

Executive Summary
Proposed Rulemaking
Chapter 208 Underground Coal Mine Safety
(25 Pa Code Chapter 208)

This rulemaking is initiated by the Board of Coal Mine Safety (“Board”) to address underground coal mine safety under the authority of the Bituminous Coal Mine Safety Act (52 P.S. §§ 690-101-690-708) (“BCMSA”). The Board is a seven-member entity that consists of the Secretary of the Department of Environmental Protection (“DEP”), as Chair, three members nominated by the United Mine Workers of America to represent the viewpoints of miners and three members nominated by the Pennsylvania Coal Alliance, previously known as the Pennsylvania Coal Association, to represent the viewpoints of underground bituminous coal mine operators.

At the national level, the Mine Safety and Health Administration (“MSHA”) regulates mine safety under the authority of the Federal Mine Safety and Health Act of 1977 (“Mine Safety Act”) 30 U.S.C.A. §§ 801 - 965. The MSHA regulations are found in 30 CFR parts 1 through 199. The operating requirements for underground coal mines are found in 30 CFR Part 75 *supra*.

On September 23, 2010, MSHA issued an emergency temporary standard (“ETS”) under section 101(b) of the Mine Safety Act, a notice of public hearings, and a notice of close of comment period (70 FR 57849.) This ETS revised the existing federal standard at the time on maintenance of incombustible rock dust (30 CFR § 75.403.) An ETS takes effect as soon as it is published in the Federal Register, and it is a fully enforceable standard. It allows MSHA to act quickly when evidence is presented that workers are in grave danger. The ETS remains in effect until such time as a standard is promulgated through the regular rulemaking process. This standard must be promulgated within nine months after publication of an ETS. MSHA also issued a program information bulletin to serve as guidance on compliance with the ETS.

The basis for the ETS was MSHA’s concern that miners in underground bituminous coal mines faced great danger if the standard of maintenance of incombustible rock dust was not modified. MSHA based its determination on the following: 1) MSHA’s own accident investigation reports of mine explosions in intake air courses that involved coal dust; 2) MSHA’s experience and data on the subject matter, and 3) a report prepared by the National Institute for Occupational Safety and Health (“NIOSH”) entitled “Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways.”

On June 20, 2011, the ETS was published as a final rule and adopted all of the requirements of the emergency rule. 76 FR 35978, June 21, 2011. Under the final rule, operators of bituminous coal mines must maintain the incombustible content of combined coal dust, rock dust, and other dust to at least 80 percent in underground areas. In addition, the incombustible content of the dust must be increased to 0.4 percent for each 0.1 percent of methane present. This final rule, like the ETS, reduces the potential as well as the severity of explosions in bituminous coal mines, should they occur, thereby protecting lives and property.

After learning of the more stringent MSHA requirement for the maintenance of incombustible content of rock dust, the Board determined it should promulgate an identical standard. Accordingly, the Board developed the proposed regulations, to among other things, obtain independent authority necessary to implement them.

By proposing to adopt this federal regulation, the Board believes it will enhance DEP's ability to ensure the safety of miners by reducing the potential or severity of explosions in bituminous coal mines, and by allowing DEP to have independent authority to enforce the federal requirement. This proposed rulemaking seeks to conform Pennsylvania regulations to federal regulations that are already in place.

The proposed rulemaking is overwhelmingly supported by both mine operators and mine workers. The benefits of the proposed regulation far outweigh the nominal costs of compliance, should there be any. Given that this regulation conforms to federal requirements already in place, there should not be any additional costs. Currently there are 38 underground bituminous coal mines in Pennsylvania, and these mines employ approximately 5,382 persons. The proposed regulation simply incorporates the provisions of the federal regulation into the state regulation.