



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/27/2023 11:00:33 AM

Office of West Virginia
Secretary Of State

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

AGENCY: Miners Health Safety And Training TITLE-SERIES: 56-18

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 56-18 Rule Governing the Program for the Sharing of Information Between Employers

PRIMARY CONTACT

NAME: Frank Foster Director

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

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code 22A-1-4(b)(12) directs the Director to promulgate legislative rules to set forth a program for the sharing of information due to a failed substance abuse drug screening.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/21/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/21/2023

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule establishes a program for sharing of information between the agency and employers of certified individuals working in the mining industry concerning said employees' certification status. The changes to this rule are for the purpose of incorporating formatting changes recommended by the Secretary of State's office.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

W. Va. Code 22A-1-4(b)(12) mandates that the Director promulgate this rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-0-	-0-	-0-
Personal Services	-0-	-0-	-0-
Current Expenses	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-
Assets	-0-	-0-	-0-
Other	-0-	-0-	-0-
2. Estimated Total Revenues	-0-	-0-	-0-

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Garner Marks -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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~~ _____.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2029.

§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 this rule that~~ are not defined herein, shall have the meanings set forth in ~~West Virginia~~ W. Va. 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/her 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 (1) 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.