

Notice of Proposed Rulemaking
Department of Environmental Protection
BOARD OF COAL MINE SAFETY
(25 Pa. Code Chapter 208)
(Underground Coal Mine Safety)

Preamble

The Board of Coal Mine Safety (Board) is seeking comments to the proposed amendment to the Department of Environmental Protection's ("Department" or "DEP") regulations at 25 Pa. Code Chapter 208 (relating to underground coal mine safety) to read as set forth in Annex A. This regulation establishes safety standards relating to Automated External Defibrillators.

This proposal was adopted by the Board at its meeting of _____, 2010.

A. Effective Date

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information contact Joseph Sbaffoni, Director Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown PA 15401, (724) 439-7469; or Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

The amendments are proposed under the authority of:

1. Sections 106, 106.1 and 106.2 of the Bituminous Coal Mine Safety Act (52 P.S. §§ 690-106, 106.1, and 106.2) (BCMSA) which authorizes the adoption of regulations implementing the BCMSA including additional safety standards. The Board is directed to consider adopting regulations implementing the MSHA MINER Act regulations.
2. Section 1917-A of The Administrative Code of 1929 (71 P. S. § 510-17), which authorizes the department to prevent the occurrence of a nuisance.

D. Background and Purpose

At the national level, 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*.

The Mine Safety Act only pre-empts state laws or regulations that are less stringent than or that conflict with MSHA standards. *See*, Section 955 (regarding state laws) of the Mine Safety Act, 30 U.S.C.A. § 955. Unlike a state’s ability under other federal statutes to obtain primacy (primary enforcement authority), a state cannot obtain authority to enforce the Mine Safety Act in that state’s jurisdiction. As a result, a number of states maintain an independent underground coal mine safety program with the mine operator being subject to two mine safety programs.

On June 15, 2006, the United States Congress amended the Mine Safety Act by enacting the MINER Act. *See, supra*. The MINER Act addresses safety issues raised by fatal mine accidents at the Sago and Alma Mines in West Virginia, and the Darby Mine in Kentucky. In addition Congress adopted the Consolidated Appropriations Act of 2008 (Pub. L. 110–161, Dec. 26, 2007, 121 Stat. 1844) directing MSHA to adopt new belt conveyor flame-resistance standards. In accordance with these congressional mandates, MSHA has promulgated regulations addressing the flammability of belt conveyors, the strength of seals for abandoned areas, escapeways, refuge alternatives, post-accident breathable air, communications, tracking, and mine rescue teams.

The Commonwealth of Pennsylvania has been regulating safety at underground bituminous coal mines since 1889. *See*, Act of May 9, 1889 (P.L. 154, No.171), entitled an act to provide for the recovery of the bodies of workmen. On July 7, 2008, the General Assembly enacted the BCMSA. The BCMSA is the first significant update of the Commonwealth of Pennsylvania’s underground bituminous coal mine safety laws since 1961. *See*, Section 103(a) (regarding findings and purpose: findings) of the BCMSA, 52 P.S. § 690-103(a).

One of the significant changes made by the BCMSA is authority to promulgate regulations for mine safety. The General Assembly established the Board of Coal Mine Safety to promulgate the regulations. This 7-member board consists of the DEP’s Secretary as Chair and three members representing the view point of mine workers and the viewpoint of underground bituminous coal mine operators respectively. *See*, Section 106 (regarding board of coal mine safety) of the BCMSA, 52 P.S. § 690 - 106.

A significant problem with the pre-existing law is that its safety standards were becoming outdated. *See* section 103 *supra*. There was no 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 contained in the BCMSA. *See*, section 106 *supra*. The Board was directed to start

considering whether to adopt federal mine safety standards not in the BCMSA. *See*, section 106.1 (regarding rulemaking) of the BCMSA, 52 P.S. §§ 690-106.1. Of particular concern is the adoption of regulations implementing safety standards established by the MINER Act regulations. *See* Section 106.1 (h) *supra*.

E. Summary of Regulatory Requirements

Section 208.70 Automated External Defibrillators (AED)

The Board is responding to a letter from a citizen, Karen J. Hampton of Fairview, Pennsylvania, who requested that AEDs be placed at coal mines for miners' safety. An AED is a portable device that uses electric shock to restore a stable heart rhythm. The Board agreed that placing AEDs at coal mines would be in the best interests of the miners' safety.

This regulation will require mine operators to place one AED at a surface location of each mine as well as a one AED at each coal producing section of each mine. Emergency medical personnel must be trained in the proper use of AED.

F. Benefits, Costs and Compliance

Benefits

The intent of this regulation is to ensure that an AED is available should a miner have a heart attack while on the job. Trained emergency management personnel may be able to save miners' lives with the use of an AED at the mine rather than waiting for an ambulance to arrive. Since the 38 underground bituminous coal mines in Pennsylvania employ approximately 4,420 people, this regulation protects all mine workers.

Compliance Costs

Each mine owner will be required to purchase the requisite number of AEDs.

G. Sunset Review

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

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on (blank) to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

I. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Board of Coal Mine Safety, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by (blank) (within 30 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by (blank) (within 30 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by _____, 20___. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

BY:

John Hanger
Chairman
Board of Coal Mine Safety