

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2013 FEB -7 PM 1:30

SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Office of Miners' Health, Safety and Training TITLE NUMBER: 56

RULE TYPE: Procedural CITE AUTHORITY: W. Va. Code § 22A-1-6

AMENDMENT TO AN EXISTING RULE: YES NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: n/a

TITLE OF RULE BEING AMENDED: n/a

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 17

TITLE OF RULE BEING PROPOSED: Rules Governing the Procedures for the Organization and Implementation of a Coal Dust Lab and Coal Dust, Rock Dust Sampling Standards

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 March 11, 2013 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Office of Miners' Health, Safety and Training
7 Players Club Drive
Suite 2
Charleston, WV 25311

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title:

Rules Governing the Procedures for the Organization and Implementation of a Coal Dust Lab and Coal Dust, Rock Dust Sampling Standards

Type of Rule:

☐ Legislative ☐ Interpretive ☒ Procedural

Agency:

WV Office of Miners' Health, Safety and Training

Address:

7 Players Club Drive

Suite 2

Charleston, WV 25311

Phone Number:

304-558-1425

Email: eugene.e.white@wv.gov**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The OMHST does not anticipate that this proposed rule will have any fiscal impact on the costs or revenues of this agency.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

Rules Governing the Procedures for the Organization and Implementation of a Coal Dust Lab and Coal Dust, Rock Dust Sampling Standards

Rule Title:

Rules Governing the Procedures for the Organization and Implementation of a Coal Dust Lab and Coal Dust, Rock Dust Sampling Standards

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The OMHST does not anticipate that this proposed rule will have any fiscal impact on the revenues of this agency.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

This rule establishes the organization and implements the coal dust sampling and laboratory testing methods and incorporates the Coal Dust Practices Survey Program Manual under which OMHST will determine if the incombustible content of mine dust is 80%. As such, W. Va. Code of State Rules 56-17-1 et seq. procedural rule pertaining to the administration and carrying out of the duties assigned to the OMHST by statute.

Date: February 6, 2013

Signature of Agency Head or Authorized Representative

Eugene White

**SUMMARY OF PROCEDURAL RULE
AND
STATEMENT OF CIRCUMSTANCES THAT REQUIRE THIS RULE**

As a result of the Upper Big Branch mine disaster Executive Order 1-10 was issued. That Executive Order required the Office of Miners' Health, Safety and Training (OMHST) to implement a rock dust sampling and testing program. This in turn resulted in the hiring of Rock Dust Samplers and the creation of the rock dust laboratory. Thereafter, the West Virginia Legislature passed House Bill 4351 on March 6, 2012. House Bill 4351 amended W.Va. Code §22A-2-24 by increasing the standards for the application of rock-dust in underground coal mines. Those events spurred the development of the OMHST Coal-Dust Practices Survey Program Manual which governs the practices and procedures OMHST Coal-Dust Surveyors utilize in the sampling of mine dust and the methods by which such samples will be lab tested. Additionally, W. Va. Code of State Rules §56-17-1 *et seq.* was drafted which is the companion rule to the Coal-Dust Practices Survey Program Manual. The rule establishes the organization and implementation procedures for the control of coal-dust and rock-dust and incorporates the Coal-Dust Practices Survey Program Manual by reference. W. Va. Code of State Rules §56-17-1 *et seq.* implements the organization and procedure for the testing of mine dust to insure compliance with the 2012 West Virginia Legislature's amendments to W. Va. Code §22A-2-24 requiring the OMHST to determine that the incombustible content of mine dust in all mines located in West Virginia shall not exceed stated levels.

TITLE 56

LEGISLATIVE RULE

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

2013 FEB -7 PM 1:31

WEST VIRGINIA
SECRETARY OF STATE

SERIES 17

**RULES GOVERNING THE PROCEDURES FOR THE ORGANIZATION AND
IMPLEMENTATION OF A COAL DUST LAB AND COAL DUST, ROCK DUST
SAMPLING STANDARDS**

§56-17-1. General.

1.1 Scope. -- These rules establish the procedure whereby the Office of Miners' Health, Safety and Training shall implement the provisions of W.Va. Code §22A-2-24 pertaining to the organization and implementation of a coal dust lab and control of coal dust, rock dust sampling standards.

1.2 Authority -- W.Va. Code §§22A-1-6 and 22A-2-24.

1.3 Filing Date --

1.4 Effective Date --

§56-17-2. Definitions.

2.1 Unless herein defined, all terms used in this rule shall have the same meaning as they are defined in W.Va. Code §22A-1-2.

2.2 "Coal dust" means the fraction of very fine coal particles deposited throughout an underground mine by air currents and transport that pass through a standard 20-mesh per linear inch sieve differentiated from "loose coal" which is larger in size and shall not pass through a standard 20-mesh per linear inch sieve. Coal dust is not easily wetted and accumulations less than fully saturated (thirty (30) percent moisture) are able to participate in an explosion.

2.3 "Excessive Accumulation of Coal Dust" means an accumulation of coal dust in excess of twenty (20) percent total content within the top one-eighth (1/8) inch of mine dust located on the surface of the mine floor and any rib or structures.

2.4 "Rock dust" means pulverized stone used to cover coal dust and thereby render accumulations of coal dust inert. Rock dust shall be composed of calcite, dolomite, or an equivalent mineral one hundred (100) percent of which shall pass through a standard 20-mesh per linear inch sieve and at least seventy (70) percent of which shall pass through a standard 200-

mesh per linear inch sieve. Rock dust shall not contain more than a total of five (5) percent free and combined silica (SiO₂) and no more than five (5) percent combustible matter. Rock dust shall not exceed regulatory respirable dust levels when applied and particles when wetted and dried shall not cohere to form a cake which may not disperse into separate particles by a blast of air.

2.5 "OMHST" means the Office of Miners' Health, Safety and Training.

§56-17-3. Control of Coal Dust.

3.1 In all mines, any accumulation of coal dust containing less than thirty (30) percent moisture located in any operating section, haulageway, conveyor, or back entry shall be rock dusted or dust allayed in order to render said accumulation inert.

3.2 Rock dust shall be applied and maintained by manual or mechanical means upon the surface of the mine floor, roof and ribs of all operating sections, haulageways and parallel entries regardless of connection intervals and in all back entries. Rock dust shall be applied to include the last open crosscut of rooms and entries, and to within forty (40) feet of faces.

3.3 Rock dust shall be maintained in such quantity that the incombustible content of the mine dust that could initiate or propagate an explosion shall not be less than eighty (80) percent and the incombustible content in return entries shall not be less than eighty (80) percent.

§56-17-4. Use of Moisture to Control Coal Dust.

4.1 A location in a mine shall be considered too wet for evaluation of rock dust standards when the mine dust present in the mine, operating section, haulageway, conveyor, or back entry contains in excess of thirty (30) percent moisture.

4.2 It is permissible to gauge a too wet condition in a mine by taking the top one-eighth (1/8) inch of mine dust and reasonably squeezing said dust in the hand. If liquid flows between the fingers upon exerting reasonable pressure or a wet residue is left in the hand as a result, then the moisture content shall be considered too wet. If no liquid flows between the fingers upon exerting reasonable pressure and no wet residue is left in the hand, then the moisture content is not sufficient. A visual observation without testing in the above described manner is not sufficient.

§56-17-5. Coal Dust Survey Implementation Procedure.

5.1 The Director, or his designated authorized representative, shall conduct a coal dust survey of each mine by collecting samples at locations that are representative of the conditions found in said mine. The coal dust survey shall be conducted at least twice each year or more frequently at the discretion of the Director.

5.2 The detailed procedures for the performance of the coal dust survey shall be published in the coal-dust practices survey program and posted on the OMHST website and are incorporated by reference herein. Modifications of these procedures may be made by the Director after consultation with the Board of Coal Mine Health and Safety. The OMHST shall make copies of the coal-dust practices survey program documentation available to miners and operators upon request.

5.3 Each coal dust survey shall include, at a minimum, a random sample location no more than one thousand (1,000) feet from the working section loading point in a room and pillar mine and no more than one thousand (1,000) feet from the tailgate or maingate in a longwall mine. At the discretion of the Director or an underground mine inspector, samples may be taken at other locations based upon proximity to a potential ignition source or based upon the appearance that conditions in the mine are substantially inferior to minimum mandatory coal dust requirements.

5.4 All entries in the section shall be sampled in a line roughly perpendicular to the direction of the entry in which the initial sample was taken, but no more than three (3) crosscuts inby or outby such a line, with the location selected being the same distance from the inby edge of the pillar as that in the initial entry.

5.5 Samples will be taken from the top one-eighth (1/8) inch of material in a band at the location selected. The material shall be separately collected from the ribs and roof from that of the floor. Each sample of collected material shall be sieved through a standard 20-mesh per linear inch sieve unless it retains sufficient moisture to prevent passing the sieve and is not considered too wet. If the sample is too wet to sieve, then the un-sieved material shall be placed in the sample bag.

5.6 Each sample shall be placed in an OMHST Mine Dust Sample Bag and sealed. The data sheet located on each OMHST Mine Dust Sample Bag which provides the unique bag identification number shall be completed and placed in the OMHST Mine Dust Sample Bag prior to being sealed. The surveyor shall complete the chain of custody portion of the OMHST Mine Dust Sample Bag to include his or her name and the date the sample was collected. The surveyor shall maintain custody of the OMHST Mine Dust Sample Bag until it is either delivered to the coal dust lab, or handed to the clerk at the United States Post Office for shipment to the coal dust lab.

§56-17-6. Coal Dust Sample Analysis.

6.1 Each coal dust sample shall be analyzed utilizing a thermogravimetric analysis procedure which allows for the determination of coal dust and rock dust ratios.

6.2 Details concerning the thermogravimetric analysis procedure shall be published in the OMHST coal-dust practices survey program identified in subsection 5.2 of this rule.

6.3 A quality control process consisting of internal duplicate samples and duplicates sent to outside laboratories shall be established to ensure the accuracy of the analysis.

6.4 Samples received from the surveyor shall become the responsibility of the authorized laboratory technician who shall complete the chain of custody portion of the OMHST Mine Dust Sample Bag and maintain the samples in a secure manner until notified by the Director that they are no longer required.

§56-17-7. Enforcement.

7.1 Upon completion of the analysis, the authorized laboratory technician shall generate a report which shall be forwarded to the Director and identify any samples that fail to meet the minimum coal dust and rock dust ratio.

7.2 If a sample fails to meet the minimum coal dust and rock dust ratio, then the Director shall notify the operator and issue a notice of violation with an appropriate abatement period.

7.3 At the expiration of the abatement period the Director shall cause a re-surveying of the affected area of the mine utilizing the random sampling methodology anchored by the then location of the working section loading point in a room and pillar mine or no more than one thousand (1,000) feet from the tailgate or maingate in a longwall mine. The samples from the re-survey shall have priority in the thermogravimetric analysis laboratory and the results shall be reported to the Director upon completion.

7.4 At the discretion of the Director repeated or serious violations of coal dust and rock dust ratios may be elevated in severity up to and including an imminent danger (as defined in W.Va. Code §22A-1-2(a)(5)).

7.5 The Director may request that any operator provide records establishing the quantity of bulk and bag rock dust purchased for a period not to exceed the immediately preceding six (6) month period.

§56-17-8. Organization.

8.1 Coal dust and rock dust surveying shall be conducted by an inspector or a dust surveyor who is designated by the Director as an authorized representative. Individuals designated as dust surveyors are authorized by the Director only to conduct those activities necessary for the Director to determine compliance with W.Va. Code §22A-2-24 and W.Va. Code of State Rules §56-17-1 *et seq.*

8.2 Thermogravimetric analysis shall be conducted by authorized dust laboratory technicians. Individuals designated as dust laboratory technicians are authorized by the Director

to conduct such activities as are necessary for the Director to determine compliance with W.Va. Code §22A-2-24 and W.Va. Code of State Rules §56-17-1 *et seq.*