



**Comments to:**  
**Department of Labor**  
**Mine Safety and Health Administration**  
**30 CFR Parts 56, 57, and 66**  
**RIN 1219-AB41**  
**Alcohol- and Drug-Free Mines: Policy, Prohibitions,**  
**Testing, Training, and Assistance**  
**Federal Register Vol. 73, No. 174**  
**Monday, September 8, 2008**  
*Submitted by:*  
*First Advantage*  
*Josephine Elizabeth Kenney, J.D.*  
*(207) 948-2955*  
*(860) 690-3392 Cell*  
*November 10, 2008*

*Contact for Questions:*  
*Josephine Elizabeth Kenney, J.D.*  
*Senior Vice President of Compliance*  
*Occupational Health Group*  
*Employment Screening Services Division*  
*First Advantage*  
*(860) 690-3392 cell*  
*jkenney@fadv.com*

First Advantage appreciates the opportunity to comment on the Department of Labor, Mine Safety and Health Administration's (MSHA's) Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training and Assistance Proposed Rule. The Preamble to the Proposed Rule's thorough and detailed explanatory information as well as its justification and authority discussion were extremely helpful in understanding the Rule's proposed requirements. Overall, we support the Proposed Rule and believe that it will meet the stated purpose of preventing accidents, injuries, and fatalities resulting from the misuse of prohibited substances by miners performing safety-sensitive job duties and their supervisors. However, we believe that some of the proposed requirements merit additional consideration. Those sections are addressed section by section as follows.

First Advantage Corporation (NASDAQ: FADV) combines industry expertise with information to create products and services that organizations worldwide use to make smarter business decisions. Along with its other support services and products, First Advantage's Occupational Health Group provides full service Consortium/Third Party Program Administration (C/TPA) and Medical Review Officer support to employers



relative to the administration of their workplace substance abuse and alcohol misuse prevention and drug testing programs, both regulated and non-regulated.

### **§ 66.3 Definitions**

We believe that the definition for Employee from 49 CFR Part 40 should be revised as appropriate and added to the Proposed Rule for the sake of clarity. Consortium/Third Party Administrator (C/TPA) should also be added to the list of types of service agents under the Service Agent definition. The definition of pre-employment testing should be re-considered relative to drugs. Testing should be required to be performed after a conditional offer of employment to make it consistent with the requirements for conducting pre-employment alcohol testing. This revision would be consistent with some state laws and is a better practice.

### **§ 66.201 (b) Written Policy**

We believe that the policy should be distributed to each covered employee in some form or fashion. This distribution could be by paper copy or by intranet electronic posting. Also, because posted policies seem to have a way of disappearing from time to time there should be a requirement that the employer ensure that the posted policy remains posted and available on an ongoing basis.

### **§ 66.203 Training Program for supervisors**

We just want to note that it is important that company officials, in particular Human Resource Personnel be trained because they often support reasonable suspicion decisions as a practical matter. The quality and effectiveness of an employer's reasonable suspicion training is just starting to be raised in workplace drug testing program and challenges.

### **§ 66.304 Pre-employment testing**

We believe that the Rule should require that pre-employment drug testing, like pre-employment alcohol testing should be conducted after a conditional offer of employment consistent with some state laws.

### **§ 66.305 Random testing**

We believe that a 10% random testing selection rate for drugs does not provide adequate deterrence. The random rate for drugs should at least be 25%, consistent with most DOT Agency random rates.



**§ 66.402 Substantiating legitimate use of otherwise prohibited substances.**

We strongly urge MSHA to reconsider the role of the MRO in verifying prescription medications because the additional responsibilities for the MRO outlined are inconsistent with current Medical Review Officer practice. The safety warning and subsequent assessment process as used in the DOT program would be a more efficient and less cumbersome process than the one outlined.