

## RESPONSE TO COMMENTS

### TITLE 56, SERIES 19

#### SUBSTANCE ABUSE SCREENING, STANDARDS AND PROCEDURES

The West Virginia Office of Miners' Health, Safety and Training (OMHST) responds to the comments received as follows:

#### COMMENTS RECEIVED FROM HAROLD BIAS

**Comment 1:** I believe the rule should prohibit and penalize any person who seeks or obtains certified employment while his/her mining certifications are suspended or revoked.

**Response:** OMHST rejects this comment. OMHST, in consultation with the West Virginia Board of Coal Mine Health and Safety, believes that the rule and West Virginia Code do prohibit and provide for penalties in the event a person attempts to obtain or obtains certified employment during the period his or her mining certifications are suspended and that changes to the proposed revised rule are not necessary.

#### COMMENTS RECEIVED FROM MARK WELLS

**Comment 1:** Section 8.6 of the Rule reads, "The Board of Appeals shall permanently revoke all certifications issued by the West Virginia Office of Miners' Health, Safety and Training when the Board finds, by a preponderance of the evidence, that a person has violated Section 5.11 of this rule for a second time."

My comment is that there are scenarios where the application of Section 8.6 results in incredibly harsh consequences for a coal miner. If an unemployed coal miner applies for a job at two coal mines and provides a urine sample for both, possibly even on the same day, and fails both drug tests he is subject to permanent revocation before he is ever aware of failing a drug test.

Furthermore, a coal miner employed at a coal mine might be randomly selected for two separate random drug tests that occur so close together that he fails both random tests before he has received the results of the first drug test or even been suspended by the Office of Miners' Health, Safety and Training. It seems there should be some allowance made when the two failed drug tests occur within a very short period of time.

**Response:** OMHST rejects this comment. OMHST, in consultation with the West Virginia Board of Coal Mine Health and Safety, has considered the merits of the comment and does not believe that Subsection 8.6. should be changed.

**COMMENTS RECEIVED FROM DAVID STANLEY CONSULTANTS --  
WILLIAM TUCKER, REGIONAL MANAGER**

**Comment 1:** I appreciate the opportunity to comment on the changes to the drug rule. I would simply like to commend everyone who worked on it. The changes make the drug rule simpler and better.

**Response:** The comment expresses satisfaction with the proposed revised rule and, as such, OMHST does not believe that any changes to the proposed revised rule are necessary based upon the comment.

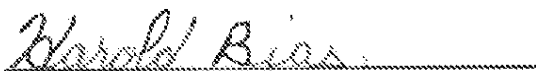
TO: Mr. Eugene White

RE: Title 56 - Series 19 Substance Abuse Screenings,  
Standards and Procedures

I have the following comment concerning this rule.

I believe the rule should prohibit and penalize any person who seeks or obtains certified employment while his/her mining certifications are suspended or revoked.

Thank you for consideration of this matter.



Harold Bias

7-10-2019

TO: Director Eugene White

Director of MSHA

RE: My Comment to Title 56, Series 19 - The Substance Abuse Drug Rule

I would like you to consider the following comment to the Drug Rule.

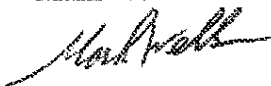
Section 8.6 of the Rule reads, "The Board of Appeals shall permanently revoke all certifications issued by the West Virginia Office of Miners' Health, Safety and Training when the Board finds, by a preponderance of the evidence, that a person has violated Section 5.11 of this rule for a second time."

My comment is that there are scenarios where the application of Section 8.6 results in incredibly harsh consequences for a coal miner. If an unemployed coal miner applies for a job at two coal mines and provides a urine sample for both, possibly even on the same day, and fails both drug tests he is subject to permanent revocation before he is ever aware of failing a drug test. Furthermore, a coal miner employed at a coal mine might be randomly selected for two separate random drug tests that occur so close together that he fails both random tests before he has received the results of the first drug test or even been suspended by the Office of Miners' Health, Safety and Training. It seems there should be some allowance made when the two failed drug tests occur within a very short period of time.

Thank you for considering my comment.

Sincerely,

Mark Wells



**Young, Willa J**

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**From:** Koerber, Barry L  
**Sent:** Thursday, July 18, 2019 1:11 PM  
**To:** Young, Willa J  
**Subject:** FW: [External] Drug Rule 56-19

**From:** William Tucker <wtucker@dsc-llc.com>  
**Sent:** Thursday, July 18, 2019 12:10 PM  
**To:** White, Eugene E <Eugene.E.White@wv.gov>  
**Cc:** Koerber, Barry L <Barry.L.Koerber@wv.gov>; Cook, Danny R <Danny.R.Cook@wv.gov>  
**Subject:** [External] Drug Rule 56-19

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I appreciate the opportunity to comment on the changes to the drug rule. I would simply like to commend everyone who worked on it. The changes make the drug rule simpler and better.

Respectfully,

William Tucker, Regional Manager, David Stanley Consultants