

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2009 JUN 12 AM 11:36

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Office of Miners' Health, Safety and Training TITLE NUMBER: 56

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code § 22A-1-6

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 15

TITLE OF RULE BEING PROPOSED: Rules and Regulations Governing Subpoenas of Mine Inspectors

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 July 13, 2009 AT 5:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Kathy Sloan, Administrative Secretary

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

FILED

56 CSR 15

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TITLE 56
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 15
RULES AND REGULATIONS GOVERNING SUBPOENAS OF MINE INSPECTORS

§ 56-15-1. General.

1.1. Scope. -- Rules and Regulations Governing Subpoenas of Mine Inspectors.

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

1.3. Filing Date. -- June 12, 2009

1.4. Effective Date. -- _____

1.5. These rules and regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of Article 1, Chapter 22A of the Code, relative to enforcement, are applicable to the enforcement of these rules and regulations.

§ 56-15-2. Definitions.

2.1. All terms used in these rules and regulations, which are otherwise not defined below, shall have the meaning set forth in W. Va. Code § 22A-1-1, *et seq.*

2.2. For purposes of this section, "mine inspector" shall include inspectors-at-large, assistant inspectors-at-large, surface mine inspectors, underground mine inspectors, and electrical inspectors.

§ 56-15-3. Protection from subpoena.

3.1. No inspector of the Office of Miners' Health, Safety and Training shall be compelled by subpoena to testify about a coal mine investigation in any civil or administrative proceeding for any purpose whatsoever except in enforcement proceedings brought under Chapter 22A of the West Virginia Code before the West Virginia Coal Mine Safety Board of Appeals.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations Governing Subpoenas of Mine Inspectors

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV Office of Miners' Health, Safety and Training

Address: 1615 Washington Street, East
Charleston, WV 25311

Phone Number: (304) 558-1425 Email: ksloan@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.

The fiscal impact is unknown at this time and cannot be determined until fully implemented. Most likely, implementation of this rule will decrease the agency costs associated with overtime and/or comp time paid when inspectors cannot meet their inspection deadlines due to their participation in civil and administrative proceedings not related to the enforcement proceedings brought under Chapter 22A of the West Virginia Code before the West Virginia Coal Mine Safety Board of Appeals.

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Rules and Regulations Governing Subpoenas of Mine Inspectors

Rule Title:

Rules and Regulations Governing Subpoenas of Mine Inspectors

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

No known increases or decreases in revenue at this time.

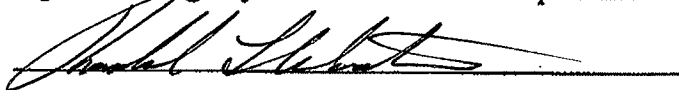
MEMORANDUM

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.

None are anticipated.

Date: June, 2009

Signature of Agency Head or Authorized Representative



Summary

This rule will prohibit mine inspectors from being subpoenaed into civil actions in which they conducted investigations on behalf of the West Virginia Office of Miners' Health, Safety and Training but in which the West Virginia Office of Miners' Health, Safety and Training is not a party to the action. This rule will further the policy goal of the inspectors completing the statutory requirement of inspecting the state's coal mines four times per year. This rule will also discourage the State of West Virginia from subsidizing private litigation with State paid expert witnesses.

Statement of Facts and Circumstances

Mine inspectors from the West Virginia Office of Miners' Health, Safety and Training are statutorily required to complete an inspection at each of the state's mines four times per year. As a result of accident investigations conducted by mine inspectors as part of their duties, they have been subpoenaed to testify in civil matters in which the West Virginia Office of Miners' Health, Safety and Training is not a party. When mine inspectors are called to testify in civil litigation, the State of West Virginia is subsidizing the litigation with state paid expert witnesses. In addition, the time taken to prepare for and participate in the civil litigation detracts from the time that mine inspectors are allotted for completing the statutorily mandated inspections.