

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

2006 DEC -1 AM 10: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: WV Office of Miners Health Safety and Training TITLE NUMBER: 56

CITE AUTHORITY: 22A-1-6; 22A-1-9; 22A-1-12; 29A-3-1

RULE TYPE: PROCEDURAL _____ INTERPRETIVE x

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO _____

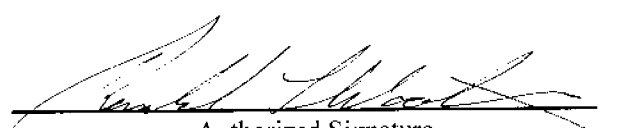
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Drug Testing of Mine Inspectors and
Mine Safety Instructors

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS December 31 2006


Authorized Signature

47.40



L. Thomas Bulla, Secretary
Department of Commerce
State Capitol
Building 6, Room 525
Charleston, WV 25305-0311

State of West Virginia
Joe Manchin III
Governor

Telephone: (304) 558-2234
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www.boc.state.wv.us

December 1, 2006

Mr. Ronald L. Wooten
Director
Office of Miners' Health, Safety
and Training
1615 Washington Street East
Charleston, West Virginia 25311-2126

Dear Director Wooten:

Upon review of your request to final file an interpretive rule under Title 56, Series 13, which governs drug testing of mine inspectors and mine safety instructors, I find the interpretive rule satisfactory and approve your filing of the regulations.

Sincerely,

L. Thomas Bulla
Cabinet Secretary

TB/db

TITLE 56
INTERPRETIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

FILED

2006 DEC -1 AM 10:52

SERIES 13
DRUG TESTING OF MINE INSPECTORS
AND MINE SAFETY INSTRUCTORS.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§56-13-1. General.

1.1. Scope. -- This regulation clarifies the Office of Miners' Health, Safety and Training authority under W. Va. Code §§ 22A-1-9, 22A-1-12(a) and 22A-1-12(e) to determine whether mine inspectors, surface mine inspectors, mine safety instructors, electrical inspectors, or persons seeking appointment as a mine inspector, surface mine inspector, mine safety instructor, or electrical inspector, are of good character, reputation and temperate habits, and do not suffer from physical or mental impairment, incompetence, neglect of duty, or malfeasance in office as a result of controlled substance or drug abuse.

1.2. Authority. -- W. Va. Code §§ 22A-1-6, 22A-1-9, 22A-1-12, and 29A-3-1 et. seq.

1.3. Filing Date. -

1.4. Effective Date. --

§56-13-2. Purpose.

2.1. The Office of Miners' Health, Safety and Training recognizes that the critical mission of mine inspections requires the maintenance of a drug free work environment and that the practice of mine inspections has several uniquely compelling interests that justify the use of drug testing. Additionally, the general citizenry of the State of West Virginia has a right to expect that mine inspectors, surface mine inspectors, mine safety instructors, electrical inspectors and others are at all times both physically and mentally able to perform their duties. The Office of Miners' Health, Safety and Training believes that there is sufficient evidence to conclude that the use of controlled substances and other forms of drug abuse could seriously impair any mine inspectors, surface mine

inspectors, mine safety instructors, electrical inspectors or others physical and mental health, and thus, their job performance, and places miners, mine personnel, mine inspectors, surface mine inspectors, mine safety instructors, electrical inspectors and the general population's lives, health and welfare at risk.

§56-13-3. Definitions.

3.1. "Collection site" means a place designated by the office where employees present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

3.2. "Confirmation test" means a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test. This test shall use either gas chromatography or mass spectrometry.

3.3. "Controlled substance" means a drug, substance or immediate precursor in Schedule I-V as defined by § 60A-1-101(d) of the West Virginia Code.

3.4. "Director" means the director of the Office of Miners' Health, Safety and Training.

3.5. "Drug" means substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States", or official "National Formulary," or any supplement thereto; substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; substances (other than food) intended to affect the structure or any function of the body of man or animals; and substances intended for use as a component of any article specified in this section.

3.6. "Drug test" means the compulsory production and submission of urine by an employee for the purpose of analysis to detect prohibited drug use.

3.7. "Electrical inspector" means an electrical inspector as provided for in section eleven, article 1, chapter 22A of the West Virginia Code.

3.9. "Employee" means a mine inspector, prospective mine inspector, mine safety instructor, prospective mine safety instructor, surface mine inspector, prospective surface mine inspector, electrical inspector or prospective electrical inspector.

3.10. "Mine" includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

3.11. "Mine inspector" means a state mine inspector as provided for in section eight, article one, chapter twenty-two a of the West Virginia Code.

3.12. "Mine Safety Instructor" means a state mine safety instructor as provided for in section nine, article one, chapter twenty-two a of the West Virginia Code.

3.13. "Office" means the Office of Miners' Health, Safety and Training.

3.14. "Reasonable cause" means a ground for belief linked to articulable, objective facts or circumstances to warrant submitting an employee to testing.

3.15. "Reasonable cause drug testing" means a drug test ordered by the office for an employee when the office has reasonable cause to believe the employee is under the influence of a controlled substance or alcohol or is a current user of a non-prescribed controlled substance.

3.16. "Screening test" means an immunoassay examination to eliminate urine specimens from further analysis.

3.17. "Surface mine inspector" means a surface mine inspector as provided for in section thirteen, article one, chapter twenty-two a of the West Virginia Code.

§56-13-4. Prohibited Activities.

4.1. Employees of the office shall not:

- a. Illegally possess any controlled substance;
- b. Ingest any controlled substance or any drug or prescription drug unless at the direction of a licensed medical practitioner;
- c. Ingest any prescribed or over-the-counter drug in amounts beyond the recommended dosage;
- d. Use alcohol in any manner while on duty or present themselves for duty in any state of alcohol induced intoxication;
- e. Refuse to participate in any drug test as directed by the Director.

§56-13-5. Drug Testing Procedure.

5.1. All employees of the office as listed in Section 5.5 of this rule form the test pool and are subject to unannounced, random drug testing procedures. Upon implementation of this rule, the Director, at his or her discretion, and at a date prior to January 1, 2007, determined by the Director, may cause all current employees to undergo an initial drug test.

5.2. Implementation of this procedure will be delegated, on a contractual basis, to an entity or corporation approved by the Director.

5.3. All employees of the office may be directed to submit to Reasonable Cause Drug Testing when reasonable cause exists to warrant the testing of such employees.

5.4. The Director may cause a randomly selected panel of employees equaling up to ten percent of the test pool to undergo a random drug test each calendar month. Such selection shall be made pursuant to a lottery system.

5.5. It is the intent of this procedure to include in the random drug test pool, those employees whose job responsibilities involve public safety issues which may impact

the health, safety, rights and privileges of others or with the public welfare. Based upon the foregoing criteria, those employees who are deemed to be eligible for inclusion into the random drug test pool are:

- a. Mine inspectors;
- b. Mine safety instructors;
- c. Surface mine inspectors;
- d. Electrical inspectors; and
- e. Any employee of the Office of Miners' Health, Safety and Training entrusted with a state vehicle on a day-to-day basis.

5.6. Upon arrival at the collection site, the selected employee shall provide positive proof of their identity to the specimen collector prior to the initiation of the collection procedure.

5.7. Employees who refuse to cooperate in the administrative documentation of the testing procedure or refuse to undergo a drug test will be deemed to have violated a direct order of the Director and shall be considered to have failed such test.

5.8. The bathroom facility of the collection site shall be private and secure and the specimen collector shall search the facility before the employee enters the same and shall document that it is free of any foreign substances.

5.9. A urine specimen shall be collected in such a manner so as to provide adequate privacy for the employee while ensuring the validity of the sample.

- a. Should the employee appear unable or unwilling to provide a specimen at the time of the test, the specimen collector shall document the same on the drug test report form.

- b. The employee will be permitted no more than three (3) hours to provide a sample, during which time he/she will remain at the collection site under observation.

c. A maximum of forty fluid ounces of liquids over a three hour period will be provided to stimulate the production of a specimen.

d. Absent an extenuating medical condition documented by a licensed medical practitioner or physician, failure to submit a specimen will be considered a refusal to submit to a drug test.

e. Whenever the specimen collector has a reasonable articulable belief that a specimen has been altered or substituted, a second specimen will be obtained as soon as possible under the direct observation of a same-gender specimen collector or designated member of the office.

5.10. Specimens shall be sealed, labeled and checked against the identity of the employee prior to delivery to the testing lab.

5.11. The testing phase shall consist of a screening test and a confirmation test.

a. The screening test shall be conducted using an immunoassay procedure. An initial positive test will not be conclusive but will be considered as "confirmation pending" and no results will be forwarded to the Director until the results of the confirmation test are obtained.

b. A specimen testing positive will undergo a confirmation test which shall be performed using gas chromatography/mass spectrometry (GC/MS).

5.12. The drug screen tests shall be capable of identifying substances specified by the Director and the testing shall only be performed at a laboratory that has been accredited by the Substance Abuse and Mental Health Services Administration (SAMHSA).

5.13. The laboratory selected to conduct the screening and confirmation analysis shall employ nationally accepted standards of quality control, documentation, chain-of-custody, technical expertise and demonstrated efficiency in the analysis of such specimens.

5.14. Specimens yielding a positive confirmation test shall be referred to a Medical Review Officer (MRO) who will be responsible for conducting a telephonic interview with the affected employee to ascertain whether any legitimate cause exists for the positive test result.

a. The MRO may require that the affected employee provide prescriptions or medical records in defense of a claim negating a positive test result.

b. Should circumstances dictate, the MRO may contact the affected employee's pharmacy or physician in order to verify a claimed medical history.

c. Should the affected employee's medical or personal history warrant, the MRO may direct that the affected employee contact a physician in order to perform a medical examination.

d. When the MRO is unable to obtain a satisfactory resolution to a positive confirmation test, the positive test results shall be reported to the Director verbally within twenty-four (24) hours followed by written notification within five (5) days.

5.15. When reasonable cause exists that an employee may be using drugs or abusing alcohol the office may require the employee to undergo a Reasonable Cause Drug Test.

5.16. Reasonable cause drug testing is based on a totality of circumstances. A variety of factors may be considered when establishing reasonable cause. Such factors may include, but are not limited to, the following:

a. A pattern of abnormal conduct or specific behaviors or deviations from expected performance including but not limited to:

1. Frequent absences/tardiness;
2. Serious errors in judgment;
3. Numerous accidents both on and off duty;
4. Chronic missed deadlines;

5. Mood swings, irrational behavior or unpredictable hostility; and/or

6. Repeated instances of violations of policies and procedures.

b. Observation, such as direct observation of use and/or physical symptoms of being under the influence of a controlled substance.

5.17. The Director may place the employee on administrative leave, pending disciplinary action, upon being notified of a positive test result.

5.18. Employees who are the subject of a positive drug test shall have the right to request that a second confirming drug test be performed on the submitted split sample.

a. Additional split testing beyond the first such test shall be performed at the sole expense of the employee at the prevailing rate then charged by the testing company and any such request must be made in writing to the Director by the employee immediately upon notification of a positive test result.

b. A different SAMHSA accredited laboratory may be used to perform this test if so requested by the employee.

c. The test will be performed within seventy-two hours of receipt of the request and the results thereof will be reported to the Director by the MRO as soon as they are available.

d. In the event the second drug test results in a negative test result, the office shall reimburse the affected employee all reasonable costs associated with the second drug test.

5.19. The Director, at his/her discretion, may afford the employee an opportunity to seek professional medical and/or psychological treatment for substance abuse for a first violation of this section. As a condition of continuing employment, the employee may be required to agree, in writing, to:

a. Immediately enroll in a substance abuse treatment program approved by the Director;

b. Sign a medical records release authorization, which relates solely to the employees' treatment for substance abuse and provide timely progress reports to the Director;

c. Successfully complete the substance abuse treatment program; and

d. Submit to unannounced drug tests for a period of not less than twelve (12) calendar months.

5.20. The Director may initiate disciplinary action against an employee who violates a provision of the rule even though the affected employee has been afforded an opportunity to seek professional medical and/or psychological treatment.

5.21. All individual records pertaining to random drug testing procedures on affected employees shall be deemed to be confidential medical records and shall not be disseminated except at the express direction of the Director, and without the express written consent of the employee.

5.22. The Director may immediately terminate any employee who violates these rules where such termination of the employee is deemed by the Director to be in the best interest of the office or the public in accordance with the requirements set forth in article one, chapter twenty-two a of the West Virginia code.

5.23. All successful applicants for the position of mine inspector, mine safety instructor, surface mine inspector or electrical inspector shall submit to a drug screening test, as set forth in this rule and in the same manner as current employees subject to random drug screening tests, and shall successfully pass such drug screening test before assuming the responsibilities and duties of the applicant's respective job.

5.24. In the event a successful applicant for the position of mine inspector, mine safety instructor, surface mine inspector or electrical inspector, and who has not assumed the responsibilities and duties of his or her job, fails the drug screening test, including any subsequent drug screening test utilized to verify the results of the first failed drug screening test, such failure will constitute cause to immediately dismiss the applicant.



State of West Virginia
Joe Manchin III, Governor

WV Office of Miners' Health, Safety & Training
James M. Dean, Acting Director
1615 Washington Street East • Charleston, West Virginia • 25311-2126
Telephone 304-558-1425 • Fax 304-558-1282
www.wvminesafety.org

Drug Testing of Mine Inspectors and Mine Safety Instructors
Title 56 Series 13
Interpretive Rule

SUMMARY

The Office of Miners' Health, Safety and Training recognizes that the critical mission of mine inspections requires the maintenance of a drug free work environment and that the practice of mine inspections has several uniquely compelling interests that justify the use of drug testing.

The citizens of the State of West Virginia have a right to expect that mine inspectors, surface mine inspectors, mine safety instructors, and electrical inspectors are at all times both physically and mentally able to perform their duties.

The Office of Miners' Health, Safety and Training believes that there is sufficient evidence to conclude that the use of controlled substances and other forms of drug abuse seriously impairs any mine inspectors, surface mine inspectors, mine safety instructors or electrical inspector's physical and mental health, and thus, their job performance, and places miners, mine personnel, mine inspectors, surface mine inspectors, mine safety instructors, electrical inspectors and the general population's lives, health and welfare at risk.

This rule gives authority to the Director and outlines the procedures to implement drug testing of mine inspectors and mine safety instructors who are employed by the West Virginia Office of Miners' Health, Safety and Training.



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Joe Manchin III, Governor

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STATEMENT OF CIRCUMSTANCE

TITLE 56 SERIES 13
DRUG TESTING OF MINE INSPECTORS AND MINE SAFETY INSTRUCTORS

The agency does not have in place any regulations or rule that gives authority to conduct drug testing of mine inspection and mine safety instructor staff.

Mine operators in the state have policy where they conduct drug testing of coal mine employees and the agency feels that the inspectors who are responsible for conducting mine inspections and instructors responsible for training should be subject to drug screening.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 56 Series 13

Type of Rule: Legislative Interpretive Procedural

Agency: WV Office of Miners' Health Safety and Training

Address: 1615 Washington Street East
Charleston, WV 25311-2126

Phone Number: 304 558-1425 Email: jdean@mines.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Contract with entity or corporation (laboratory) for conducting the screening and analysis of specimens for initial and random drug tests.

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	4,000.00	3,000.00	3,000.00
Personal Services			
Current Expenses	4,000.00		3,000.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	4,000.00		3,000.00

Rule Title: Title 56 Series 13

Rule Title:

Title 56 Series 13

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

To pay for contract service or laboratory to conduct initial drug testing and random drug testing analysis

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.

Date:

8-18-06

Signature of Agency Head or Authorized Representative

C. A. Phillips

September 12, 2006

Director
Office of Miners' Health, Safety & Training
1615 Washington Street, East
Charleston, WV 25311

▲
SEP 2006
Received
Health Safety &
Training

RE: Title 56 Series 13 Proposed Drug Testing

Dear Sir:

I'm writing this letter about my concerns relating to the proposed drug testing policy for a select few employees of the Office of Miners' Health, Safety & Training. I am not against drug testing in any way, shape or form, in my opinion it is way overdue for the agency. We all know that there is a huge problem with substance abuse in the mining industry and it is all our jobs to work toward curbing or stopping the abuse, so that no one else will die or destroy their life or the life of a coworker.

The Office of Miners' Health, Safety & Training must set an example if we are going to win the war on drugs and alcohol in the coalfields. In order to do this all employees of the agency should be required by law to submit to the drug testing required by the proposed policy, not just safety instructors and mine inspectors. All agency employees deal with the public in one way or another each and every day of the week, thus we all are a part of the safety factor that impacts mine safety. Having said that, it just stands to reason that all employees should be in the right frame of mind at all times when dealing with the public, regardless of whether it be by telephone or in person at a mine site or in the office. I feel that in order to set the proper example for the agency and the industry, testing should start with upper level management and include all employees.

Substance abuse affects all personnel from top management to field workers to clerical and thus no one should be exempt from this policy so that problems can be identified and assistance offered to everyone in need.

I feel that the agency should appoint a small committee to review the policy closer and better define some of the wording such as will, may, his/her discretion, etc. I further believe as stated above that all Office of Miners' Health, Safety and Training employees should be required to submit to testing, failure to do so could cause the agency problems in the future.

Respectfully,



Jim Hodges

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 18, 2006 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Attn: Director's Office

WV Office of Miners' Health, Safety
and Training
1615 Washington Street East

Charleston, WV 25311-2126

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Box 43
Jenkinsville
West Virginia
24848
9-15-2006

To Whom it May Concern,

It is a good idea to have drug testing implemented, but it is not right or fair to single out, inspectors and instructors only to be tested. There are other employees that work for this agency; so testing should be agency wide everyone, no one should be exempted from top to bottom.

Pre-employment testing - fine. An employee suspected of substance abuse fine, have him or her tested. Who is best to have the say about that but the boss or the IAH at the office where the person works. To say the testing is to be implemented at the directors' discretion he do not know us or how we work.

We are State of W.V. employees, are all state employees asked to piss in a cup. We have rights that are protected by the constitution of the United States of America, what about the new HIPPA law who will be seeing our private information and having knowledge about it.

The drug testing is a good thing
but all should be tested or none

Thank You


Yours Respectfully

Jamie Martin

' Drug Testing of Mine Inspectors and Mine Safety Instructors'

COMMENTS:

1. Section 4.1.e – States ' Have alcohol in the body system while on duty,'
Question – How much alcohol? Any alcohol?
2. Section 4.1.f – Should read: 'Refuse to participate in any drug test as directed by the Plan.'
3. Section 5.4 – 'Randomly selected panel of employees' by whom and how will this random selection occur?
4. Section 5.18.a – For the first time an individual has a positive test, the split test should be paid by the employer. Any future test that are positive, the split test will be paid by the employee.
5. Section 5.19. – The Director, at his/her discretion, may afford – for a first violation, this should read will afford. Are we looking for a reputable work force, or are we trying to discharge certain individuals. Everyone should be treated equally.
6. Section 5.19.b – A medical records release authorization should be for that condition only, it should not allow for full exposure of unrelated medical conditions.
7. At no time should the 'collection site' as described in this plan be at the mine site. An employee pulled away from a mine for a drug screen, would do unrepairable damage to the individual's character and the reputation of this Agency, whether the individual was guilty or not. This stipulation should be specified in the plan.
8. All employees of the Office of Miners' Health, Safety and Training should be in this plan. In the present format, this plan is very discriminatory.



Safety Instructor
Region 3

' Drug Testing of Mine Inspectors and Mine Safety Instructors'

COMMENTS:

SEP 2006
Received
Health Safety &
Training

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8. All employees of the Office of Miners' Health, Safety and Training should be in this plan. In the present format, this plan is very discriminatory.

Larry M. #138
Roof Control Specialist
Region 3

137 PEACH COURT, SUITE 2
DANVILLE, WV 25033
(304) 389-7823 TELEPHONE
(304) 389-7826 FAX

**OFFICE OF MINERS'
HEALTH, SAFETY &
TRAINING**

Fax

CA Phillips
 To: KATHY SPAN From: EUGENE WHITE
TERRY FARLEY
 Fax: _____ Pages: 5
 Phone: _____ Date: 9/14/06 8 AM
 Ref: _____ CC: _____

- Urgent
 For Review
 Please Comment
 Please Reply
 Please Recycle

• Comments: DRUG TESTING Guideline comments

TITLE 56
 Interpretive Rules
 Office of Miners' Health, SAFETY AND TRAINING
 TO WHOM IT MAY CONCERN:

RE: SERIES 13
 DRUG TESTING OF MINE INSPECTORS AND
 MINE SAFETY INSTRUCTORS

56-13-3 (PURPOSE)

THE GENERAL CITIZENRY OF THE STATE
 OF WEST VIRGINIA HAS A RIGHT TO EXPECT
 THAT ALL EMPLOYEES OF THE OFFICE OF MINERS'
HEALTH, SAFETY AND TRAINING ARE AT ALL
TIMES BOTH PHYSICALLY AND MENTALLY ABLE
 TO PERFORM THEIR DUTIES.

56-13-3 (DEFINITIONS) 56-13-3(3.13)
 does term office include regional offices

56-13-4 (Prohibited Activities)

56-13-4(4.1)(a)

ILLEGALLY POSSES ANY CONTROLLED SUBSTANCE

THE OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
 NEEDS TO IMPLEMENT PROCEDURES AND GUIDELINES
 (POLICY, CHAIN OF COMMAND) CONCERNING DRUG
 COMPLAINTS AT WEST VIRGINIA COAL MINES

(SURFACE AND UNDERGROUND) FOR AGENCY PERSONNEL.

56-13-4(4.1)(e)

HAVE ALCOHOL IN THE BODY SYSTEM WHILE ON DUTY, REGARDLESS OF WHETHER ALCOHOL WAS CONSUMED ON OR OFF DUTY.

WHAT IS LEGAL LIMIT OF ALCOHOL THAT CAN BE PRESENT IN BODY SYSTEM.

WHAT IS AGENCY'S POLICY FOR EMPLOYEES FOR CALL OUT ON WEEKENDS, HOLIDAYS ETC. CAN EMPLOYEES REFUSE CALL OUT IF ALCOHOL HAS BEEN CONSUMED?

56-13-5 DRUG TESTING PROCEDURE

56-13-5(5.3)

ALL EMPLOYEES OF THE OFFICE MAY BE DIRECTED TO SUBMIT TO REASONABLE CAUSE DRUG TESTING WHEN REASONABLE CAUSE EXIST TO WARRANT THE TESTING OF SUCH EMPLOYEE.

CLARIFY REASONABLE CAUSE

WHO DETERMINES REASONABLE CAUSE EXISTS?

56-13-5(5.4)

THE DIRECTOR MAY CHOOSE A RANDOMLY SELECTED PANEL OF EMPLOYEES EQUALLY DIVIDED TO ALL DEPARTMENTS OF THE TEST TO EQUAL TO

undergo A random drug test EACH calendar month.

Is it possible that SAME employee could be tested EACH month. Possible twelve times A year?

If so, is it ~~then~~ possible for AN employee who may be using illegal drugs not be tested in calendar year unless it would be under Reasonable Cause Drug Testing guidelines.

56-13-5 (5.5)

All employees of the Office of Minors' Health, Safety and Training responsibilities involve public safety issues which may impact the health, safety, rights and privileges of other or public welfare.

56-13-5 (5.6)

Issue All employee's new identification badges.

56-13-5 (5.2)(b)

Define collection site?

56-13-5 (5.14)

Who is Medical Review Officer

P94

I AM NOT AGAINST DRUG TESTING
FOR employees. I support it
100 %.

Eugene White



State of West Virginia

Joe Manchin III, Governor

WV Office of Miners' Health, Safety & Training
Ronald L. Wooten, Director
1615 Washington Street East • Charleston, West Virginia • 25311-2126
Telephone 304-558-1425 • Fax 304-558-1282

ADMENDMENT TO TITLE 56 SERIES 13 SOME BASED ON COMMENTS RECEIVED DURING THE COMMENT PERIOD

It was determined from written comments received that the following amendments were made to the rule.

- 1) In 2.1. - added "and others" to include persons other than inspection and instructors**
- 2) In 4.1.(d) – added "or present themselves for duty in any state of alcohol induced intoxication"**
- 3) In 4.1.(e) – Deleted – added language in 4.1.(d) to cover same**
- 4) In 5.4 – added language "Such selection shall be made pursuant to a lottery system".**
- 5) In 5.6. – changed the word "affected" to "selected"**
- 6) In 5.7 – added "refuse to"**
- 7) In 5.7 – Deleted language – "subject to disciplinary action under WV Code §22A-1-1, et seq**
- 8) In 5.7 – added "considered to have failed such test".**
- 9) In 5.9(b) – changed the word "give" to "provide"**
- 10) In 5.9(b) changed the word "they" to "he/she"**
- 11) In 5.13 – changed the word "confirming" to "confirmation"**
- 12) In 5.18(a) – added "Additional"... "beyond the first such test shall" deleted "will"**
- 7) In 5.19(b) – added language "which related solely to the employees' treatment for substance abuse"**
- 8) In 5.21 – added "additional".... "and without the express written consent of the employee".**