

EXECUTIVE SUMMARY

Prohibiting Electronic Liquid-Vaporizing Devices at Underground Bituminous Coal Mines

This final-form rulemaking amends 25 Pa. Code Chapter 208 (relating to underground coal mine safety) as set forth in Annex A.

The purposes of the Bituminous Coal Mine Safety Act of 2008, enumerated in section 103(b) (52 P.S. § 690-103(b)), include the promulgation of improved mandatory standards to protect the health and safety of miners and other individuals in and about mines. To achieve that purpose, this final-form rulemaking will amend the smoking prohibition at underground bituminous coal mines to expressly prohibit the use and/or possession of liquid-vaporizing devices, such as electronic cigarettes, and will impose a penalty for violations. This final-form rulemaking will also separately distinguish the prohibition at surface work areas of underground bituminous coal mines from the prohibition inside these mines.

By prohibiting the use of and/or possession of liquid vaporizing devices at underground bituminous coal mines or at surface work areas for underground bituminous coal mines, this final-form rulemaking helps to address both explosive and distraction hazards that the use and/or possession of these devices present at underground coal mining operations.

The development and drafting of this rulemaking was aided by input from the Board which received recommendations and advice on the rulemaking from its constituents. The Board is chaired by the Secretary of the Department of Environmental Protection (Department) and consists of three members representing the interests of mine workers and three members representing the interests of underground bituminous coal mine operators.

The final-form rulemaking was published on March 13, 2021 for a 30-day public comment period (51 Pa.B. 1316). No public hearings were held. The public comment period closed on April 12, 2021. The Board received one public comment from the American Lung Association (ALA) and comments from the Independent Regulatory Review Commission (IRRC). The ALA comment was in support of the proposed regulation. Based on IRRC's comments, the Preamble was updated to provide more information on both the Department's statutory authority to assess a civil penalty and the process the Department would go through prior to assessing a civil penalty. One minor update was also made to both the Annex A and the RAF based off IRRC's comments.

This final-form rulemaking will improve safety by expressly prohibiting the use and/or possession of liquid-vaporizing devices under the existing prohibitions against smoking and possession of smoking materials in order to reduce the likelihood that miners or other persons in and about mines will use and/or possess these items which present a safety hazard. Miners, their families, mining companies, and others will benefit from the additional safety ensured by the avoided hazards associated with the use or possession of liquid-vaporizing devices in or about underground coal mines. Additionally, miners, mine officials, mine operators, and the Department will benefit from clarity regarding how the use and possession of these devices are regulated at underground coal mines.

The Department recommends adoption of this final-form rulemaking.