WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL RULE

AGENCY: Miners Health Safety And Training

TITLE-SERIES: 56-17

RULE TYPE: Procedural

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: Rules Governing Organization and Implementation Procedures for Control of Coal Dust, Rock Dust Standards

CITE STATUTORY AUTHORITY: W. Va. Code 22A-1-6 and 22A-2-24

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

August 31, 2023

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Garner Marks -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 56
PROCEDURAL RULE
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 17
RULES GOVERNING ORGANIZATION AND IMPLEMENTATION PROCEDURES FOR CONTROL OF COAL DUST, ROCK DUST 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 procedures for control of coal dust, rock dust standards.

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

1.3. Filing Date. -- July 27, 2023.

1.4. Effective Date. -- August 31, 2023.

§56-17-2. Definitions.

2.1. Unless the context in which a word or phrase appears clearly requires a different meaning, all terms used in this rule that are not defined herein shall have the meanings set forth in W. Va. Code §22A-1-2.

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

2.4. "Rock dust" shall mean 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" shall mean 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 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/her 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 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.

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 R. §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 R. §56-17-1 *et seq.*