

**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 reportable accidents.

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.

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 208.71 Reportable Accidents

The proposed rulemaking package would clarify what situations require the operator of an underground bituminous coal mine to notify the Department no later than 15 minutes of discovery of an accident. The proposed rulemaking package expands the Bituminous Coal Mine Safety Act's definition of "accidents" by adding two additional scenarios to the current list of 14. Board is specifying seeking comment on the exclusion of the wording ""including any of the following" from the proposed rulemaking. There is a concern that limiting "reportable accidents" to the list 16 scenarios the operator may not contact the Department when an accident occurs that would require an investigation by the Department. Consequently, the Board would like to receive comments on whether limiting "reportable accidents" is an appropriate means to adequately report all unforeseen accidents.

## **F. Benefits, Costs and Compliance**

### Benefits

Many of the miners who work underground maybe located several miles away from a mine opening. Because of the dangerous conditions and the strenuous activities miners encounter, safety is a priority. The rulemaking expands upon the definition of accidents to include an additional two accident scenarios where the operator must contact the Department within 15 minutes of the incident. The 15 minute time schedule is needed because these specific accident scenarios require a quick response. A quick response is needed by the Department for either a rescue or to preserve evidence for an investigation.

### 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, 16<sup>th</sup> 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](mailto: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