing electrical work as an apprentice electrician with low and medium voltage and has satisfactorily passed a certification examination.
- 4.3 Electrician (Low, medium and high voltage). A person may become certified as a low, medium, and high voltage electrician when such person has at least twelve (12) months experience in performing electrical work as an apprentice electrician, has worked with low, medium, and high voltage, (at least 20% of the required electrical experience during the twelve (12) month training program shall be directly related to high voltage) and has satisfactorily passed a certification examination.

(NOTE: The low, medium, and high voltage certified electrician is permitted to perform all types of electrical work at any mining operation.)

- 4.4 Low and Medium Voltage Certification to Low, Medium, and High Voltage Electrician. A person certified as a low and medium voltage electrician shall have four (4) months experience, at least 10% of which must be in performing high voltage work, and shall satisfactorily pass that portion of the electrical certification examination devoted to high voltage. During the period of time the low and medium voltage electrician is working on high voltage he shall work under the direct supervision of a certified low, medium, and high voltage electrician. The high voltage electrical work performed by the low and medium voltage electrician shall be examined by a certified low, medium, and high voltage electrician before the circuits or equipment are energized and returned to service.

The high voltage electrical experience of the low and medium voltage electrician shall be logged by the operator in a record book specifically for that purpose during the four (4) month training period.

- 4.5 Degree in Electrical Engineering. A person who has a Bachelor's Degree or Associate Degree in electrical engineering from an accredited college or university, and has at least six (6) months experience in performing electrical work under the supervision of a certified electrician may be permitted to become certified as an electrician (low, medium, and high voltage, or low and medium voltage) when such person has satisfactorily passed a certification examination for such category.
- 4.6 Electrical Training Programs Already in Effect. All persons in training to become certified electricians prior to the effective date of these rules and regulations, shall be allowed to continue training and become certified as an electrician after the completion of one years experience in performing electrical work under the supervision of a certified electrician and after successful passage (at least 80% score) of the certification examination.

Any person starting training to become a certified electrician on or after the effective date of these rules and regulations shall comply with these rules and regulations.

- 4.7 Prior Certification. All valid electrical certifications issued by the Department of Mines or the Department of Energy prior to the effective date of these regulations shall remain valid.

Any person holding a prior certification and wishing to be certified in another category must:

- (1) document his experience;
- (2) successfully pass any other portion of the electrical certification examination not previously taken for low and medium voltage or low, medium and high voltage as required in Section 5 of these regulations; and
- (3) successfully pass the hands-on (skill) portion of the electrical certification examination.

(EXAMPLE: Prep plant to low, medium, and high voltage).

Section 5. Examinations

- 5.1 Electrical Examinations for Low and Medium Voltage. Examinations for low and medium voltage electrician certifications shall consist of seven parts:

- (a) Direct current theory and application
- (b) Alternating current theory and application
- (c) Electric equipment and circuits
- (d) Permissibility of electric equipment
- (e) Legal requirements - state and federal law
- (f) National Electric Code
- (g) Hands-on (Skill)

In order to pass the electrical certification examination, an applicant must score at least 80 percent on parts (a) through (f) and must pass part (g). The hands-on (skill) part (g) is graded on a pass/fail basis only.

An applicant who fails to pass the examination must reapply to take the examination within thirty (30) days after notification of a failing score. An applicant who fails the examination two (2) times must receive at least forty (40) hours of additional classroom training as provided in 4.1(a) prior to retaking the examination. An applicant who fails the examination the third time must repeat the twelve month apprentice program as required in Section 4.1 of these regulations.

5.2 Electrician Examinations for Low, Medium, and High Voltage. Examinations for low, medium, and high voltage electrician certification shall consist of eight parts:

- (a) Direct current theory and application
- (b) Alternating current theory and application
- (c) Electric equipment and circuits
- (d) Permissibility of electric equipment
- (e) Legal requirements - state and federal laws
- (f) National Electric Code
- (g) Dangers of high voltage
- (h) Hands-on (Skill)

In order to pass the electrical certification examination, the applicant must score at least 80 percent in parts (a) through (g) and must pass part (h). The hands-on (skill) part (h) is graded on a pass/fail basis only.

An applicant who fails to pass the examination must reapply to take the examination within thirty (30) days after notification of a failing score. An applicant who fails the examination two (2) times must receive at least forty (40) hours of additional classroom training as provided in 4.1(a) prior to retaking the examination. An applicant who fails the examination the third time must repeat the twelve (12) month apprentice program as required in Section 4.1 of these regulations.

Section 6. Certification Procedures

- 6.1 Application for Certification. Prior to taking an examination for certification in any of the categories listed in 3.1 of these regulations, an individual must submit an application to the Department of Energy to take such examination in the form provided in Appendix A of these regulations. Such application must be submitted to the Department of Energy within thirty (30) days of completion of the apprentice training program.

Upon receipt of an application for examination, the Department of Energy shall provide for the applicant to be examined at the next available examination which is at least fifteen days from receipt of the application and shall inform the applicant of the time and place for examination. Within fifteen days after the completion of an examination, the Department of Energy shall inform the applicant of his score upon the examination.

6.2 Certification. Upon determination that an application for certification has satisfactorily passed an examination for certification in any category listed in 3.1 of these regulations and has presented proper documented electrical experience, the Department of Energy shall promptly issue to such individual a certificate indicating that he has been certified in the particular category for which he has applied.

6.3 Effect of Certification.

(a) Except where otherwise provided in this section, no person shall perform electrical work of any type (a) until such person has become a certified electrician to perform such work, or (b) unless such work is performed by an apprentice electrician under the direct supervision or immediate supervision of a certified electrician, or (c) unless such work is performed on circuits of twenty-four (24) volts or less. This provision does not prohibit a person already being trained prior to the effective date of these rules and regulations to continue to perform electrical work under the direct supervision of a certified electrician until he has met the experience requirements. (See Section 4).

(b) Exceptions.

- (1) Mining equipment manufacturer's service representatives are not required to be certified as mine electrician or apprentice electrician in order to perform work on equipment which is manufactured or serviced by the company they are representing. Such individuals are considered to be persons trained to perform electrical work and to maintain electrical equipment. When work is performed by manufacturer's service representatives who are not a certified electrician or an apprentice electrician, such work shall be performed under the direct supervision of a certified electrician and the completed work is to be examined by a certified electrician before the machine or equipment is placed in service.
- (2) Rebuilding of electric equipment by original equipment manufacturers or rebuild shops may be performed by persons other than certified electrician or an apprentice electrician; however, mine management is under a contin-

using responsibility to assure that such equipment is examined by a certified electrician to assure safe operating condition before the equipment is placed in service.

- 6.4 Certification from other States. Any person holding a mine electrician certification issued by any other state may act in the capacity of electrician until the next available electrical certification examination is held by the Department of Energy, but not to exceed a maximum of ninety (90) days.

Section 7. Criteria for Apprentice Electrical Training Program

- 7.1 Apprentice Electrician Card. An apprentice electrician card shall be issued by the West Virginia Department of Energy when applied for by the miner with a statement from the mine operator stating that the miner will be in an electrical training program for the next twelve (12) months. The apprentice electrician card will be issued for twelve (12) months and may be extended for valid reasons by the Department of Energy.
- 7.2 Approved Electrical Training Program. A minimum of 40 hours of classroom training is required and shall cover the following subjects:
- (1) State and Federal laws which apply to electricity
 - (2) Permissibility
 - (3) AC and DC theory
 - (4) Basic electricity
 - (5) Schematic reading
 - (6) Gas detection

The twelve (12) month training will include electrical and mechanically related work with 20 percent (20%) of the twelve (12) months being directly involved with electrical work. (NOTE: 12 month training is at least 80 percent (80%) of all regularly scheduled days in 12 months).

- 7.3 Failure to Complete Apprentice Training. If for valid reasons, accepted by the Commissioner, an apprentice electrician is unable to complete the twelve (12) month apprentice training program with twelve (12) consecutive months, the Commissioner may permit such individual a time extension of such apprentice card; however, such time period extension shall not exceed two (2) years.

Section 8. Annual Training

8.1 Electrical Retraining. In order to maintain electrical certification an individual must complete an annual approved eight (8) hour refresher course. The course will include but not be limited to permissibility, state and federal law, safety in job performance and training on equipment applicable to the card holders' work. A minimum of eight (8) hours of refresher training will be required regardless of the number of cards held.

8.2 Failure to Maintain Electrical Certification. An individual who fails to attend the required refresher training annually will be required to retake the electrical certification examination. Upon scoring at least 80 percent on each subject, the individual will be issued a new electrical certification card.

This provision will not apply to an individual who was unable to take the annual electrical refresher training for valid reasons accepted by the Commissioner. The individual must, however, complete eight (8) hours of refresher training within ninety (90) days after returning to work.



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help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

July 2, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

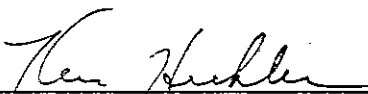
AGENCY: Department of Energy

RULE: Series 14 Standards for Certification of Coal Mine Electrician. Amendments to Section 2 "Definitions" and Section 6 "Certification Procedures."

DATE FILED AS AN EMERGENCY RULE: May 21, 1986

DECISION NO. 6-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 2, 1986
ADMINISTRATIVE LAW DIVISION

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help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

DECISION
(ERD 6-86)

Emergency Rule Decision

AGENCY: Department of Energy
RULE: Series 14 Standards for Certification of Coal Mine Electricians, Amendments to Section 2 "Definitions" and Section 6 "Certification Procedures."
DATE FILED AS AN EMERGENCY RULE: May 21, 1986

- par. 1 The Department of Energy has filed as an emergency rule an amendment to their Series 14 rule titled Standards for Certification of Coal Mine Electricians. The amendment is to Section 2 "Definitions" defining electrical work and to Section 6 "Certification Procedures" citing exceptions.
- par. 2 The amendment to Section 2 expands the definition of "electrical work" to specify the types of electrical work which may be done by a certified electrician and work which may be done by a non-certified person. The amendment to Section 6 is to permit persons who are not certified by the State as mining electricians to do certain types of electrical work at coal mines, such as persons employed by an equipment manufacturer.
- par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 7 The Department of Energy has filed this emergency rule with supporting documents with the Secretary of State on May 21, 1986 and with the LRMRC prior to the issuance of this decision. It is, therefore, the determination of the Secretary of State that the Department of Energy has complied with the procedural requirements of WV Code 29A-3-15.

par. 8 (B) Statutory Authority: WV Code 22-1-15 reads:

§22-1-15. Commissioner's Authority to promulgate rules and regulations.

The commissioner shall have the power and authority to propose or promulgate rules and regulations to organize the department and to carry out and implement the provisions of this chapter and chapter twenty-two-a [§22A-1-1 et seq.] of this code. With respect to chapter twenty-two-b [§22B-1-1 et seq.] of this code, the commissioner's rulemaking powers and authority shall be as described in section thirteen [§22-1-13] of this article. All rules and regulations in effect on the effective date [July 11, 1985] of this act [Acts 1985, c.77] which pertain to the provisions of this chapter, chapter twenty-two-a and twenty-two-b of this code shall remain in effect until changed or superseded by the commissioner, or as appropriate, the director of the division of oil and gas. Except when specifically exempted by the provisions of this chapter, or chapters twenty-two-a or twenty-two-b of this code, all rules and regulations or changes thereto shall be proposed or promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a [§29A-1-1 et seq.] of this code. (1985, c. 77.)

par. 9 WV Code 22A-1A-2:

§22A-1A-2. Division of mines and minerals; purposes; rules and regulations.

The division of mines and minerals shall have as its purpose the supervision of the execution and enforcement of the provisions of this chapter and, in carrying out the aforesaid purposes, it shall give prime consideration to the protection of the safety and health of persons employed within or at the mines of this state. In addition, the division shall, consistent with the aforesaid prime consideration, protect and preserve mining property and property used in connection therewith.

The division hereby given authority where authorized and in the same manner prescribed in this chapter, to enact such rules and regulations as may be necessary to effectuate the above-stated purposes, all under the supervision, review and approval of the commissioner. (1985, c. 77.)

par. 10 WV Code 22A-2-40(19):

22A-2-40 General Provisions (Electricity).

Operations of coal mines in which electricity is used as a means of power shall comply with the following provisions. . . .

(19) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons who installed them, or, if such persons are unavailable, by persons authorized by the operator or his agent.

par. 11 The Department of Energy is responsible for regulating the qualifications of persons working in and around mines. The existing rules and these proposed rules regarding coal mine electricians are within the statutory authority of the Department of Energy.

par. 12 It is the determination of the Secretary of State that the Department of Energy has not exceeded its statutory authority by amending its Series 14 rule.

par. 13 (C) Emergency: WV Code 25A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 14 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 15 The Department of Energy claims that this proposal is for "the immediate preservation of the public . . . safety.

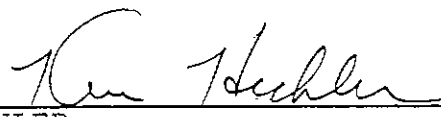
par. 16 It is obvious that in this case "public" is an overly broad term in that it is the safety of those persons operating in and around mining operations rather than the general population that this rule addresses.

par 17. Generally an emergency rule whose object is the "immediate preservation" standard must show that harm is an existing occurrence and not just a perceived future possibility with little or no evidence of occurring.

- par. 18 There are exceptions when evidence exists that harm is likely to occur and is of a serious nature and impact.
- par. 19 A higher standard of evidence, however, must be met for those future events of less than a life or injury threatening nature.
- par. 20 Administrative impatience with the laborous rule making process is not grounds for an emergency.
- par. 21 The Department of Energy (DOE) contends that the need for this emergency was perceived following an incident that was as follows:
1. Repair work on an elevator at a deep mine was being conducted by a manufacturer's representative trained in such equipment.
 2. No present mine company electrician was trained in such specific electrical work.
 3. Department of Energy inspectors cited the above action as violating DOE Series 14 rules.
 4. Following discussions with all parties and consultation with the State Board of Coal Mine Health and Safety and the State Board of Mine Training, Education and Certification, the DOE proposed these amendments.
- par. 22 Mining is a very hazardous occupation and the principal source of power for operations in and around mines is electrical. This can involve a wide variety of electrical equipment ranging from the simplest to the very complex. Inadequate or incompetent installation maintenance or repair of such equipment can directly result in injury or death. This is especially true with very specialized equipment such as elevators.
- par. 23 One of the responsibilities of the DOE is to insure as safe an operation as possible and to merely respond to accidents is not the legislature's intent with regard to such responsibility. DOE is expected to anticipate unsafe conditions and respond with such regulatory measures to reduce as much as practical the opportunity for injury.
- par. 24 As indicated in par. 19, the standard for evidence does not have to be extensive when a life threatening incident is to be prevented.
- par. 25 The Secretary of State determines that the Department of Energy has demonstrated the need to make effective this proposal for the immediate preservation of the public. . . safety.

- par. 26 It is the decision of the Secretary of State that this proposal by the Department of Energy is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Department of Energy; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should not be disapproved.

- par. 27 This decision shall be cited as Emergency Rule Decision 6-86 or ERD 6-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department of Energy, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____ THIS DATE July 2, 1986
ADMINISTRATIVE LAW DIVISION