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Form #6

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

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

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S. B. 140

SECTION 64-10-1(b), PASSED ON March 8, 2014

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: May 10, 2014

Joshua A. Jeffries

Authorized Signature

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

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

§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. -- April 10, 2014

1.4 Effective Date. -- May 10, 2014

§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.