

Notice of Final Rulemaking
Department of Environmental Protection
BOARD OF COAL MINE SAFETY
[25 Pa. Code Ch. 208]
Requirements for Automatic External Defibrillators

The Board of Coal Mine Safety (Board) by this order amends Chapter 208 (relating to underground coal mine safety) to read as set forth in Annex A. This final-form rulemaking establishes safety standards relating to automated external defibrillators (AED).

This order was adopted by the Board at its meeting on _____.

A. Effective Date

This final rulemaking will go into effect 90 days after 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 Director, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available through the Department's web site: <http://www.depweb.state.pa.us>.

C. Statutory Authority

The final-form rulemaking is being made under the authority of sections 106 and 106.1 of the Bituminous Coal Mine Safety Act (BCMSA) (52 P.S. §§ 690-106 and 690-106.1), which authorizes the adoption of regulations implementing the BCMSA including additional safety standards. The Board is specifically authorized by BCMSA to adopt regulations implementing the Mine Improvement and New Emergency Response Act of 2006 (Pub. L. No. 109-236) (MINER Act). The Board is further authorized to promulgate regulations that are necessary or appropriate to implement the requirements of the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines.

D. Background and Purpose

At the National level, the United States Department of Labor, Mine Safety and Health Administration (MSHA) regulates mine safety under the Federal Mine Safety and Health Act of 1977 (Mine Safety Act) (30 U.S.C.A. §§ 801—965). The MSHA regulations are set forth in 30 CFR Parts 1—199. The operating requirements for underground coal mines are in 30 CFR Part 75 (relating to mandatory safety standards—underground coal mines).

The Mine Safety Act only pre-empts state laws or regulations that are less stringent than, or that conflict with, MSHA standards. See 30 U.S.C.A. § 955. Unlike a state's ability under other Federal statutes to obtain 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. The Commonwealth has been regulating safety at underground bituminous coal mines since 1889. See Act of May 9, 1889 (P.L. 154, No.171). On July 7, 2008, the General Assembly enacted the BCMSA which is the first significant update of the Commonwealth's underground bituminous coal mine safety laws since 1961. See 52 P.S. § 690-103(a).

One significant change made by the BCMSA is the delegation of authority to promulgate regulations for mine safety and the General Assembly established the Board to promulgate such regulations. The seven-member Board consists of the Secretary of the Department of Environmental Protection (DEP) as chairperson and three members representing the view point of mine workers and the viewpoint of underground bituminous coal mine operators respectively. See 52 P.S. § 690-106.

The BCMSA contains broad rulemaking authority to adopt and promulgate regulations to modernize safety standards. The Board is generally authorized to promulgate regulations that are necessary or appropriate to implement the requirements of the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines. 52 P.S. § 690-106.1(a).

In this rulemaking 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 safety purposes. 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 safety of miners and other individuals in and about mines.

This regulation requires mine operators to place one AED at a location on the surface in close proximity to the mine entry at the same location where the first aid equipment is stored for the mine, as well as to place one AED at a specific point in each working section of the mine. Emergency medical technicians and emergency medical technician paramedics shall be trained in the proper use of an AED.

On November 5, 2011, at 41 *Pa.B.* 5959, the proposed rulemaking was published for comment, with a 30-day comment period, in the *Pennsylvania Bulletin*. No comments were received from members of the public during the comment period; several comments were submitted by the Independent Regulatory Review Commission (IRRC) on January 4, 2012 pursuant to the Regulatory Review Act, 71 P.S. § 745.1 et seq.

E. Summary of Changes to the Proposed Rulemaking

§ 208.70. Automated external defibrillators

This regulation requires mine operators to place one AED at a surface location of each mine as well as one AED at each coal producing section of each mine. Emergency medical

personnel shall be trained in the proper use of an AED. Several changes were made to this section for the final rulemaking in response to comments on the proposed regulation.

§ 208.70(a). The proposed § 208.70(a) required that a mine operator provide for use in an emergency one AED at two specified locations: “at a location on the surface of the mine;” and “on or near each coal production section.” The proposed regulation also contained a reference to location of AEDs “consistent with the Equipment Approval Task Force Guidelines.” In response to a comment that this section lacked sufficient clarity, the Board has changed the regulation for the final rulemaking. The reference in § 208.70(a) to the “Equipment Approval Task Force Guidelines” has been deleted. Section 208.70(a)(1) was changed to require placement of an AED at a location on the mine surface “in close proximity to the mine entry at the same location where the first aid equipment is stored.” Similarly, § 208.70(a)(2) was changed in the final regulation to mirror the requirement for first aid equipment locations in 30 CFR § 75.1713-7(a)(3). The final-form regulation requires that AEDs be located “At a point in each working section not more than 1,000 feet outby the active working face or faces at the same location where the first aid equipment is stored.” The final regulation also adds a requirement in § 208.70(a) that mine operators consult with emergency medical technicians when providing for placement of AEDs in the required locations.

§ 208.70(b). The proposed § 208.70(b)(1) and (2) used the term “emergency medical personnel” in prescribing training requirements, but the current regulations do not include a definition for this term. The BCMSA defines the terms “emergency medical technician” and “emergency medical technician paramedic” in 52 P.S. § 690-601. In response to a comment that this subsection lacked clarity, the Board has changed the final regulations at § 208.70(b) to replace the term “emergency medical personnel” with the two statutory terms, because that more precisely expresses the intent of the regulation.

F. Summary of Comments and Responses on the Proposed Rulemaking

There were several comments related to the clarity of the proposed regulation.

A commentator questioned the reference in proposed § 208.70(a) to location of AEDs “consistent with the Equipment Approval Task Force Guidelines” and raised concerns with incorporation of these guidelines into the regulation. These guidelines can be amended without notice and opportunity for public comment and without consideration of the effect on this regulation. Moreover, the guidelines as currently written do not provide clear direction regarding the location of AEDs. The Board agreed with this comment and has changed the final-form regulation to delete the reference to the guidelines.

A commentator noted that proposed § 208.70(a)(1) requires an AED to be placed at “a location on the surface of the mine” without further specification. The commentator thought this requirement is vague and raised a similar concern with respect to proposed § 208.70(a)(2) which requires an AED be placed “on or near each coal producing section.” The commentator found this description too indefinite and thus could raise compliance difficulties. The Board agreed with this comment and changed the regulation to establish more precise locations for the AEDs. The Board has coordinated the final-form regulation with the MSHA regulation pertaining to minimum requirements for placement of first aid equipment in 30 CFR § 75.1713-7. Section

208.70(a)(1) has been amended in final-form regulation to require placement of an AED at a location on the mine surface “in close proximity to the mine entry at the same location where the first aid equipment is stored.” This will give precision and consistency to the surface location and enable emergency responders to know where the AED equipment can be found in the event of an emergency. Similarly, § 208.70(a)(2) has been amended in the final regulation to mirror the requirement for first aid equipment locations in 30 CFR § 75.1713-7(a)(3). The amended regulation requires that AEDs be located “At a point in each working section not more than 1,000 feet outby the active working face or faces at the same location where the first aid equipment is stored.” This change will enable an operator to easily comply with the requirement and enable emergency personnel to know the location of the AED equipment.

A commentator recommended that the regulation require that mine operators consult with emergency medical technicians to determine the best placement of AEDs in order to better effectuate the purpose of the regulation. The Board agreed with this comment and changed the final regulation to add a requirement in § 208.70(a) that mine operators consult with emergency medical technicians when providing for placement of AEDs in the required locations.

A commentator noted that proposed §§ 208.70(b)(1) and (2) use the term “emergency medical personnel” in prescribing training requirements, but that the regulation is not clear regarding who specifically are “emergency medical personnel.” The current regulations do not include a definition for this term, however, the BCMSA defines the terms “emergency medical technician” and emergency medical technician paramedic” in 52 P.S. § 690-601. In response to this comment, the Board amended the final regulations at § 208.70(b) to replace the term “emergency medical personnel” with the two statutory terms, because that more precisely expresses the intent of the regulation.

Several comments were submitted suggesting additional requirements be included to certain aspects of the proposed regulation.

A commentator noted that § 208.70(b) requires training in the use of AEDs but in the event the victim is in full cardiac arrest the AED would direct the administration of Cardio Pulmonary Resuscitation (CPR). The commentator recommended that the regulation specifically include a requirement for CPR training in addition to training in use of the AED equipment. The Board does not see a need to add a specific requirement for CPR training in this regulation because the annual safety retraining for mine personnel already must include training in CPR; the training in CPR is part of annual mine safety refresher course for mine personnel. Thus, the Board believes including such a requirement in this regulation would be redundant.

A commentator raised concerns related to proposed § 208.70(c) which addresses maintenance and inspection of AEDs. First, the mechanisms may be susceptible to deterioration when exposed to dust and moisture found in a mine, and there is a safety concern when placing an electronic device in a mine where a spark could ignite an explosion. The commentator suggested it would be appropriate to add more specific requirements for AEDs related to maintenance. The commentator also recommended describing minimum recordkeeping requirements in this section. The Board believes it is unnecessary to add specific requirements to assure protection from the elements. Underground mining operations are accustomed to adapting or taking special care of equipment used in the mine in order to account for conditions. The AEDs will be incorporated as part of the first-aid materials at underground mines and will

receive the same protection from elements, and treatment for safety purposes, as all other equipment used at the underground mine. The placement of AEDs at the mine will not necessitate any additional recordkeeping specifically associated with maintenance and inspection of the AEDs. This equipment will be inspected as a normal part of the pre-shift inspection routine that must be done for underground mines, similar to other equipment used at an underground mining operation. The incorporation of the AED equipment will not generate any additional recordkeeping that is not already being performed in conjunction with routine pre-shift inspections.

G. Benefits, Costs and Compliance

Benefits

The intent of this rulemaking 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 a miner's life 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 this Commonwealth employ approximately 4,420 people, this rulemaking protects all mine workers.

Compliance costs

Each mine owner will be required to purchase the requisite number of AEDs; the costs of compliance are not expected to be significant.

Compliance Assistance Plan

The Department of Environmental Protection will provide notification to all bituminous coal mine operators affected by this regulation to inform them of the final promulgation of these regulatory changes.

Paperwork

This regulation is not expected to add to paperwork requirements.

H. Sunset Review

This proposed regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the proposed regulation 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 October 26, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 41 *Pa.B.* 5959 (Nov. 5, 2011) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act, on _____ these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form regulations.

J. Findings of the Board

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 at 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 proposal published at 41 *Pennsylvania Bulletin* 5959 (Saturday, Nov. 5, 2011).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

K. Order of the Board

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

(a) The regulations of the Department of Environmental Protection, 25 *Pa. Code* Chapter 208, are amended to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A 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.

(c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

MICHAEL KRANCER,
Chairperson