

Form #3

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SECRETARY OF STATE


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TITLE 56

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

SERIES 15

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 16, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Office of Miners' Health, Safety and Training
1615 Washington Street, East
Charleston, WV 25311-2126
(304) 558-1425

LEGISLATIVE RULE TITLE: Title 56, Series 15 Rules and Regulations Governing Subpoenas
of Miner Inspectors

1. Authorizing statute(s) citation West Virginia Code Sections 22A-1-6
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 12, 2009
 - b. What other notice, including advertising, did you give of the hearing?
Posted on West Virginia Office of Miners' Health, Safety and Training website
 - c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Comment Period ended June 13, 2009
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 16, 2009

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Kathy Sloan, Administrative Secretary
WV Office of Miners' Health, Safety and Training
1615 Washington Street, East

Telephone: (304)558-1425/Fax: (304)558-1285/Email: ksloan@mines.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Ronald L. Wooten, Director
WV Office of Miners' Health, Safety and Training
1615 Washington Street, East
Charleston, WV 25311-2126
Telephone: (304)558-1425

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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.

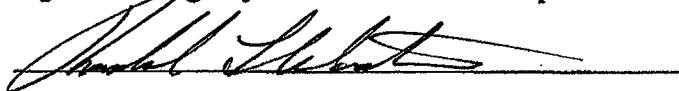
MEMORANDUM

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.