

NOTICE OF PROPOSED RULEMAKING
[25 PA CODE CHAPTER 208]

PREAMBLE

Sections 106 and 106.1 of the Bituminous Coal Mine Safety Act (52 P.S. §§ 690-106 and 106.1) (“BCMSA”) authorizes the adoption of regulations implementing the BCMSA, including additional safety standards. The Board of Coal Mine Safety (“Board”) is 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.

The Board is seeking to add a regulation 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. The proposed rulemaking conforms Pennsylvania law to federal law, thereby establishing that the incombustible content of coal dust, rock dust and any other dust will not be less than 80 percent in bituminous coal mines.

This notice is given under Board order at its meeting of December 11, 2012.

A. Effective Date

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Joe Sbaffoni, Director Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown PA 15401, (724) 439-7469, jsbaffoni@pa.gov; or Susana Cortina de Cárdenas, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060, scortina@pa.gov.

C. Statutory Authority

The proposed rulemaking is authorized under the authority of Sections 106 and 106.1 of the BCMSA, 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 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

This proposed rulemaking package would require that where rock dust is to be applied in bituminous coal mines, the incombustible content of the combined coal dust, rock dust, and other

dust that is present in a mine's intake and return airways must be not be less than 80 percent. On September 23, 2010, the 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 in response to the grave danger that miners in underground bituminous coal mines face when accumulations of coal dust are not made inert. 75 FR 57857. MSHA concluded, from investigations of mine explosions and other reports, that immediate action is 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 (LLEM) 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 percent total incombustible content (TIC) in both intake and return airways of bituminous coal mines in the ETS. In addition, the incombustible content of the dust must be increased to 0.4 percent for each 0.1 percent of methane present.

Based on NIOSH's data and recommendations, and MSHA data and experience, the U.S. 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 requirements in the ETS and that the ETS was necessary to protect miners from such danger. The Final MSHA Rule retained the requirements of the ETS verbatim to ensure continuous protection for underground bituminous coal miners from grave danger due to hazards of coal dust explosions. 76 FR 35978, June 21, 2011.

In developing the final rule, MSHA considered 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 .403-1.

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. 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 DEP's Secretary as Chair, three members representing the viewpoint of mine workers and the viewpoint of underground bituminous coal mine operators, respectively. 52 P.S. § 690-106.

A significant problem with the pre-existing law was that its safety standards were becoming outdated. 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. The Board was directed to start considering whether to adopt federal mine safety standards not in the BCMSA. 52 P.S. § 690-106.1.

After learning of the more stringent MSHA requirements under 30 CFR §§ 75.403 and .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, the Board is proposing these requirements for public review and comment.

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 above-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, federal regulation mandates that the incombustible content of the combined coal, rock and any other type of dust used in bituminous coal mines must be no less than 80 percent. The proposed rulemaking conforms to the federal regulation in this regard.

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.

E. Summary of Proposed Regulatory Requirements

The Board proposes the addition of a regulation which will 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. Most of the miners who work underground may be several miles away from a mine opening. Because of the dangerous conditions that miners encounter and the increased probability of explosions with the use of rock dust with incombustible content that is less than 80 percent, safety is a priority. Using additional rock dust to attain the percentage mentioned above is another tool that miners will have available to save a life, as well as protect property.

25 *Pa Code* § 208.71(a) is proposed to be added to provide that, among other things, the incombustible content of the combined coal dust, rock dust, and other dust must be not less than 80 percent.

Subsection (b) is proposed to be added to provide that where methane is present, the percent of incombustible content of such combined dust must be increased 0.4 percent for each 0.1 percent of methane.

Subsection (c) is proposed to be added to provide that moisture contained in the combined coal dust, rock dust and other dusts must be considered as a part of the incombustible content of such mixture.

F. Benefits and Costs

Benefits

The proposed rulemaking will reduce the possibility and severity of explosions that may cause bodily harm, loss of life or property. The proposed regulation simply incorporates the provisions of federal regulations into the state's regulations, thus enhancing the Commonwealth's mine safety program and its reputation for excellence.

Compliance Costs

The proposed rulemaking will not add any compliance costs to those already existing, as a federal regulation is already in place in this regard. This 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 proposed regulation and how to comply with it. This will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

The regulatory revisions will not increase the paperwork that is already generated because of the existing federal regulation that is already in place.

G. 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.

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 _____, 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 on or before _____. 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 the Board on or before _____. 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@pa.gov and must also be received by the Board on or before _____. 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.

Persons with a disability who wish to attend the hearing and require an auxiliary aide, service or other accommodation in order to participate should contact (717) 787-4526, or through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

By:

Michael Krancer
Chairman