

**From:** Labarge, Jeffrey [mailto:Jeffrey.Labarge@LibertyMutual.com]  
**Sent:** Monday, October 13, 2008 7:54 PM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Subject:** RIN 1219-AB41 - Comment

As a safety professional and US citizen I am opposed to the language and intent in the proposed rule 30 CFR subchapter N - Section 66.400 (b)<sup>[1]</sup>. I believe this Section of the proposed rule unduly violates an employer's right to take actions for violations the employer legally deems reasonable and necessary to ensure a drug free place of employment. Some employers may choose to offer a "One strike" policy, but I believe this is the right and decision that the employer should have the freedom to make, (if they chose to do so), and not MSHA or the US Federal government or any governmental agency for that matter.

Thank you for your consideration

*Jeffrey J. LaBarge - CSP, ARM*

**§ 66.400 "Consequences to miner for failing an alcohol or drug test or refusal to test"**  
—

***(b) Mine operators shall not terminate miners who violate the mine operator's policy for the first time (e.g., by testing positive for alcohol or drugs). Rather, those miners testing positive for the first time, who have not committed some other separate terminable offense, shall be provided job security while the miner seeks appropriate evaluation and treatment. The miner will be able to be reinstated and allowed to resume performance of safety-sensitive job duties provided the miner complies with return-to-duty requirements outlined in §§ 66.405 and 66.406.***

*Jeffrey J. LaBarge - CSP, ARM*

Jeffrey J. LaBarge  
Cell phone: 518-368-3529  
Fax: (518) 782-2555

E-mail: jlabarg3@nycap.rr.com

AB41-COMM-69
--------------

<sup>[1]</sup> **§ 66.400 "Consequences to miner for failing an alcohol or drug test or refusal to test" –**

***(b) Mine operators shall not terminate miners who violate the mine operator's policy for the first time (e.g., by testing positive for alcohol or drugs). Rather, those miners testing positive for the first time, who have not committed some other separate***

***terminable offense, shall be provided job security while the miner seeks appropriate evaluation and treatment. The miner will be able to be reinstated and allowed to resume performance of safety-sensitive job duties provided the miner complies with return-to-duty requirements outlined in §§ 66.405 and 66.406.***