

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Department of Energy TITLE NUMBER: 38

CITE AUTHORITY: 22-6-4

RULE TYPE: PROCEDURAL XX INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE 22-6-4

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Regulations Governing Requirements for  
Truck Cabs Where Rear Vision Is Impaired Safety of those employed surface mines

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: \_\_\_\_\_

TITLE OF RULE BEING ADOPTED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS April 29, 1991

*Steph A. Cd*



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

1615 Washington Street E. • Charleston, WV 25311 • (304) 348-3500

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

FROM: Stephen A. Edens, Health and Safety Administrator *SAE*

SUBJ: Amendments to Existing Regulations Title 38, Series 3, Section  
42.5(d) Governing Requirements for Truck Cabs Where Rear Vision is  
Impaired

EFFECTIVE DATE: April 29, 1991

DATE: March 29, 1991

ACTION: Final Rule - Title 38, Series 3, Section 42.5(d) Dump Trucks And  
Dumping (Amended)

AUTHORITY:

The Board of Coal Mine Health and Safety (Board) is created pursuant to WV §Code 22-6-1 et seg.

The Board is empowered to:

- (a) Review rules and regulations governing the coal mining industry in West Virginia and to revise the same or develop and promulgate new rules and regulations dealing with coal mine health and safety;
- (b) Develop, promulgate and revise rules necessary to effectuate the purposes of WV §Code 22A-2-1 et seg.

The rules and regulations developed, promulgated or revised by the Board may expand protections afforded by WV §Code 22A-1-1 et seg. notwithstanding specific language therein, and such rules and regulations may deal with subject areas not covered by WV §Code 22A-1-1 et seg. to the end of affording the maximum possible protection to the health and safety of miners. WV §Code 22-6-4(c)(1).

Any rule or regulation promulgated by the Board shall not reduce or compromise the level of safety of protection afforded miners below the level of safety or protection afforded by WV §Code 22A-1-1 et seg. WV §Code 22-6-4(c)(2).

SUMMARY:

The Board of Coal Mine Health and Safety has found that a fatal accident occurred in 1989 at a surface mining operation. It was determined that the fatality occurred when the victim while operating a 35 ton rock truck, backed over the highwall, landing in approximately nine (9) feet of water and mud. The victim was pinned in the truck which

resulted in drowning. The victim had complained about not having proper mirrors on the truck prior to the accident. During the investigation the truck was found to have convex mirrors on both the passenger and drivers side at the time of the accident. Further investigation revealed that the original mirrors previously on the truck (standard on drivers side and convex on the passenger side) had been replaced due to a previous accident. The Board has decided that is necessary to amend the existing regulation (Title 38, Series 3, Section 42.5(d)) and add the word adequate to enhance the scope and effectiveness of said regulation. The existing regulation became effective on May 13, 1984.

The Board has determined the following contributing factors from the investigation of the fatality:

1. The investigation indicates that the evening shift began work at 3:00 p.m. on November 09, 1989, at the Bently Coal Company's Flatbush Surface Mine. During this shift, the victim was ordered by the evening shift foreman to haul rock from a bench loading operation above the No.1 Pit.
2. Testimony indicates that on the day of the accident the victim had traveled to the dumping area one or two times and returned without incident.
3. According to testimony the victim was involved in an automobile accident on November 03, 1989 resulting in injuries to his ribs. Also the victim stated that he was experiencing discomfort from these injuries the day of the fatality.
4. Employees testified that the victim normally wears eye glasses and his were broken in the accident on November 03, 1989. The victim was observed working without his glasses the week of the accident.
5. The investigation revealed that the victim was not on medication at the time of the accident.
6. Only convex mirrors were provided on the truck. On the day of the accident the victim stated that he had difficulty using these mirrors.
7. According to statements made by the first shift truck driver and mechanics the 35 ton Komatsu truck was maintained in a safe operating condition.
8. On November 15, 1989, after the truck had been recovered, it was examined by MSHA. No visible defects were found in the braking system. The cab was distorted from the impact of the fall and the windows had been broken out. During recovery of the victim, part of the left rear corner of the cab had been severed. At this time the truck was inoperable and it was not possible to function test the brakes.

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9. Evidence revealed that the lighting was not a factor in that the accident occurred during daylight hours.

10. Evidence indicates that the location had been used during the first shift, based on the amount of materials which had been dumped near the accident location and testimony given by other employees.

11. According to the superintendent, the area where the victim ran off the bench was not intended to be a dumping area, and that the dumping area stopped about 100 feet to the west of the accident site. The day shift driver indicated however, that he had dumped closer to the accident site. Apparently instructions as to the dumping area were not clear.

12. In the immediate accident area the width of the roadway between the edge of the bench and the highwall was measured at 24 feet. According to the endloader operator, when the victim left with the second load of overburden he was traveling in the forward direction. The truck tire tracks found at the location of the trucks departure off the bench indicate that the victim had successfully turned and was backing at the time of the accident.

13. Measurements of the truck conducted on November 13, 1989, are as follows:

Length - 25 feet,  
Width - 12 feet from front to center of  
rear tire - 18 feet Wheel base - 12 feet

14. Evidence indicates that the dumping process of the 35 ton Komatsu truck had not been started at the time of the accident.

15. After the accident, the truck was found in the pit laying on its left side, cab under water, with the engine still running. The backup alarm was sounding and the rear wheels were jerking as if trying to turn in reverse.

17. The truck appeared in good condition at the time of recovery.

18. There were no eyewitness to the accident.

19. An adequate berm or guard was not provided along the elevated haulage road above the No. 1 Pit.

20. Adequate precautions were not taken to prevent equipment from going over the highwall during bench loading operations.

21. Adequate preshift and onshift inspections were not being conducted at this mine.

CONCLUSIONS OF LAW:

1. West Virginia Administrative Regulations Title 38, Series 3, Section 42.5(d) became effective on May 14, 1984.
2. The final adoption of the proposed amendment Title 38, Series 3, Section 42.5(d) occurred on March 20, 1991.
3. The proposed amendemnt to Title 38, Series 3, Section 42.5(d) will not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by WV Code §22-6-4(c)(2)
4. The proposed amendment to Title 38, Series 3, Section 42.5(d) will reduce the exposure of truck drivers to the inherent hazards of operating unsafe equipment.
5. The proposed amendent to Title 38, Series 3, Section 42.5(d) expands the protections afforded miners by WV Code §22-6-4(c)(1) and supersedes the aforementioned statue.
6. Notice of the proposed Regulation Title 38, Seiries 3, Section 42.5(d) shall be issued by the Commissioner of the Department of Energy in accordance with WV Code 22-6-4(c)-(7).  
Therefore, the Board has issued the following amendment to Title 38, Series 3, Section 42.5(d).

(d) ~~Truck-cabs-where-rear-vision-is-impaired-shall-be-equipped-with rear-view-mirrors-on-both-sides.~~

(d) Truck cabs where rear vision is impaired shall be equipped with adequate rear view mirrors on both sides.

POSTING AND REVIEW OF THE REGULATION:

In accordance with West Virginia Administrative Regulations Title 36 Series 13, each operator of a mine shall:

1. Post the regulation for thirty (30) days immediately upon receipt.
2. Review the regulation with all persons acting in the capacity of foreman and assistant foreman, during the posting period.
3. Review the regulation with all employees, during the week following the review with the foreman and assistant foreman.

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Additional Information:

Questions and copies of this regulation should be addressed to:

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Board of Coal Mine Health and Safety  
1615 Washington Street East  
Charleston WV 25311  
(304) 348-3500

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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

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Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

TO: TERRY Farley  
Dana Martin  
AGENCY: Office of Miners' Health, Safety and Training  
Environmental Protection

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: February 6, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 3 TITLE: Rules & Regs Governing the Safety of Those Employed in and around Surface Mines in West Virginia

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Kathy Sloan

TITLE OF PERSON SIGNING: Administrative Aide

DATE: 2/12/92

Where it refers to the Director of the Department of Energy it should be referenced to the "Director of the Office of Miners' Health, Safety and Training" in accordance with House Bill 217, effective October 16, 1991.

Also note, that our agency name is the Office of Miners' Health, Safety and Training and not Environmental Protection and the contact person should be Terry Farley.