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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

(1982)

SUBJECT: INTERPRETATIVE RULES AND REGULATIONS GOVERNING MANDATORY RESPIRABLE  
DUST STANDARDS FOR SURFACE COAL MINES AND SURFACE WORK AREAS OF  
UNDERGROUND COAL MINES

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

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for Surface Coal Mines and Surface Work Areas of Underground Coal  
Mines

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SUBJECT: Rules and Regulations Governing Mandatory Respirable Dust Standards for Surface Coal Mines and Surface Work Areas of Underground Coal Mines

TYPE OF RULE: Interpretative                      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 14th day of May, 1982, and become effective on the 14th day of May, 1982.

1.03 Filing Date - These rules and regulations were filed in the office of the Secretary of State on the 14th day of May, 1982.

1.04 Scope and effect - These rules and regulations set forth Mandatory Respirable Dust Standards for Surface Coal Mines and Surface Work Areas of Underground Coal Mines. 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 the rules and regulations, which are defined, shall have the meanings set forth in Section 1, Article 1, Chapter 22

of the West Virginia Code.

2.02 "Act" - The Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164.

2.03 "Active workings" - Any place in a surface coal mine or the surface work area of an underground coal mine where miners are normally required to work or travel.

2.04 "Certified person" - An individual certified by the Secretary in accordance with Title 30, Part 71.202 Code of Federal Regulations (Certified person; sampling) to take respirable dust samples required by these rules and regulations or certified in accordance with Title 30 Part 71.203 Code of Federal Regulations (Certified person; maintenance and calibration) to perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

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

2.06 "Designated work position" - A work position designated under Title 30 Part 71.208 Code of Federal Regulations (Bimonthly sampling; designated work positions).

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

2.08 "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.

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

2.09 "MSHA" - Mine Safety and Health Administration of the Department of Labor.

2.10 "Normal work shift" - (1) A shift during which the regular duties of the designated work position are performed while routine day-to-day mining activities are occurring in the rest of the mine, and (2) a shift during which there is no rain, or, if rain occurs, the rain does not suppress the respirable dust to the extent that sampling results will be measurably lower, in the judgement of the person certified under this part to conduct sampling.

2.11 "Quartz" - Crystalline silicon dioxide ( $\text{SiO}_2$ ) not chemically combined with other substances and having a distinctive physical structure.

2.12 "Respirable dust" - Dust collected with a sampling device approved by the Secretary and the Secretary of Health and Human Services in accordance with Part 74, Title 30 Federal Code of Regulations (Coal Mine Dust Personal Sampler Units) of such title. Sampling device approvals issued by the Secretary of the Interior and Secretary of Health, Education and Welfare are approved by the Director of the Department of Mines.

2.13 "Secretary" - The Secretary of Labor or delegate.

2.14 "Surface area" - A specific physical portion of a surface coal mine or surface area of an underground coal mine. These areas are assigned a four digit identification number by MSHA.

2.15 "Surface coal mine" - A surface area of land and all structures, facilities, machinery, tools, equipment, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, including custom coal preparation facilities.

2.16 "Surface installation" - Any structure in which miners work at a

surface coal mine or surface work area of an underground coal mine.

2.17 "Surface work area of an underground coal mine" - The surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed in, upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal from its natural deposits underground by any means or method, and the work of preparing the coal so extracted, including custom coal preparation facilities.

2.18 "Surface worksite" - Any area in which miners work at a surface coal mine or surface work area of an underground coal mine.

2.19 "Valid respirable dust sample" - A respirable dust sample collected and submitted as required by this part, and not voided by MSHA.

2.20 "Work position" - An occupation identified by an MSHA code number describing a location to which a miner is assigned in the performance of his or her normal duties.

### Section 3. Respirable Dust Standards

3.01 Sampling program. (a) 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 mine 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 regulations promulgated at 30 C.F.R. Part 71. 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. § 71.206 (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. § 71.206 (Approved sampling devices; equivalent concentrations), computed by dividing the percent of quartz into the number 10.

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

#### Section 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 work position and then sample the affected work position 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, the use of water or other dust allaying material on roadways 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 Designated work position; respirable dust samples. When designated work position respirable dust samples are to be collected as required by Part 71, Title 30 Code of Federal Regulations, and such sampling devices are not worn by a miner, the operator shall designate a miner(s) or his authorized representative(s) to monitor the sampling procedures. When designated work position respirable dust samples are to be collected as required by Part 71, Title 30 Code of Federal Regulations and such sampling device is worn by the miner, the miner designated for sampling in the designated work position 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 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 designated miner(s) or his authorized representative(s) that monitored

the respirable dust samples collected in the designated areas.

A miner(s) or his authorized representative(s) designated by the operator 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 71 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, Sections 48 and 70d. 30 C.F.R. Part 71 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.