

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

Form #5

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WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: 22A-2-43(i); 22A-6-1; 22A-6-3; 22A-6-5

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

22A-6-4

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

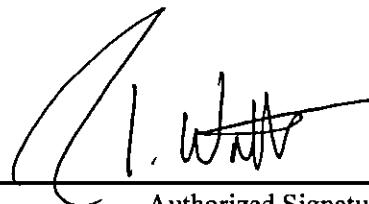
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 54

TITLE OF RULE BEING PROPOSED: Rules Governing Machine Mounted Methane Monitors in Underground Coal Mines

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS 1 Nov 2013



Authorized Signature



WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

1900 Kanawha Blvd Bldg 6 Ste 652 Charleston WV 25311 304.957.2306

NOTICE: LEGISLATIVE EXEMPT RULE

To: All persons interested in Rules and Regulations constructed by the Board of Coal Mine Health and Safety

From: Joel L. Watts, Administrator – BCMH&S

Subject: 36.54 – **Rules Governing Machine Mounted Methane Monitors in Underground Coal Mines**

Authority: §22A-2-43(i); 22A-6-4; §22A-6-5(b)

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

On 21 August 2013, the Board of Coal Mine Health and Safety (Board) unanimously promulgated the attached rule, §36-54 (**Rules Governing Machine Mounted Methane Monitors in Underground Coal Mines**), in accordance with §22A-6-5. These are the Findings of Fact and Conclusions of Law required by §22A-6-5.

During the 2012 Legislative Session House Bill 4351 was passed, modifying §22A-2-43 and directing the Board to

promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code establishing calibration procedures, defining the term “sustained period” for purposes of implementing this section, and establishing a compliance schedule setting forth the time frame in which all new and existing face cutting machines, continuous miners, longwall face equipment and other mechanized equipment used to extract coal or load coal within the working place shall be refitted with methane monitors. Enforcement of subsections (g) and (h) of this section shall not commence until after the time frame is established by rule.
(§22A-2-43(i))

After diligent deliberation, the Board proposed a rule meeting, in part, this requirement on 26 March 2013. It determined the best course was to ask for stakeholder help in setting the definition for ‘sustained period.’ It received one comment during the 30-day comment period. Deliberation followed, but the Board was unable to reach a conclusion on the definition of ‘sustained period’ while recognizing the undue financial burden that would be placed upon the industry in the event of a final bill. After much study, the Health and Safety Administrator reported to the Board that it was likely to cost millions of dollars and require no less than 2.5 years to completely retrofit the fleet of machines in underground coalmines.

The Board several times met with or attempted to meet with various stakeholders over the course of the year, but each time was met with the reality that to achieve the standards set by the Legislature would create other barriers unforeseen.

During the 21 August 2013 the Board, recognizing these issues and the maturation of the issue sought another solution. In doing so, the Board copied Federal statute (30 CFR 75.342 and 30 CFR 75.323), but lowered the de-energization threshold in 30 CR 75.342(c) from 2.0 percent to 1.5.

The Board feels this solution strengthens the intent of HB4351, is in line with the spirit of the Governor's original proposal, and increases the degree of safety while allowing for a more appropriate time frame to accomplish these goals than the one suggested by the Health and Safety Administrator. The effective date was set for 1 November 2013 to allow for normal maintenance procedures to recalculate the digital readouts on machine mounted methane monitors.

The Board, in accordance with both §22A-6-3 and §22A-6-5 suspended the required examination of new rules as well as the required comment period in order to promulgate this rule immediately. The Administrator was given appropriate time to draft the Findings of Fact and Conclusions of Law and to submit the rule to the West Virginia Secretary of State.

The Board would also like to humbly ask the West Virginia Legislature to consider an appeal of the language requiring a 1.25 methane de-energization of the extraction apparatus (§22A-2-43(h) and (i)). The Board respectfully suggests the rule as filed by the Board increases the degree of safety and thus meets the intent of the Legislature's demands.

TITLE 36
LEGISLATIVE RULES
BOARD OF COAL MINE HEALTH AND SAFETY

SERIES 54

Rules Governing Machine Mounted Methane Monitors in Underground Coalmines

§36-54-1. General

1.1 Scope. Rules Governing Machine Mounted Methane Monitors in Underground Coalmines

1.2 Authority. WV Code §22-6-4.

1.3 Filing Date: 22 August 2013

1.4 Effective Date 1 November 2013

§ 36-54-2. Effect of Law and Regulations.

2.1 These rules and regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law

2.2 These rules and regulations are intended to increase the degree of safety called for by §22A-2-43(h) calling for the automatic de-energization of the extraction apparatus when methane concentration at any machine-mounted methane monitor reaches one and twenty-five one hundredths percent for a sustained period.

2.3 These rules and regulations are intended as a response to the legislative mandate in §22A-2-43(i) requiring the Board of Coal Mine Health and Safety to promulgate legislative rules defining the term "sustained period" as in §22A-2-43(h)(1) as well as establishing a compliance schedule to all machine mounted methane monitors to be refitted with methane monitors able to detect methane at one and twenty-five one hundredths percent.

2.4 These rules and regulations, as they increase the degree of safety called for by the West Virginia Legislature, are intended to act as a replacement and a call for appeal of existing legislative language as found in §22A-2-43(h) and §22A-2-43(i).

§ 36-54-3 Methane Monitors

3.1 MSHA approved methane monitors shall be installed on all face cutting machines, continuous miners, longwall face equipment, loading machines, and other mechanized equipment used to extract or load coal within the working place except machines used to load coal behind a continuous miner.

3.2 The sensing device for methane monitors on longwall shearing machines shall be installed at the return air end of the longwall face. An additional sensing device also shall be installed on the longwall shearing machine, downwind and as close to the cutting head as practicable. An alternative location or locations for the sensing device required on the longwall shearing machine may be approved in the ventilation plan.

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3.3 The sensing devices of methane monitors shall be installed as close to the working face as practicable.

3.4 Methane monitors shall be maintained in permissible and proper operating condition and shall be calibrated with a known air-methane mixture at least once every 15 days. To assure that methane monitors are properly maintained and calibrated, the operator shall:

3.4.1 Use persons properly trained in the maintenance, calibration, and permissibility of methane monitors to calibrate and maintain the devices.

3.4.2 Maintain a record of all calibration tests of methane monitors. Records shall be maintained in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

3.4.3 Retain the record of calibration tests for 1 year from the date of the test. Records shall be retained at a surface location at the mine and made available for inspection by authorized representatives of the Director and the representative of miners.

3.5 When the methane concentration at any methane monitor reaches 1.0 percent the monitor shall give a warning signal.

3.6 The warning signal device of the methane monitor shall be visible to a person who can deenergize electric equipment or shut down diesel-powered equipment on which the monitor is mounted.

3.7 The methane monitor shall automatically deenergize electric equipment or shut down diesel-powered equipment on which it is mounted when—

3.7.1 The methane concentration at any methane monitor reaches 1.5 percent; or

3.7.2 The monitor is not operating properly.

§ 36-54-4 Actions for excessive methane.

4.1 Location of tests hand held methane detectors. Tests for methane concentrations with hand held methane detectors under this section shall be made at least 12 inches from the roof, face, ribs, and floor.

4.2 Working places and intake air courses.

4.2.1 When 1.0 percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mechanized mining equipment is being installed or removed--

4.2.1.1 Except intrinsically safe atmospheric monitoring systems (AMS), electrically powered equipment in the affected area shall be deenergized, and other mechanized equipment shall be shut off;

4.2.1.2 Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane to less than 1.0 percent; and

4.2.1.3 No other work shall be permitted in the affected area until the methane concentration is less than 1.0 percent.

4.3 When 1.5 percent or more methane is present in a working place or an intake air course, including a working section, an air course in which a belt conveyor is located, or in an area where mechanized mining equipment is being installed or removed--

4.3.1 Everyone except those persons referred to in §22A-2-43 shall be withdrawn from the affected area; and

4.3.2 Except for intrinsically safe AMS, electrically powered equipment in the affected area shall be disconnected at the power source.

4.4 Return air split. (1) When 1.0 percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, or the location at which the split is used to ventilate seals or worked-out areas changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air to less than 1.0 percent.

4.4.1 When 1.5 percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air, or the location where the split is used to ventilate seals or worked-out areas--

4.4.1.1 Everyone except those persons referred to in §22A-2-43 shall be withdrawn from the affected area;

4.4.1.2 Other than intrinsically safe AMS, equipment in the affected area shall be deenergized, electric power shall be disconnected at the power source, and other mechanized equipment shall be shut off; and

4.4.1.3 No other work shall be permitted in the affected area until the methane concentration in the return air is less than 1.0 percent.

4.5 Return air split alternative.

4.5.1 The provisions of this paragraph apply if--

4.5.1.1 The quantity of air in the split ventilating the active workings is at least 27,000 cubic feet per minute in the last open crosscut or the quantity specified in the approved ventilation plan, whichever is greater;

4.5.1.2 The methane content of the air in the split is continuously monitored during mining operations by an AMS that gives a visual and audible signal on the working section when the methane in the return air reaches 1.5 percent, and the methane content is monitored as specified in §22A-2-43 and

4.5.1.3 Rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point.

4.5.2 When 1.5 percent or more methane is present in a return air split between a point in the return opposite the section loading point and where that split of air meets another split of air or where the split of air is used to ventilate seals or worked-out areas--

4.5.2.1 Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air below 1.5 percent;

4.5.2.2 Everyone except those persons referred to in in §22A-2-43 shall be withdrawn from the affected area;

4.5.2.3 Except for intrinsically safe AMS, equipment in the affected area shall be deenergized, electric power shall be disconnected at the power source, and other mechanized equipment shall be shut off; and

4.5.2.4 No other work shall be permitted in the affected area except as referred to in in §22A-2-43 until the methane concentration in the return air is less than 1.5 percent.

4.6 Bleeders and other return air courses. The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of air, or in a return air course other than as described in paragraphs (c) and (d) of this section, shall not exceed 2.0 percent.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rules Governing Machine Mounted Mounted Methane Monitors in Underground Coal Mines

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: Board of Coal Mine Health and Safety

Address: 1900 Kanawha Blvd Bild 6 Ste 652 Charleston WV 25301

Phone Number: 304.957.2306 Email: joel.l.watts@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.

N/A

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

Rules Governing Machine Mounted Methane Monitors in Underground Coal Mines

Rule Title: _____

Rule Title: _____

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

N/A

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.

N/A

Date: 22 August 2013

Signature of Agency Head or Authorized Representative

