

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

Form #3

Do Not Mark In This Box

2013 JUL 26 PM 2:11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY: W. Va. Code § 22A-1-4(b)(12)

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: 18

TITLE OF RULE BEING PROPOSED: Rules Governing the Program for the Sharing of Information Between
Employers

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

SUMMARY OF LEGISLATIVE RULE AND STATEMENT OF THE CIRCUMSTANCES

West Virginia Code § 22A-1-4(b)(12) states that, "the Director shall propose rules for legislative approval...establishing a program for the sharing of information between employers who employ certified persons regarding the discharge of persons in safety sensitive positions...for violation of an employer's substance abuse policy."

This rule establishes that program and provides that the Director shall list the names of all individuals who are temporarily suspended or permanently decertified for violation of an employer's substance abuse policy or who fail a pre-employment drug screening on the Office of Miners' Health, Safety and Training web-site, found at wvminesafety.org.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing the Program for the Sharing of Information Between Employers

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Office of Miners' Health, Safety and Training

Address: #7 Players Club Drive, Suite 2
Charleston, West Virginia 25311

Phone Number: (304) 558-1425 Email: _____

Fiscal Note Summary

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

None

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: _____

Rule Title: _____

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

None

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

Date: June 26, 2013

Signature of Agency Head or Authorized Representative

Eugene White

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 26, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Office of Miners' Health, Safety and Training
7 Players Club Drive, Suite 2
Charleston, WV 25311
(304) 558-1425

LEGISLATIVE RULE TITLE: Rules Governing the Program for the Sharing of Information
Between Employers

1. Authorizing statute(s) citation W. Va. Code § 22A-1-4(b)(12)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 26, 2013

b. What other notice, including advertising, did you give of the hearing?
Posted on the agency website -wvminesafety.org

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 26, 2013 at 11:00 a.m.

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 26, 2013

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

Eugene White, Director

West Virginia Office of Miners' Health, Safety and Training

7 Players Club Drive, Suite 2

Charleston, WV 25311

PH-(304) 558-1425

FAX- (304) 558-1282

eugene.e.white@wv.gov

- 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)

same

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

**TITLE 56
LEGISLATIVE RULE
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING**

FILED

2013 JUL 26 PM 2:11

**SERIES 18
RULES GOVERNING THE PROGRAM FOR THE
SHARING OF INFORMATION BETWEEN EMPLOYERS.**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§56-18-1. General.

1.1 Scope. – This Rule establishes a program for the sharing of information between employers concerning the identity of individuals having been decertified due to a violation of a substance abuse policy and testing program as mandated by W. Va. Code § 22A-1-4(b)(12) and modified by subsequent rules. This Rule is promulgated for the purpose of protecting and enhancing public safety.

1.2 Authority. -- W.Va. Code §22A-1-4(b)(12).

1.3 Filing Date. --

1.4 Effective Date. --

§56-18-2. Definitions.

2.1 Unless the context in which a word or phrase appears clearly requires a different meaning, all terms used in these rules and regulations, which are not defined herein, shall have the meanings set forth in West Virginia Code § 22A-1-2.

2.2 Code. The term “Code” shall mean the West Virginia Code of 1931, as amended.

2.3 Director. The term “director” shall mean the Director of the Office of Miners' Health, Safety and Training and shall include his authorized representatives where applicable.

2.4 Employer. The term “employer” shall mean all operators, independent contractors, subcontractors, or otherwise that employ certified persons who work in mines, or employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position.

2.5 Mine. The term “mine” shall have the meaning set forth in W. Va. Code § 22A-1-2(a)(6) and shall include any underground coal mine, surface coal mine, coal preparation plant, coal loadout, or river coal loadout.

2.6 Certified Person. The term “certified person” shall have the meaning set forth in W. Va. Code § 22A-1-2(d)(3).

2.7 Safety-Sensitive Position. The term “safety-sensitive position” shall mean an employment position where the employee’s job responsibilities include duties and activities that involve the personal safety of the employee or others working at the mine.

2.8 Substance Abuse Policy and Testing Program. The term “substance abuse policy and testing program” shall include, at a minimum, a breath test for the presence of alcohol and the ten-panel urine test required by W. Va. Code § 22A-1A-1(a)(1) and established for the purpose of detecting the illicit substances identified therein.

§56-18-3. Responsibilities of the Director.

3.1 The director shall compile and maintain a list of all certified persons who are temporarily or permanently decertified for failing a substance abuse policy and testing program or refusing to submit to a substance abuse policy and testing program.

3.2 A list of those persons identified in section 3.1 of this rule shall include the certified person’s name, certification number(s) and date of decertification and shall

be made available on the Office of Miners' Health, Safety and Training web-site: wvminesafety.org.

3.3 Once a decertified person has his/her certification(s) reinstated, his/her name shall be removed from the list identified in Section 3.2.

§56-18-4. Alternative Method for Confirming Certified Person Status.

4.1 Any employer may request in writing that the director identify whether a specific certified person is currently on the list identified in section 3.1 of this rule, or if his/her certification is in good standing.

4.2 Each request shall be limited to one specifically identified person and shall contain identifying information unique to the person including legal name, date of birth and the last four (4) digits of his/her social security number.

4.3 Requests may be filed either in person at the office of the director, by facsimile, by mail, or by email.

4.4 Each request shall be on the employer's letterhead and signed by the employer's designated representative.

4.5 The director shall respond to each request, in writing, as soon as practicable, but within no later than five (5) business days of receipt of the request.