

RULES AND REGULATIONS

BOARD OF COAL MINE SAFETY

[25 PA. CODE CH. 208]

Maintenance of Incombustible Content of Rock Dust

[43 Pa.B. 7275]

[Saturday, December 14, 2013]

The Board of Coal Mine Safety (Board) adds § 208.71 (relating to maintenance of incombustible content of rock dust). The final-form rulemaking conforms Pennsylvania regulations to Federal regulations, thereby establishing that the incombustible content of coal dust, rock dust and other dust will not be less than 80% in bituminous coal mines.

This final-form rulemaking was given under Board order at its meeting of September 17, 2013.

A. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

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C. *Statutory Authority*

This final-form rulemaking is authorized under sections 106 and 106.1 of the Bituminous Coal Mine Safety Act (BCMSA) (52 P. S. §§ 690-106 and 690-106.1), which grant the Board the authority to adopt regulations implementing the BCMSA, including additional safety standards. The Board is authorized to promulgate regulations that are necessary or appropriate to implement the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines.

D. Background and Purpose

This final-form rulemaking requires that where rock dust is to be applied in bituminous underground coal mines in this Commonwealth, the incombustible content of the combined coal dust, rock dust and other dust that is present in a mine's intake and return airways may not be less than 80%.

On September 23, 2010, the United States Department of Labor and the Federal Mine Safety and Health Administration (MSHA) issued an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C.A. § 811(b)) in response to the grave danger that miners in underground bituminous coal mines throughout the country face when accumulations of coal dust are not made inert. See 75 FR 57849 (September 23, 2010). MSHA concluded, from investigations of mine explosions and other reports, that immediate action was necessary to protect miners.

The ETS served as an emergency temporary final rule with immediate effect and provided an opportunity for notice and comment, after which time a final rule would be issued. The National Institute for Occupational Safety and Health (NIOSH) conducted a series of large-scale dust explosion tests at the NIOSH Lake Lynn Experimental Mine using the dust survey results to determine the incombustible content necessary to prevent explosion propagation. Based on the results of this testing, NIOSH recommended an 80% total incombustible content in both intake and return airways of bituminous coal mines in the ETS. In addition, the incombustible content of the dust shall be increased to 0.4% for each 0.1% of methane present.

Based on NIOSH's data and recommendations and MSHA data and experience, the United States Secretary of Labor determined that miners were exposed to grave danger in areas of underground bituminous coal mines that were not properly and sufficiently rock dusted in accordance with the ETS and that the ETS was necessary to protect miners from this danger. The final MSHA rule retained the verbatim requirements of the ETS to ensure continuous protection for underground bituminous coal miners from grave danger due to hazards of coal dust explosions. See 76 FR 35968 (June 21, 2011).

In developing the final Federal rule, MSHA considered the following: its accident investigation reports of mine explosions in intake air courses that involved coal dust; the NIOSH Report of Investigations entitled "Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways"; MSHA's experience and data; public comments on the ETS; and testimony provided at the public hearings. MSHA believes that the requirements of the final rule are necessary to continue to protect underground bituminous coal miners from grave danger. These regulations are codified at 30 CFR 75.403 and 75.403-1 (relating to maintenance of incombustible content of rock dust; and incombustible content).

The percentage of incombustible content of rock dust plays an important role in the probability and severity of explosions in bituminous coal mines. Rock dust has been used for 100 years as a precautionary measure to prevent explosions. The workings of these mines lead to the production of explosive coal dust and adding rock dust with an incombustible content of a certain percentage reduces the potential, as well as the severity, of explosions. This has been amply documented by the previously-referenced studies. Inert rock dust acts as a heat sink, that is, a source that absorbs and dissipates heat, so that a certain amount of inert rock dust with coal dust is likely to prevent or reduce the potential

for coal dust explosions. For that reason, the Federal regulation mandates that the incombustible content of the combined coal, rock and any other type of dust used in bituminous coal mines may not be less than 80%.

The BCMSA is the first significant update of the Commonwealth's underground bituminous coal mine safety laws since 1961. See section 103(a) of the BCMSA (52 P. S. § 690-103(a)). One of the significant changes made by the BCMSA is the authority to promulgate regulations for mine safety. The General Assembly established the Board to promulgate the regulations. This seven-member board consists of the Department's Secretary as Chairperson, three members representing the viewpoint of mine workers and three members representing the viewpoint of underground bituminous coal mine operators. See section 106 of the BCMSA.

A significant problem with the pre-existing law was that its safety standards were becoming outdated. There was not an effective mechanism to modify existing standards or to adopt new safety standards to address changes in technology or other hazards. To rectify this problem, the BCMSA contains broad rulemaking authority to adopt regulations to either modernize safety standards in the BCMSA or adopt new safety standards not in the BCMSA. The Board was directed to consider whether to adopt Federal mine safety standards not in the BCMSA. See section 106.1 of the BCMSA.

After learning of the more stringent MSHA requirements under 30 CFR 75.403 and 75.403-1 for the maintenance of incombustible content of rock dust, the Board determined that the Commonwealth should incorporate the Federal standards into State regulation and provide the Department the necessary independent authority to enforce those standards. Accordingly, at 43 Pa.B. 2587 (May 11, 2013), the Board proposed these requirements for a 30-day public comment period. The Board received comments from the United Mine Workers of America, who fully supported the rulemaking. The Independent Regulatory Review Commission (IRRC) provided notice to the Board that it reviewed the proposed rulemaking and did not have objections, comments or recommendations to offer. IRRC noted that if the Board delivered the final-form rulemaking without revisions, and the standing committees did not take any action on the final rulemaking, the final-form rulemaking would be deemed approved by IRRC. Changes were not made between the proposed and final-form rulemakings. Therefore, this final-form rulemaking is adopted as proposed.

E. Summary of Comments and Responses to the Proposed Rulemaking

The United Mine Workers wholeheartedly supported the rulemaking. The commentator believed that this rulemaking, which is consistent with the Federal standards, will save lives.

The Board agrees and appreciates the commentator's support of the rulemaking. The Board believes that the final-form rulemaking will enhance the Department's ability to ensure the safety of miners by reducing the potential or severity of explosions in bituminous coal mines and by allowing the Department to have independent authority to enforce the Federal requirement. This final-form rulemaking conforms State regulations to Federal regulations that are already in place.

F. Summary of Final Regulatory Requirements

The Board adds § 208.71 to require the use of additional rock dust to reduce the

possibility and severity of explosions that may cause bodily harm or loss of life while working underground, as well as prevent property loss. Changes were not made from proposed to final-form rulemaking.

Subsection (a) provides that, among other things, the incombustible content of the combined coal dust, rock dust and other dust may not be less than 80%.

Subsection (b) provides that where methane is present, the percent of incombustible content of combined dust shall be increased 0.4% for each 0.1% of methane.

Subsection (c) provides that moisture in the combined coal dust, rock dust and other dusts shall be considered a part of the incombustible content of the mixture.

G. Benefits and Costs

Benefits

The final-form rulemaking will reduce the possibility and severity of explosions that may cause bodily harm, loss of life or property. The final-form rulemaking incorporates Federal regulations into the Commonwealth's regulations, thus enhancing the Commonwealth's mine safety program and its reputation for excellence.

Compliance Costs

The final-form rulemaking will not add compliance costs to those already existing, as a Federal regulation is already in place in this regard. This final-form rulemaking imposes standards already imposed by MSHA.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the final-form rulemaking and how to comply with it. This will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

The final-form rulemaking will not increase the paperwork that is already generated because of the existing Federal regulation that is already in place.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether it effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 1, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa.B. 2587, to IRRC and the Chairpersons of the Senate and House Environmental Resources and

Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 6, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective November 6, 2013.

J. Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposed rulemaking published at 43 Pa.B. 2587.
- (4) This regulation is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

K. Order

The Board, acting under the authorizing statutes, orders that:

- (1) The regulations of the Department, 25 Pa. Code Chapter 208, are amended by adding § 208.71 to read as set forth at 43 Pa.B. 2587.
- (2) The Chairperson of the Board shall submit this order and 43 Pa.B. 2587 to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.
- (3) The Chairperson of the Board shall submit this order and 43 Pa.B. 2587 to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (4) The Chairperson of the Board shall certify this order and 43 Pa.B. 2587 and deposit them with the Legislative Reference Bureau as required by law.
- (5) This order shall take effect immediately.

E. CHRISTOPHER ABRUZZO,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 6988 (November 23, 2013).)

Fiscal Note: Fiscal Note 7-481 remains valid for the final adoption of the subject regulation.

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