

**From:** Mary Hauck [mailto:mhauck@Westmoreland.com]  
**Sent:** Thursday, October 09, 2008 6:18 PM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Subject:** Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training and Assistance

Below are general comments relative to the proposed rule that crease new Part 66 in 30 CFR Subchapter N (Uniform Mine Safety Regulations).

### **Issues with Proposed Rule**

- Prohibitions does not include sale, possession, or distribution of illegal drugs on company property
- Prohibitions does not include improper or abusive use of prescription drugs and/or over the counter medications while performing safety sensitive jobs or on company property
- Confirmation tests are not specific as to type of test (gas chromatography/mass spectrometry (GC/MS))
- Our policy is more strict for alcohol (.02 - .04)
- Proposed Rule does not address using or being under the influence of **legal** drugs that are being used illegally while performing safety sensitive jobs
- Proposed Rules does not address selling, buying, soliciting to buy or sell, transporting, or transferring illegal drugs while on performing safety sensitive jobs or on company property
- Proposed Rules requires that no miner be discharged for a first violation (allows for a one-strike)—miner must be referred to a Substance Abuse Professional (SAP). Many current policies have zero tolerance for drug/alcohol use while performing safety-sensitive jobs.
- Potential issues within the Proposed Rules in that drug test may occur before a conditional offer of employment; alcohol test must occur after a conditional offer
- Proposed Rule allows for the miner to admit to use before testing, then return the miner to duties after completing the return-to-duty process, even if this was second or subsequent offense. This could potentially allow the minor to admit use as soon as he is identified for a test, but prior to the test actually occurring
- The Proposed Rule does not address unlawful involvement with Controlled Substances or prescription medication leading to a conviction, and the reporting thereof to the company.
- MSHA should not legislate a policy that is less strict than a company has adopted. The Proposed Rule should be the minimal standards—not the maximum (e.g., allowing for one-strike before termination).
- The proposed provisions limit the Company's freedom to terminate, thus we believe, making the workplace less safe. Ultimately regulating employment policy should be outside of MSHA's jurisdiction.
- The proposed regulations do not allow a blood test instead of urine when given states allow such testing.

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