



State of West Virginia

Department of Mines

Charleston 25305

JOHN D. ROCKEFELLER, IV.
Governor

WALTER N. MILLER
Director

NOTICE OF INTERIM EMERGENCY INTERPRETATIVE RULES AND STATEMENT OF FACTS AND CIRCUMSTANCES

FROM: Walter N. Miller, Director

RE: Interpretative rules and regulations governing mandatory respirable dust standards for underground coal mines, the surface areas of underground coal mines and surface mines in the State of West Virginia

TYPE OF RULE: Interpretative

ACTION: Interim Emergency Rules

EFFECTIVE DATE: May 14, 1982

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 5/14/82

On March 30, 1982, the West Virginia Supreme Court of Appeals issued a formal Writ of Mandamus ordering the Director of the Department of Mines to establish, forthwith, a program for the control of respirable dust in the coal mines of this state. (See United Mine Workers of America, et al. v. Miller, et al., No. 15493 West Virginia Supreme Court of Appeals, March 30, 1982). In compliance with such order, interim emergency interpretative rules are today filed in the state register in accordance with West Virginia Code § 29A-3-15.

The Board of Coal Mine Health and Safety has been authorized to promulgate rules and regulations dealing with coal mine health and safety which have the force and effect of law pursuant to Code § 22-2A-4. On April 30, 1982, the Director, as Chairman of such Board, proposed rules and regulations for control of respirable dust which will effectuate the provisions of Code § 22-2-70d. Until such time as legislative rules become effective, this interpretative rule shall constitute an interim program of enforcement for Code § 22-2-70d.

The Director has determined that an emergency exists as defined in Code § 29A-3-15 (e), requiring the promulgation of this interim interpretative rule in compliance with the Writ of Mandamus of the Supreme Court of Appeals. The enforcement of Code § 22-2-70d, entitled "Control of respirable dust," requires an immediate guideline for the public so that the occupational health of persons employed in and around coal mines in West Virginia may be protected. The time limitation set out for rule-making before the Board of Coal Mine Health and safety in Code § 22-2A-4 requires the promulgation of a legislative rule within

sixty days of a public hearing. Additionally, Enrolled Senate Bill 404, passed by the legislature on March 13, 1982 and effective July 1, 1982, will require the reorganization of the Board.

Public comment on the proposed rules for control of respirable dust filed with the Board of Coal Mine Health and Safety will be analyzed by the Director to determine the necessity of amending the interim respirable dust control program.

SUMMARY OF EMERGENCY RULES:

These rules and regulations are patterned of the program for control of respirable dust now presently enforced in West Virginia by the United States Department of Labor - Mine Safety and Health Administration. Section 2 of these regulations set out definitions which are substantially similar to the provisions of 30 Code of Federal Regulations, Parts 70 and 71. Section 3.01 requires each operator of a coal mine to take accurate samples of the amount of respirable dust in the mine atmosphere in accordance with the provisions of federal regulations. The results of these samples shall be made available to the Director by each coal mine operator, unless the Director gives notice that such sample results have been obtained by the Department of Mines directly from the Mine Safety and Health Administration. Notices of violation and civil penalties for violations of Code § 22-2-70d shall be issued pursuant to Section 4 of these rules to operators of surface mine operations which exceed the applicable limit on the concentration of respirable dust which is set out in Sections 3.02, and 3.03.

The Director's regulations for the participation of miners or their authorized representatives in monitoring the respirable dust control program is outlined in Section 5. Federal regulations on mandatory health standards for coal mines are incorporated by reference in Section 6.

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State of West Virginia

Department of Mines

Charleston 25305

JOHN D. ROCKEFELLER, IV.
Governor

WALTER N. MILLER
Director

NOTICE OF AMENDMENT TO INTERIM
EMERGENCY INTERPRETATIVE RULES FILED
MAY 14, 1982

DATE: May 21, 1982

FROM: Walter N. Miller, Director
West Virginia Department of Mines

TO: The State Register

RE: Interpretative rules and regulations governing mandatory respirable dust standards for underground coal mines, the surface areas of underground coal mines and surface coal mines in the State of West Virginia.

TYPE OF RULE: Interpretative

ACTION: Amendment to Interim Emergency Interpretative Rules

EFFECTIVE DATE: May 21, 1982

The interim emergency interpretative rule regarding enforcement by the Department of Mines of the respirable dust program is hereby amended by withdrawing the interpretative rule filed on May 14, 1982 and submitting for filing an amended rule. This amendment changes only Section 5 in both sets of interpretative rules by requiring the miners or their authorized representative to designate one non-supervisory employee to monitor the designated area respirable dust samples or area-wide work position samples required under Section 3.01 of both sets of the interpretative rules and 30 C.F.R. §§70.208 and 71.208. The miner selected for monitoring the designated area sample and the area-wide designated work position sample must be working in the area to be sampled.

The statement of facts and circumstances of emergency previously filed with this office on May 14, 1982 is hereby incorporated by reference. This interim program will continue in effect until amended by the Director or the interim program is superseded by rules and regulations promulgated by the Board of Coal Mine Health and Safety.

Address any questions or comments on these interpretative rules to Walter N. Miller, Director, West Virginia Department of Mines. Room E-151, State Capitol, Charleston, West Virginia. 25305; Telephone (304) 348-2051.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 5/21/82

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

(1982)

SUBJECT: INTERPRETATIVE RULES AND REGULATIONS GOVERNING MANDATORY REPAIRABLE
DUST STANDARDS FOR UNDERGROUND COAL MINES IN THE STATE OF WEST
VIRGINIA

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 5/21/82

I N D E X

SUBJECT: RULES AND REGULATIONS GOVERNING MANDATORY RESPIRABLE DUST STANDARDS
FOR UNDERGROUND COAL MINES IN THE STATE OF WEST VIRGINIA

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

(1982)

SUBJECT: Rules and Regulations Governing Mandatory Respirable Dust Standards for Underground Coal Mines in the State of West Virginia

TYPE OF RULE: Interpretive ACTION: Temporary Emergency Regulations

Section 1. General

1.01 Authority - These rules and regulations are issued as an interpretation of West Virginia Code Chapter 22, Article 2, Sections 48 and 70d and are authorized by West Virginia Code Chapter 29A, Article 3, Section 15.

1.02 Effective date - These rules and regulations were promulgated on the 21st day of May, 1982, and become effective on the 21st day of May, 1982.

1.03 Filing Date - These rules and regulations were filed in the office of the Secretary of State on the 21st day of May, 1982.

1.04 Scope and effect - These rules and regulations set forth Mandatory Respirable Dust Standards for Underground Coal Mines in the State of West Virginia. These rules and regulations are intended to provide information and guidance to the public regarding the Department of Mines' interpretations upon the enforcement of West Virginia Code Chapter 22, Article 2, Sections 48 and 70d.

Section 2. Definitions

2.01 Unless the context in which a word or phrase appears clearly requires a different meaning, all terms used in these rules and regulations, which are

not defined, shall have the meaning set forth in Section 1, Article 1, Chapter 22 of the West Virginia Code.

2.02 "Active workings" - Any place in a coal mine where miners are normally required to work or travel.

2.03 "Certified person" - An individual certified by the Director of the Department of Mines, or an organization whose certification is recognized as authoritative on the subject by the Director of the Department of Mines, to take respirable dust samples and perform the maintenance and calibration or respirable dust sampling equipment as required by these rules and regulations.

2.04 "Concentration" - A measure of the amount of substance contained per unit volume of air.

2.05 "Designated area" - An area of a mine identified by the operator in the plan approved by the MSHA District Manager.

2.06 "Designated occupation" - The occupation on a mechanized mining unit that has been determined by results of respirable dust samples to have the greatest respirable dust concentration.

2.07 "MSHA District Manager" - The manager of the Coal Mine Safety and Health district in which the mine is located.

2.08 "Mechanized mining unit" - (1) A unit of mining equipment including hand loading equipment used for the production of material; or (2) A specialized unit which utilizes mining equipment other than specified in these rules and regulations. (Bimonthly sampling; Mechanized mining units).

2.08.1 "Miner" - A non-supervisory employee of a coal operator.

2.09 "MRE Instrument" - The gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

2.10 "M.S.H.A." - The Mine Safety and Health Administration of the Department of Labor.

2.11 "Normal production shift" - (1) A production shift during which the amount of material produced in a mechanized mining unit is at least 50 percent of the average production reported for the last set of five valid samples; or (2) A production shift during which any amount of material is produced by a new mechanized mining unit, until a set of five valid samples is taken.

2.12 "Production shift" - (1) With regard to a mechanized mining unit, a shift during which material is produced, or (2) with regard to a designated area of a mine, a shift during which material is produced and routine day-to-day activities are occurring in the designated area.

2.13 "Quartz" - Crystalline silicon dioxide (SiO_2) not chemically combined with other substances and having a distinctive physical structure.

2.14 "Respirable dust" - Dust collected with a sampling device approved by the Director of the Department of Mines in accordance with Part 74, Title 30 Code of Federal Regulations. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education, and Welfare are approved by the Department of Mines.

2.15 "Secretary" - The secretary of the United States Department of Labor or his delegate, or any successor agency of the federal government charged with the enforcement of mine safety.

2.16 "Valid respirable dust sample" - A respirable dust sample collected and submitted as required by Part 70, Title 30 Code of Federal Regulations, and not voided by M.S.H.A.

Section 3. Respirable Dust Standards

3.01 Sampling program. (1) Each operator of a coal mine shall take

accurate samples of the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed. Such samples shall be taken by any device approved by the Secretary of the United States Department of Labor, or any successor agency of the federal government charged with the enforcement of mien safety. Such samples shall be taken in accordance with such methods, at such locations, at such intervals, and in such manner as provided by the Secretary of the United States Department of Labor in regulations promulated at 30 C.F.R. Part 70. Each coal operator shall make available to the Department of Mines the results of the analysis of such samples conducted by the United States Department of Labor, unless the Department of Mines notifies such operator that such results of sample analysis have been obtained by the Department of Mines directly from the federal enforcement authorities.

3.02 Respirable dust standards. (a) Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with 30 C.F.R. § 70.206 (Approved sampling devices; equivalent concentrations).

(b) Each operator shall continuously maintain the average concentration of respirable dust within 200 feet outby the working faces of each section in the intake airways at or below 1.0 milligrams of respirable dust per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with 30 C.F.R. § 70.206 (Approved sampling devices; equivalent concentrations).

3.03 Respirable dust standard when quartz is present. When the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed at or below a concentration of respirable dust, expressed in milligrams per cubic meter of air as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with 30 C.F.R. § 70.206 (Approved sampling devices; equivalent concentrations), computed by dividing the percent of quartz into the number 10.

(Example: The respirable dust associated with a mechanized mining unit or a designated area in a mine contains quartz in the amount of 20%. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that mechanized mining unit or designated area shall be continuously maintained at or below 0.5 milligrams of respirable dust per cubic meter of air ($10/20 = 0.5 \text{ mg/m}^3$).

Sectuib 4. Enforcement

4.01 If, based upon samples taken, analyzed, and recorded pursuant to Section 3.01 of these regulations, or samples taken during an inspection by an authorized representative of the Secretary of the United States Department of Labor or an authorized representative of the Director, the applicable limit on the concentration of respirable dust required to be maintained pursuant to sections 3.02 or 3.03 of these regulations is exceeded and thereby violated, the Director or his authorized representative shall issue a notice of violation of West Virginia Code Chapter 22, Article 2, Section 70d pursuant to West Virginia Code Chapter 22, Article 1, Section 14(b), fixing a reasonable time for the abatement of the violation. During the time for abatement fixed in the notice of violation, the operator shall take corrective action to lower the concentration of respirable dust in the affected mechanized mining

unit or designated area and then sample each production shift unit until five valid respirable dust samples are taken.

4.02 If, upon the expiration of the period of time as originally fixed or subsequently extended, the Director or his authorized representative finds that the period of time should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in West Virginia Code Chapter 22, Article 1, Section 14(c), to be withdrawn from, and to be prohibited from entering such area until the Director or his authorized representative has reason to believe, based on actions taken by the operator, that such limit will be complied with upon the resumption of mining operations in such mine.

4.03 The Director and his authorized representatives may require the operator to take such actions as they deem appropriate to insure the respiratory health of any person in or at a mine during any inspection of such mine pursuant to West Virginia Code Chapter 22, Article 1, Sections 13, 14, and 15. Such actions include, but are not limited to, increasing the quantity and velocity of air reaching the working faces, increasing the amount and pressure of water sprays on mechanical equipment and requiring the availability for use of approved respirators for all persons exposed to concentrations of respirable dust in excess of the levels required to be maintained under these regulations. Use of respirators shall not be substituted for environmental control measures in the active workings.

Section 5. Miner Participation

5.01 Miner participation designated occupation respirable dust samples.

When designated occupation respirable dust samples are to be collected as required by Part 70, Title 30 Code of Federal Regulations, the miner designated for sampling shall monitor the sampling procedures. Monitoring of the respirable dust sampling procedures shall consist of the following:

- (1) Observe the distribution, placement and collection of the sampling device used to take the dust sample.
- (2) Observe all required on shift examinations of the sampling device.
- (3) Observe the removal of the sample from the sampling device and observe the properly completed dust data card for the transmittal fo the sample to MSHA.

The operator shall place upon the operators dust data card the name of the non-supervisory employee that monitored the respirable dust samples collected in the designated occupation.

A miner designated to monitor the respirable dust samples collected in designated occupation shall monitor such sampling procedures and should make note of the identification number of the filter cassette to compare with such data that will be received by the operator from MSHA and posted on the mine bulletin board.

5.02 Miner participation - Designated area; respirable dust samples.

When designated area respirable dust samples are to be collected as required by 30 Code of Federal Regulations §70.208, the authorized representative of the miners at the mine shall designate a miner in the area to be sampled to monitor the designated sampling procedures. If no representative is authorized at the mine, the miners shall select a miner in the area of the mine to be sampled to monitor the designated area sampling procedures. Monitoring of the respirable dust sampling procedures shall consist of the following:

- (1) Observe the distribution, placement and collection of the sampling device used to take the dust sample.
- (2) Observe all required on shift examinations of the sampling devices.
- (3) Observe the removal of the sample from the sampling device and observe the properly completed dust data card for the transmittal of the sample to MSHA.

The operator shall place upon the operators dust data card the name of the non-supervisory employee that monitored the respirable dust samples collected in the designated areas.

A non-supervisory employee designated to monitor the respirable dust samples collected in designated areas shall monitor such sampling procedures and should make note of the identification number on the filter cassette to compare with such data that will be received by the operator from MSHA and posted on the mine bulletin board.

Section 6. Reference to Federal Standards

6.01 The definitions, sampling procedures, methods and equipment established under 30 Code of Federal Regulations, Part 70 for the control of respirable dust are incorporated by reference in these regulations as if such were fully set out herein. The West Virginia Department of Mines recognizes these federal regulations as the established standards for enforcement of West Virginia Code Chapter 22, Article 2, Section 48 and 70d. 30 C.F.R. Part 70 shall be recognized by the West Virginia Department of Mines for the purpose of enforcement of respirable dust standards unless any provision of such regulations is determined to reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by the West Virginia Code Chapter 22 or these regulations.