



## *State of West Virginia*

### **WV Office of Miners' Health, Safety & Training Eugene White, Director**

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April 7, 2020

The Honorable Mac Warner  
Secretary of State  
Bldg. 1, Suite 157-K  
1900 Kanawha Blvd. East  
Charleston, WV 25305

RE: West Virginia Office of Miners' Health, Safety and Training  
Suspension of W. Va. Code R. § § 56-19-5.4 and 5.5

Dear Secretary Warner:

By Proclamation dated March 16, 2020, the Governor of the State of West Virginia declared a statewide State of Emergency to address the emergency created by the Covid-19 pandemic. In the March 16, 2020 Proclamation declaring that State of Emergency, the Governor also delegated to all state agencies the ability to suspend rules, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency.

By Executive Order 9-20 dated March 23, 2020, the Governor Declared and Ordered that coal mining and coal-fired electric generation facilities, as well as all ancillary and support functions ranging from transportation, maintenance, equipment, and supply vendors are essential businesses and shall remain open.

One ancillary and support function of coal mining is the use of drug testing vendors to conduct preemployment, random, reasonable suspicion and post-accident drug tests of coal miners in accordance with W. Va. Code R. § 56-19-1 *et seq.* Those drug tests consist of both a split sample urine drug test and a breath test for alcohol.

The West Virginia Office of Miners' Health, Safety and Training (WVOMHST) has been informed that conducting a breath test for alcohol, as defined in W. Va. Code R. 56-19-3.5, creates a heightened risk of transmitting the Covid-19 virus among coal miners. WVOMHST believes that allowing employers the option to suspend pre-employment and random breath tests for alcohol will greatly reduce the number of breath tests, therefore, reducing the likelihood of transmitting the Covid-19 virus.

The West Virginia Office of Miners' Health, Safety and Training (WVOMHST) seeks to suspend certain requirements in W. Va. Code Rule § 56-19 pertaining to the preemployment and random breath tests for alcohol for coal miners while still requiring coal operators/employers to conduct breath tests for alcohol when there is reasonable suspicion to suspect a coal miner has been drinking alcohol and/or after a serious accident has occurred at a mine. The following rule suspensions shall continue until WVOMHST terminates this notice or the State of Emergency is lifted, whichever occurs first.

**W. Va. Code R. § 56-19-5.4 and 5.5** - These two sections of the rule are suspended in their entirety while the rule suspension time period exists. It is the intent of WVOMHST that for the duration of the rule suspension coal operators/employers shall no longer be required to do a breath test for alcohol when conducting a pre-employment or random drug test. No other sections of the rule are suspended. Coal operators/employers are still required to do a breath test for alcohol when conducting a reasonable suspicion or serious post-accident drug test. Additionally, it is WVOMHST's intent to immediately and temporarily suspend the mining certifications of all certified persons/coal miners who fail or refuse a breath test for alcohol regardless of the type of test should the employer chose to continue the pre-employment and random breath test for alcohol.

Thank you for your time and attention to this matter.

Very truly yours,



Eugene White  
Director