

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

Form #5

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2013 MAY -9 PM 2:06

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

AGENCY: Board of Coal Mine Health and Safety TITLE NUMBER: 36

CITE AUTHORITY: 22A-6-4, 22A-6-5(b)

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE x

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

22A-6-4

AMENDMENT TO AN EXISTING RULE: YES _____ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 55

TITLE OF RULE BEING PROPOSED: RULES AND REGULATIONS GOVERNING THE REPORTING OF
FAILED SUBSTANCE ABUSE SCREENINGS AND TESTS AND
APPROVAL OF REHABILITATION PROGRAMS BY THE BOARD OF
APPEALS

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS 1 July 2013



Authorized Signature

#2.60

WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY

1900 Kanawha Blvd Bldg 6 Ste 652 Charleston WV 25311 304.957.2306

NOTICE: EMERGENCY RULE (LEGISLATIVE EXEMPT)

To: All persons interested in Rules and Regulations constructed by the Board of Coal Mine Health and Safety

From: Joel L. Watts, Administrator – BCMH&S

Subject: 36.55 – RULES AND REGULATIONS GOVERNING THE REPORTING OF FAILED SUBSTANCE ABUSE PRE-EMPLOYMENT SCREENINGS AND TESTS AND APPROVAL OF REHABILITATION PROGRAMS BY THE BOARD OF APPEALS

Authority: §22A-6-4; §22A-6-5(b) for emergency rule making capability

The Board of Coal Mine Health and Safety is created pursuant to WV Code §22A-6-1

On 8 May 2013, the Board of Coal Mine Health and Safety unanimously voted to dispense with standard rule making procedures in order to vote on the immediate promulgation of 36-55. The Board then voted unanimously to immediately promulgate 36-55 and direct the Administrator to file the rule as complete with the effective date of 1 July 2013.

The Board of Coal Mine Health and Safety issues these findings of facts:

1. The Board believes there to be a substantial “hole in the law” allowing for those who fail pre-employment substance abuse screenings to continue with certifications. Is it the Board’s contention that this is not the original intent of the law, but that such an avenue will leave open the possibility for those with failed results to keep their certifications.
2. The Board further desires that the rehabilitation programs have approval of the Board of Appeals which must oversee certain avenues in the return to work. This will also allow public confidence in rehabilitation programs.

The Board of Coal Mine Health and Safety issues these conclusions of law:

1. The implantation of this new regulation will force operators to report failure of pre-employment substance abuse screenings, allowing for those who fail such screenings to be held accountable under the code of the State of West Virginia as are other miners and safety sensitive personnel.
2. The implantation of this new regulation will increase public confidence in rehabilitation programs

**TITLE 36
LEGISLATIVE RULE
BOARD OF COAL MINE HEALTH AND SAFETY**

**SERIES 55
RULES AND REGULATIONS GOVERNING THE REPORTING OF FAILED
SUBSTANCE ABUSE PRE-EMPLOYMENT SCREENINGS AND TESTS AND
APPROVAL OF REHABILITATION PROGRAMS BY THE BOARD OF
APPEALS**

§36-55-1. General.

1.1. Scope. – Rules and regulations governing the reporting of failed substance abuse pre-employment screenings and tests and approval of rehabilitation programs by the board of appeals.

1.2. Authority. – W. Va. Code §22-6-4; §22-6-5(b)

1.3. Filing Date. – 8 May 2013

1.4. Effective Date. – 1 July 2013

§36-55-2. Effects Of Regulations.

2.1. 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 1A, Chapter 22A of the Code relative to enforcement are applicable to the enforcement of these rules and regulations.

§36-55-3. Requirement to report failed screening results

3.1. All substance abuse screening tests required by §22A-1A-1(a)(1) of West Virginia Code producing a positive result will be reported to the Office of Miner's Health Safety and Training pursuant to §22A-1A-1(d).

3.2 Upon receipt of such report the Office of Miner's Health Safety and Training shall temporarily suspended certifications of individuals pursuant to §22A-1A-1(d).

§36-55-4. Requirement to have the West Virginia Board of Appeals approve rehabilitation programs in response to failed screening results

4.1. All rehabilitation programs mandated by §22A-1A-2(b) in response to a failed substance abuse screening test must be approved by the West Virginia Board of Appeals.