

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Board of Coal Mine Health and Safety TITLE NUMBER: 36

RULE TYPE: Legislative; CITE AUTHORITY 22-6-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 18

TITLE OF RULE BEING AMENDED: Responsibility and Care and Maintenance
of Equipment

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON May 10, 1991 AT 4:30PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

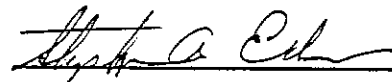
Attn: Mr. Stephen A. Edens

BCMHS - TRC

1615 Washington Street, East

Charleston, West Virginia 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 36
LEGISLATIVE RULES
BOARD OF COAL MINE HEALTH AND SAFETY
SERIES 18

TITLE: RULES AND REGULATIONS GOVERNING THE RESPONSIBILITY FOR CARE AND MAINTENANCE OF EQUIPMENT

36.18.1 General:

1.1 Scope: Rules and regulations governing the responsibility for care and maintenance of equipment.

1.2 Authority: WV Code 22-6-4

1.3 Filing Date: These rules and regulations were filed with the Secretary of State on this _____ day of _____ 1991.

1.4 Effective Date:

36.18.2 Effect of Regulations:

2.1 These rules and regulations shall have the same effect of law and violations shall be deemed a violation of the law and so cited with same effect as law. All provisions of Chapter 22A, Article 1A, of the Code relative to enforcement are applicable to the enforcement the rules and regulations.

36.18.3 Definitions:

3.1 All terms used in these rules and regulations, not defined herein shall have the meaning set forth in Chapter 22A, Article 1A, Section 1, of the West Virginia Code.

36.18.4 Responsibility For Care and Maintenance of Equipment:

4.1 Mine operators shall maintain equipment in a safe operating condition. Equipment operators shall exercise reasonable care in the operation of the equipment entrusted to them and shall promptly report defects known to them, provided, if equipment has been taken out of service, by being properly tagged out, the operator shall not be issued a violation under the provision of this section, provided however, such tag placed on such equipmnet shall indicate the date and time such equipment was removed from service. The [ersons removing the equipment from service and tagging such equipment shall place his signature upon the tag.

36.18.5 EQUIPMENT CHECK; RECORD KEEPING REQUIREMENTS:

5.1 Each working shift prior to its operation, all section equipment to be operated during that shift shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the director; such form shall be given to the mine foreman or his assistant within four (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report from and the foreman receiving such form, shall initial upon receipt. A record of all above such examinations shall be maintained for ten (10) days and made available to an authorized representative of the director and to the miners at the mine.

5.2 Section equipment shall be maintained in a safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.

ADMINISTRATOR'S REPORT
CHECKLIST FOR ALL UNDERGROUND FACE MINING EQUIPMENT

(March 5, 1991)

PROBLEM:

Determine the need for a pre-operational equipment checklist system for all underground face mining equipment.

TECHNICAL EVIDENCE AVAILABLE:

The total number of equipment and electrical violations were reviewed for a period from 1985 through 1989. The total number of equipment violations written during this period were 2,298. The total number of electrical violations written for this period were 17,303. Also, included in this report is a review of a fatality that occurred on January 23, 1990. Information indicates that the failure of the emergency parking brake caused this fatal. Also, it is the consensus of the Board that if an equipment checklist procedure had been in place this fatality may have been prevented.

STAFF TIME REQUIRED:

Not applicable

LEGAL AUTHORITY:

West Virginia Code §22-6-4a(a)(1), and West Virginia Administrative Regulations Title 36, Series 37, Section 6.1, allow any Board member or the administrator to suggest subjects for the Board to investigate.

FINDINGS OF FACT:

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

2. 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 and regulations necessary to effectuate the purposes of WV Code §22-6-4.(b)(c).

3. The rules and regulations developed, promulgated or revised by the Board may expand protections afforded by WV Code §22A-1-1. et. seq. notwithstanding specific language therein, and such rules and regulations may deal with subject areas not covered by WV Code §22A-1-1. et seq. to the end of affording the maximum possible protection to the health and safety of the miners. WV Code §22-6-4.(c)(2).

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

5. The following is the total number of citations written during 1985 through 1989 for violations pertaining to underground machinery and electrical equipment:

<u>YEAR:</u>	<u>EQUIPMENT:</u>	<u>ELECTRICITY:</u>
1985	513	3,819
1986	454	3,071
1987	301	2,858
1988	423	3,501
1989	607	4,054
TOTAL	<u>2,298</u>	<u>17,303</u>

6. West Virginia Surface Mining Regulations (38-3-42.1(a)) requires that equipment will be checked prior to the beginning of each shift.

38-3-42.1(a) Provides:

(a) Immediately prior to the beginning of each working shift, all equipment except licensed vehicles subject to state highway inspection requirements shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation daily for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the director; such form shall be given to the mine foreman or his assistant within (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report form and the foreman receiving such form, shall initial upon receipt. A record of all the above examinations shall be maintained for thirty (30) days and made available to an authorized representative of the director and to the miners at the mine.

(b) Immediately prior to the beginning of each working shift, equipment operated by independent contractors in the removal of coal and overburden on a surface mine shall be examined by the equipment operator for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the director; such form shall be signed by the person performing the examination and such form shall remain with the vehicle for thirty (30) days and upon request be made available to an authorized representative of the director.

7. WV Code §22A-2-37(o), WV Code §22A-2-47, WV Administrative Regulations 36-18-4, as well as MSHA Regulations 30 CFR 75.1725 require that equipment be maintained in a safe and operating manner.

8. WV Code §22A-2-71, gives the miner the right to refuse to operate unsafe equipment; procedure; discrimination.

9. WV Code §22A-2-71(a), gives the miner the right to refuse to work in an unsafe area or unsafe manner.

10. On January 23, 1990, an electrician employed by Toney's Branch Coal Company No. 1-A Mine received fatal crushing injuries while performing work underneath a 21-SC Shuttle Car with a defective emergency parking brake. After positioning the shuttle car on a ramp (built by using ten (10) half headers) and setting the emergency parking brake, the victim positioned himself underneath the boom of the shuttle car in an attempt to remove a bent conveyor flight, the shuttle car rolled off the ramp, fatally crushing the victim.

11. Acting within its statutory authority, the Board has proposed the following regulation;

36.18.5 EQUIPMENT CHECK; RECORD KEEPING REQUIREMENTS:

5.1 Each working shift prior to its operation, all section equipment to be operated during that shift shall be examined by the equipment operator or a mechanic if designated by the foreman in charge of the operation for safety defects. The person performing such examination shall record his findings in ink or indelible pencil on a form approved by the director; such form shall be given to the mine foreman or his assistant within four (4) hours after the beginning of the start of the working shift. The person performing the above examination shall sign the report from and the foreman receiving such form, shall initial upon receipt. A record of all above such examinations shall be maintained for ten (10) days and made available to an authorized representative of the director and to the miners at the mine.

5.2 Section equipment shall be maintained in a safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.

12. The Board has reviewed the issues regarding the need for a face equipment check system in all West Virginia underground coal mines, particularly the number of violations pertaining to machinery and electrical equipment and also, the fatality that occurred on January 23, 1990.

13. The Board proposes that the implementation of an equipment check regulation for all underground face mining equipment as proposed in West Virginia Administrative Regulations Title 36, Series 18, Section 5, will not reduce the level of safety or protection afforded by the existing statutes and regulations.

CONCLUSIONS OF LAW:

1. West Virginia Administrative Regulations 36-18-4, became effective on March 1, 1982.
2. The proposed amendment to West Virginia Administrative Regulations 36-18-4 was adopted by the Board on February 21, 1991.
3. The proposed amendment to West Virginia Administrative Regulations 36-18-4, 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 to West Virginia Administrative Regulations 36-18-4 to incorporate an equipment check system for all inderground face mining equipment 36-18-5, will reduce and/or eliminate the exposure of miners to inherent hazards of operating unsafe equipment.
5. The proposed amendment to West Virginia Administrative Regulations 36-18-4, expands the protections afforded miners by WV Code §22-6-4(c)(1) and supersedes the aforementioned statue.
6. Notice of the proposed amendments to West Virginia Administrative Regulations 36-18-4, shall be issued by the Commissioner of the WV Department of Energy in accordance with WV Code §22-6-4(c)(4)-(7).



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

Re: Extension of Comment Period for Proposed Amendments to
Existing Regulations Title 36, Series 18, Section 4;
Responsibility and Care and Maintenance of Equipment.

Date: March 27, 1991

Please be advised that due to printing and mailing difficulties the comment period deadline of April 25, 1991 has been extended to May 10, 1991 for the amendment of WV Administrative Regulations Title 36, Series 18, Section 4.

If you have any questions concerning this matter please contact me at any time.

Enclosure:
SAE/tml



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

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

M E M O R A N D U M

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

Re: Proposed Amendments to Existing Regulations

Date: March 8, 1991

ACTION: REQUEST FOR COMMENTS - Proposed Amendments to West Virginia Administrative Regulation Title 36, Series 18, Section 4; Responsibility for Care and Maintenance of Equipment.

AUTHORITY:

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

The Board is empowered to:

(a) Review rules and regulations governing the 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 seq.

The rules and regulations developed, promulgated or revised by the Board may expand protections afforded by WV Code §22A-1-1 et seq. notwithstanding specific language therein, and such rules and regulations may deal with subject areas not covered by WV Code §22A-1-1 et seq. 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 or protection afforded miners below the level of safety or protection afforded by WV Code §22A-1-1 et seq. and WV Code §22-6-4(c)(2).

REQUEST FOR COMMENTS OR ADDITIONAL INFORMATION:

Comments are invited from interested persons on the Board's intention to amend the existing regulation regarding procedures to perform safety checks on all underground face coal mining equipment. Comments should be limited to the content of the proposal. All comments or requests for a hearing to held on this amendment should be in writing, and mailed no later than April 25, 1991, to:

Stephen A. Edens, Health and Safety Administrator
Board of Coal Mine Health and Safety
1615 Washington Street, East
Charleston, West Virginia 25311
(304) 348-3500