

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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1991 JUN 19 PM 3:28
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING 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: _____

DATE OF PUBLIC HEARING: July 17, 1991 TIME: 9:00 AM

LOCATION OF PUBLIC HEARING: Executive Inn

3300 MacCorkle Ave., South East

Charleston, West Virginia 25304

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Division of Energy

Attn: Stephen A. Edens

1615 Washington Street E.

Charleston, WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



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FINDINGS OF FACT:

OFFICE OF WEST VIRGINIA
DEPARTMENT OF LABOR

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 or protection afforded by WV Code §22-1-1. et. seg. and WV Code §22-6-4. (c)(2).

2. 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
TOTALS	2,298	17,303

3. West Virginia Surface Mining Regulations 38-3-432-1(a)(b), requires that equipment will be checked prior to the beginning of each shift.

4. 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.

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

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

7. On January 23, 1990, an electrician employed by the 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.

8. Acting within it's statutory authority, the Board has proposed the attached regulation pertaining to Equipment Checks and Record Keeping Requirements.

9. 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 the machinery and electrical equipment and also, the fatality that occurred on January 23, 1990.

10. The Board proposes that the implementation of an equipment check regulation for all underground face mining equipment as proposed in West Virginia Administrative Regulations 36-18-5, 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 West Virginia Administrative Regulations 36-18-4 to incorporate an equipment check system for all underground 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 statute.
6. Notice of the proposed amendments to West Virginia Administrative Regulations 36-18-4, shall be issued by the Commissioner of the WV Division of Energy in accordance with WV Code §22-6-4(c)(4)-(7).

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

36.18.1 General:

1.1 Scope: Proposed Amendment to Rules and Regulations Title 36, Series 18, Section 4, Governing the Responsibility for Care and Maintenance of Equipment.

1.2 Authority: WV Code §22-6-4

1.3 Filing Date: January 22, 1982
These Rules and Regulations were Amended and Filed with the Secretary of State this ____ day of _____ 1991.

1.4 Effective Date: March 1, 1982.
These Rules and Regulations were Amended and Became Effective this ____ day of _____ 1991.

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 Article one A, Chapter twenty-two A of the Code relative to enforcement are applicable to the enforcement of these rules and regulations.

36.18.3 Definitions:

3.1 All terms used in these rules and regulations, not defined herein, shall have the meanings set forth in Section one A, of Article one A, Chapter twenty-two A of 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 equipment shall indicate the date and time such equipment was removed from service. The person 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.



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

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

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 Amendment To Existing Regulation Title 36,
Series 18, Section 4: Responsibility for Care and
Maintenance of Equipment.

Date: June 21, 1991

ACTION: PUBLIC HEARING (9:00 AM WEDNESDAY, JULY 17, 1991,
EXECUTIVE INN CONFERENCE ROOM, KANAWHA CITY)

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 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 or protection
afforded miners below the level of safety or protection
afforded by WV Code §22A-1-1 et seg. and WV Code §22-6-
4(c)(2).

The Board of Coal Mine Health and Safety will conduct a Public Hearing regarding the proposed amendments to West Virginia Administrative Regulations Title 36, Series 18, Section 4, - Rules and Regulations Governing the Responsibility for Care and Maintenance of Equipment.

This Hearing will begin at 9:00 AM on Wednesday, July 17, 1991 at the Executive Inn (Kanawha City) located at 3300 MacCorkle Ave. South East, Charleston, WV 25304.

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.

Any requests for copies of the proposed amendments to the existing regulation Title 36, Series 18, Section 4, and/or additional information should be addressed 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