

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

Form #5

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2009 SEP 28 PM 12:45

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Board of Coal Mine Health and Safety TITLE NUMBER: 36

CITE AUTHORITY: 22A-6-4

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

22A-6-4

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

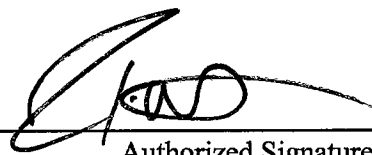
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 46

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS October 1, 2009

  
Authorized Signature

FILED

36 CSR 46

2009 SEP 28 PM 12:45

TITLE 36  
LEGISLATIVE RULES  
BOARD OF COAL MINE HEALTH AND SAFETY

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 46  
RULES AND REGULATIONS GOVERNING THE SAFETY OF  
PERSONS IN AND AROUND RIVER LOADOUTS

**§ 36-46-1. General.**

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

1.2 Authority. W. Va. Code §§ 22A-6-4 *et seq.*

1.3 Filing Date. September 28, 2009

1.4 Effective Date. October 1, 2009

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

**§ 36-46-2. 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.

**§ 36-46-3. Definitions.**

3.1 The term "Director" means 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 "facing-up" means connecting the boat to the end of the barge or fleet of barges.

3.3 The term "gaging" means to verify the empty and/or loaded draft of the barge.

3.4 The term "moored" means a coal barge physically attached to a river loadout facility for the purpose of coal being loaded into the barge.

3.5 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. For purposes of this rule, the term "operator" does not include any firm, corporation,

partnership or individual solely engaged in the business of delivery or retrieval of barges to the facility.

3.6 The term "riverman" means a person employed by an operator to engage in the loading and/or inspecting of coal on a barge at the river loadout facility regulated by the Office of Miners' Health, Safety and Training.

3.7 The term "working line" means any line other than a rigging wire used to position, maneuver, or secure a barge.

#### **§ 36-46-4. Training Requirements of Rivermen 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 promulgated by the Board of Miner Training, Education and Certification 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. Notwithstanding the effective date of this rule, the provisions of this subsection related to promulgation of training requirements for rivermen shall be effective on January 1, 2010.

4.2 (A) No operator may require or allow any person to board a barge unless the person is wearing a life jacket approved by the United States Coast Guard.

(B) No operator may require or allow any riverman to board a barge unless he or she is equipped with and trained in the use and purpose of: (1) An operable strobe light; and (2) A marine whistle with lanyard.

(C) At all times a riverman is aboard a barge, he or she shall be equipped with a submersible, two-way communication device.

4.3 Any person other than a trained riverman shall be hazard trained before boarding a barge and shall be at all times within sight and sound of a trained riverman while aboard the barge. This requirement does not apply to employees of any firm, corporation, partnership or individual solely engaged in the business of delivery or retrieval of barges to the facility.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY**

**BRIEFING DOCUMENT**

**Rule Title:** 36 CSR 46 - Rules and Regulations Governing the Safety of Persons in and Around River Loadouts

**A. AUTHORITY:** W. Va. Code § 22A-6-4

**B. SUMMARY OF RULE:**

This rule establishes safety mechanisms to assist in preventing injury to “rivermen” defined as the people employed by an operator to engage in the loading and/or inspecting of coal on a barge at the river loadout facility regulated, by the Office of Miner’s Health, Safety and Training.

**C. REQUIREMENTS:**

Promulgation of this rule will enhance the safety of all people engaged in the loading and or inspection of coal.