

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Department of Environmental Protection

(2) Agency Number:

Identification Number: #7-481

IRRC Number:

(3) PA Code Cite: 25 Pa Code Chapter 208 Underground Coal Mine Safety

(4) Short Title: Maintenance of Incombustible Content of Rock Dust

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

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 should not be less than 80 per cent. 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. Based on NIOSH's data and recommendations, and MSHA's 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 this ETS and that this ETS was necessary to protect miners from such danger.

The final MSHA Rule retains 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.

The proposed rulemaking will allow Pennsylvania regulations to conform to the federal requirements. The Board of Coal Mine Safety ("Board") agreed that this rulemaking would be in the best interests of the miners' safety. The Board's decision is based on its interest in minimizing the possibility and severity of explosions, as well as conforming Pennsylvania regulations to the federal requirements.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The Bituminous Coal Mine Safety Act, ("BCMSA"), 52 P.S. §§ 690-101 et seq., authorizes the adoption of regulations to implement the BCMSA and to protect the health and safety and welfare of miners and other individuals in and about mines.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This regulation is not mandated by any federal or state law, court order, or federal regulation. The proposed regulation incorporates the provisions of the federal requirements.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The rulemaking package would require that where rock dust is to be applied, the incombustible content of the combined coal dust, rock dust, and other dust must be less than 80 percent in a mine's intake and return airways. The use of additional rock dust would assure this percentage of incombustibility, which is already required under the federal regulations. The use of additional rock dust could prevent bodily harm, save the lives of miners, as well as prevent property loss, as it will avert potential explosions or reduce their severity. Because of the dangerous conditions and the strenuous activities miners encounter, safety is a priority. Using additional rock dust will be another tool that miners will have available to prevent bodily harm, save a life or protect property by preventing potential explosions.

This proposed regulation is necessary to ensure that the Department has independent regulatory authority to enforce the federal requirements under 30 CFR §§ 75.403 and 403-1. Moreover, there is a compelling public interest to ensure that miners are safe in the workplace. While estimating an exact number of individuals who will benefit from this proposal is difficult, miners, their families, the mining companies, and society at large will benefit from safer mines. It is also difficult to quantify the benefits of a proposed regulation that will significantly reduce workplace injuries and deaths.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. The proposed regulation incorporates the federal requirements into the state coal mine safety program.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The regulated community in other states also has to comply with the federal regulation. By this proposed rulemaking, Pennsylvania is assuring that its regulation on the subject conforms to the federal requirements. As such, this regulation will have no impact on Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. The proposed regulation will not affect any other regulations of the promulgating agency or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

This rulemaking was prepared at the direction of the Board that was established under the BCMSA. The seven member Board consists of the Secretary of Department of Environmental Protection, three members representing mine workers, and three members representing the coal mine operators. Three of the members of the Board were nominated by the United Mine Workers of America to represent the viewpoint of miners, and three were nominated by the Pennsylvania Coal Alliance, formerly known as the Pennsylvania Coal Association ("PCA"), to represent the viewpoint of the coal mine operators. It was through the Board that communications with and solicitation of input from the regulated community in the development and drafting of the proposed regulation occurred. Three members of the PCA represent the 5 underground mining companies and affiliates that are currently in operation in the Commonwealth of Pennsylvania. They participated in the decision of the Board to prepare this regulation. At this point in time, this rulemaking will only apply to those 5 underground mining companies.

The Board has determined that no small businesses, as that term is defined under Section 3 of the Regulatory Review Act, will be affected by this proposal. According to the Small Business Size Regulations under 13 CFR Part 121, for NAICS Code 212112 (bituminous coal underground mining) a small business is one that employs fewer than 500 persons. The Board determined that this rulemaking would only apply to the current 5 underground mining companies operating in the Commonwealth of Pennsylvania, all of which employ more than 500 persons. The Board made this determination by reviewing its own internal data and publicly available data from the companies. As a result, this rulemaking would not impact small businesses.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of

the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Currently there are 38 bituminous underground mines operating in Pennsylvania. The rulemaking would require them to make certain that the incombustible content of the rock dust is no less than 80 percent in the mines' intake and return airways to prevent the probability or severity of explosions. There is no opposition from the underground coal industry as it already participated in the decision-making process that led to the Board to prepare this regulation, and the coal industry already has to comply with the federal regulation. This rulemaking will only apply to the current 5 underground mining companies operating in the Commonwealth of Pennsylvania, all of which employ more than 500 persons. There are no other underground coal mine companies to which this proposed regulation would apply at this time. There are currently no small businesses, persons or entities operating underground mining companies in the Commonwealth of Pennsylvania. Consequently, the regulation will not apply to small businesses, nor any other persons or businesses other than the 5 mining companies previously mentioned. Moreover, the owners and operators of these mines already have to comply with the federal regulation in this regard.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

Currently there are 38 underground bituminous coal mines in the Commonwealth of Pennsylvania. These mines employ approximately 5,382 persons (not all of whom work underground). All of them already have to comply with the federal regulation and, as a result, conforming Pennsylvania regulations to federal regulations will not have an impact on any persons, groups, entities or small businesses. In addition, none of the businesses to which this regulation would apply are small businesses or groups representing small businesses, as they all employ more than 500 persons.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There is a federal regulation in place already. The owners and operators of these mines already have to comply with the federal regulation in this regard. As a result, assuring that the Pennsylvania regulation conforms to the federal requirements will not have any additional financial, economic or social impact. In addition, none of the current businesses to which this regulation would apply are small businesses or groups representing small businesses, as they all employ more than 500 persons, nor would it apply to other persons, groups or entities. The potential benefit of preventing bodily harm, loss of life or property is incalculable.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There will be no additional costs and adverse effects associated with this rulemaking as its sole purpose is to conform Pennsylvania regulations to federal requirements. There is already a federal regulation in place. As a result, assuring that the Pennsylvania regulation conforms to the federal one will not have any additional financial, economic or social impact on any entity or individuals, and the potential benefit of preventing bodily harm, loss of life or property is incalculable.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There would not be either additional costs or savings for the regulated community as it already has to comply with this requirement at the federal level. Nonetheless, although the regulation is intended to protect miners, it can also prevent property loss and therefore prevent additional expenses to the regulated community. Explosions can result in high costs for a mine operator, as it typically takes an operator a minimum of two months to resume operations after an explosion. This could lead to expenses for the mine operator totaling from \$2 to 7 million, as a result of the following: lost wages, lost production capacity, payment for services associated with mine rescue operations, and other related expenses.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This question is not applicable because local governments do not engage in underground bituminous coal mining.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This question is not applicable because state government does not engage in underground bituminous coal mining.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This rulemaking does not require any additional accounting or consulting procedures, additional reporting, recordkeeping, or other paperwork other than that which is already being performed on a routine basis as required under federal law.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

This question is not applicable because neither local nor state governments engage in underground bituminous coal mining, and the regulated community already incurs in costs to comply with this requirement at the federal level. There will be no additional costs associated with compliance with the implementation of this regulation. There are potential savings, however, as this regulation can prevent additional expenses to the regulated community. Explosions can result in high costs for a mine operator, as it typically takes an operator a minimum of two months to resume operations after an explosion. This could lead to expenses for the mine operator totaling from \$ 2 to 7 million, as a result of the following: lost wages, lost production capacity, payment for services associated with mine rescue operations, and other related expenses.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Environmental Protection Operations (#160-10381)	\$84,218,000	\$78,021,000	\$88,879,000	\$74,547,000
Environmental Program Management (#160-10381)	\$31,100,000	\$28,881,000	\$25,787,000	\$24,965,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

This regulation will not have any effect on small businesses as all of the underground mining companies that would be impacted employ more than 500 persons.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

None. There would be no additional costs for the regulated community as it already has to comply with this requirement at the federal level.

- (c) A statement of probable effect on impacted small businesses.

None. This regulation will not have any effect on small businesses as all of the currently operating underground mining companies in Pennsylvania that would be impacted employ more than 500 persons.

- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

None. There is no alternative method that could be relied upon or additional costs for the regulated community, as it already has to comply with this requirement at the federal level.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions were required to be developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers since none were identified to be impacted.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

This question is not applicable as there is already a federal regulation in place, and this rulemaking will assure that Pennsylvania regulations conform to the federal regulations.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting

- requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

There will not be any adverse impact on small business from this rulemaking. This rulemaking merely codifies an existing federal requirement that already applies to underground coal mine operators. On September 23, 2010, MSHA issued an 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. NIOSH conducted a series of large-scale dust explosion tests at 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 TIC in both intake and return airways of bituminous coal mines.

The Final MSHA Rule retains 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.

This rulemaking was prepared at the Board's direction, in response to NIOSH's additional research and testing and the MSHA regulation. At the present time, the regulation will only apply to the 5 underground mining companies previously mentioned that currently operate in Pennsylvania, none of which constitute small businesses, as all of them employ more than 500 persons. For that reason, there was no need to consider any other regulatory methods, nor how to minimize any impact of the same to small business.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

NIOSH conducted a series of large-scale dust explosion tests at 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 TIC in both intake and return airways of bituminous coal mines. Based on NIOSH's data and recommendations, and MSHA's own research, 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 retains 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.

(29) Include a schedule for review of the regulation including:

- | | |
|---|------------------------------------|
| A. The date by which the agency must receive public comments: | <u>1st Quarter 2013</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>4th Quarter 2013</u> |
| D. The expected effective date of the final-form regulation: | <u>4th Quarter 2013</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>4th Quarter 2013</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board is committed to ensuring the health and safety of all persons in the bituminous coal mine industry. As a result, the Board periodically reviews all regulations within this industry to ensure their continued effectiveness. This periodic review occurs at all Board meetings. The Board meets at a minimum of twice during each calendar year or more as may be necessary.