

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2009 MAY -1 AM 11:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Office of Miners' Health, Safety and Training TITLE NUMBER: 56

RULE TYPE: Emergency Legislative CITE AUTHORITY: West Virginia Code Sections 22A-1-6, 22A-1-38

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____


IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: Rules and Regulations Governing the Safety of Miners Employed in and Around River Loadouts

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 1, 2009 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Office of Miners' Health, Safety and Training
1615 Washington Street, East
Charleston, West Virginia 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**STATEMENT OF CIRCUMSTANCES
AND SUMMARY OF THE EMERGENCY RULE**

On December 29, 2008, a West Virginia coal miner fell from a barge and drowned. The Office of Miners' Health, Safety and Training ("OMHST") requested an opinion from the West Virginia Attorney General as to whether it had jurisdiction to investigate accidents occurring on barges moored to mine property. The Attorney General's office issued an advice letter informing the OMHST that it did have jurisdiction to investigate the accident and to also regulate barges when moored to mine property.

Investigation reveals that the miner who was killed was employed at the preparation plant and had received no training in barge work or as a riverman. The accident occurred at approximately 11:00 p.m. and due to him being alone it was approximately two (2) hours before his absence was noticed and a search began. After barges were moved the miner's body surfaced.

The West Virginia Board of Coal Mine Health and Safety is statutorily charged with reviewing reports of fatalities and within one hundred and twenty days of such review to promulgate "such rules as are necessary to prevent the reoccurrence of such fatality." This is a mandatory duty unless "a majority of the quorum (of the Board) present determines that no rules can assist in the prevention of the specific type of fatality." W. Va. Code § 22A-6-4(e).

The Board of Coal Mine Health and Safety received the Director's report of this fatality on February 25, 2009. The Board most recently met on April 22, 2009 and voted not to promulgate a rule regarding the subject of this proposed emergency rule until after litigation is concluded in the case of *Consolidation Coal Co., Inc. v. Solis, et al.*, Case No. 5:09-cv-0035-FPS. This case names the Director and the Board, as well as others as defendants and, in effect, seeks to preclude any regulatory agency other than the United States Occupational Safety and Health Administration from exercising jurisdiction over river coal loadouts. There is no reasonable expectation that the case will be concluded within 120 days of February 24 and without the proposed emergency rule there is no rule in place.

This rule is designed to insure that coal miners who have not received "Riverman" training are not allowed on barges. The rule is also designed to require those coal miners who are trained Rivermen to wear a life jacket while on the barge.

This rule is filed as an emergency because there are no State laws or regulations in effect regulating any type of activity on barges moored to mine property.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations Governing the Safety of Miners Employed in and Around River Loadouts

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Office of Miners' Health, Safety and Training

Address: 1615 Washington Street, East
Charleston, West Virginia 25311

Phone Number: (304) 558-1425 Email: blk@wvago.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The fiscal impact is unknown at this time and cannot be determined until fully implemented. Any increase in administrative costs will be minimal and will be absorbed without increasing employees or substantial increases in expenses.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Rules and Regulations Governing the Safety of Miners Employed in and Around River Loadouts

Rules and Regulations Governing the Safety of Miners
in and Around River Loadouts

Rule Title:

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

No increases or decreases in revenue at this time.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None are anticipated.

Date: May 1, 2009

Signature of Agency Head or Authorized Representative



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56 CSR 13

2009 MAY -1 AM 11:48

TITLE 56
LEGISLATIVE RULES
OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES ~~10~~ 14
RULES AND REGULATIONS GOVERNING THE SAFETY OF
MINERS EMPLOYED IN AND AROUND RIVER LOADOUTS

§ 56-13-1 General.

1.1 Scope. These rules govern safety of miners in and around river loadouts.

1.2 Authority. W. Va. Code §§ 22A-1-6 and 22A-1-38

1.3 Filing Date. May 1, 2009

1.4 Effective Date. _____

1.5 Applicability. These regulations shall extend to all coal barges moored to any river loadout facility permitted by the Office of Miners' Health, Safety and Training.

1.6 Other law applicable. – All provisions of the mining law of this state, specifically Chapter 22A of the Code, are applicable to river loadouts permitted by the Office of Miners' Health, Safety and Training attached to mining operations, except to the extent that these regulations cover the specific requirement, and except to the extent that the context of a specific provision would render its applicability totally inappropriate to river loadouts attached to mining operations.

§ 56-13-2. Effect of Law and Regulations.

2.1 These regulations shall have the effect of law and violations shall be deemed a violation of law and so cited with the same effect as law. All provisions of Article 1, Chapter 22A of the West Virginia Code relative to enforcement are applicable to the enforcement of these regulations.

§ 56-13-3. Definitions.

3.1 The term "Director" shall mean the Director of the Office of Miners' Health, Safety and Training provided for in Chapter 22A, Article 1, Section 3 of the West Virginia Code.

3.2 The term "moored" refers to a coal barge physically attached to a river loadout facility for the purpose of coal being unloaded, loaded and transported.

3.3 The term "operator" means any firm, corporation, partnership or individual operating any coal mine, or part thereof, or engaged in the construction of any facility associated with a coal mine.

3.4 The term "riverman" means a person employed by an operator to engage in the loading and unloading of coal on a barge at the river loadout facility permitted by the Office of Miners' Health, Safety and Training and moving such barge(s) within the facility.

§ 56-13-4 Training Requirements of Miners Working on River Barges.

4.1 No operator may require or allow a riverman, in the course of his or her employment, to board a barge used for the transport of coal unless the riverman has successfully completed riverman task training which shall include safety training, mandatory use of life jackets while aboard a barge, working lines, handling materials, facing-up, proper use of wire rigging, moving barge to loadout and set-up, gaging during and after loading, precautions to gaging, placing empty barges, securing empty barges, maneuvering of barges, slack in lines, pinch points, communicating with boat operator, avoiding shadows, and transitioning from boat to barge or barge to loadout. All persons covered by this provision shall have such required training and annual re-training recorded on an MSHA 5000-23 form a copy of which shall be maintained at the facility for a period of at least one (1) year.

4.2 No operator shall require or allow a miner to board a barge unless the miner is wearing a life jacket approved by the United States Coast Guard.

4.3 Any other person shall be hazard trained before boarding a barge and shall be accompanied by a trained riverman at all time while aboard the barge.