

RULES AND REGULATIONS

BOARD OF COAL MINE SAFETY

[25 PA. CODE CH. 208]

Requirements for Automatic External Defibrillators

[42 Pa.B. 7414]

[Saturday, December 8, 2012]

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

This order was adopted by the Board at its meeting on August 2, 2012.

A. Effective Date

This final-form rulemaking will go into effect on March 1, 2013, 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 on the Department of Environmental Protection's (Department) web site at 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). The Board is further authorized to promulgate regulations that are necessary or appropriate to implement 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 section 506 of the Mine Safety Act (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 independent underground coal mine safety programs. The Commonwealth has been regulating safety at underground bituminous coal mines since 1889. See the 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 section 103(a) of the BCMSA (52 P.S. § 690-103(a)).

One significant change made by the BCMSA is the delegation of authority to promulgate regulations for mine safety. The General Assembly established the Board to promulgate regulations. The seven-member Board consists of the Secretary of the Department as chairperson and three members representing the viewpoint of mine workers and the viewpoint of underground bituminous coal mine operators respectively. See section 106 of the BCMSA.

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. See section 106.1(a) of the BCMSA.

In this final-form rulemaking, the Board is responding to a letter from a citizen, Karen J. Hampton, Fairview, PA, 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.

Section 208.70 (relating to automated external defibrillators) 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.

The proposed rulemaking was published at 41 Pa.B. 5959 (November 5, 2011) with a 30-day comment period. Comments were not 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, under the Regulatory Review Act (71 P. S. §§ 745.1—745.12).

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 in response to comments on the proposed rulemaking.

Proposed § 208.70(a) required that a mine operator provide for use in an emergency one AED at two specified locations: "a location on the surface of the mine" and "on or near each coal producing section." The proposed rulemaking 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 amended this subsection in this final-form rulemaking. The Board concluded that to establish a more precise location for an AED, it would coordinate the language with the MSHA regulation pertaining to minimum requirements for the placement of first aid equipment. In doing so, the Board recognized that section 104 of the BCMSA (52 P. S. § 690-104) defines a "working section" as "the area in a mine from the face extending back 1,000 feet." Therefore, in prescribing a more precise location for the placement of AEDs, the Board coordinated the location requirement for AEDs with the definition of "working section" as provided in the BCMSA. The Board believes this change will enable an operator to easily comply with the requirement and emergency personnel to know the location of the AED equipment.

Therefore, 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 to require the placement of AEDs underground in the same locations as the first aid equipment. The final-form rulemaking 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." A requirement was also added in § 208.70(a) that mine operators consult with emergency medical technicians when providing for placement of AEDs in the required locations.

Proposed § 208.70(b)(1) and (2) used "emergency medical personnel" in prescribing training requirements but the regulations do not include a definition for this term. The BCMSA defines "emergency medical technician" and "emergency medical technician

paramedic" in section 601 of the BCMSA (52 P. S. § 690-601). In response to a comment that this subsection lacked clarity, the Board replaced "emergency medical personnel" with the statutory terms "emergency medical technicians" and "emergency medical technician paramedics" to more precisely express the intent of the regulation.

F. *Summary of Comments and Responses on the Proposed Rulemaking*

There were several comments regarding the clarity of the proposed rulemaking.

A commentator questioned the reference in § 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 deleted the reference to the guidelines in the final-form rulemaking.

A commentator noted that proposed § 208.70(a)(1) required an AED to be placed at "a location on the surface of the mine" without further specification. The commentator thought this requirement was vague and raised a similar concern with respect to proposed § 208.70(a)(2) which required 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 coordinated the final-form rulemaking with the MSHA regulation in 30 CFR 75.1713-7 (relating to first-aid equipment; location; minimum requirements) pertaining to minimum requirements for placement of first aid equipment. Section 208.70(a)(1) has been amended 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 to require placement of AEDs underground at the same locations as the first aid equipment. 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." 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 to better effectuate the purpose of the regulation. The Board agreed with this comment and added a requirement in § 208.70(a) that mine operators consult with emergency medical technicians when providing for placement of AEDs in required locations.

A commentator noted that proposed § 208.70(b)(1) and (2) used "emergency medical personnel" in prescribing training requirements but that the regulation is not clear regarding who specifically are "emergency medical personnel." The regulations do not include a

definition for this term. However, section 601 of the BCMSA defines "emergency medical technician" and "emergency medical technician paramedic." In response to this comment, the Board amended § 208.70(b) to replace "emergency medical personnel" with the statutory terms "emergency medical technicians" and "emergency medical technician paramedics" to more precisely express the intent of the regulation.

Several comments suggested additional requirements be included to certain aspects of the proposed regulation.

A commentator noted that proposed § 208.70(b) required training in the use of AEDs but in the event the victim is in full cardiac arrest the AED would direct the administration of cardiopulmonary 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 includes training in CPR. Training in CPR is part of annual mine safety refresher course for mine personnel. Therefore, the Board believes including this a requirement in this regulation would be redundant.

A commentator raised concerns regarding proposed § 208.70(c), which addressed 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 regarding 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 to account for conditions. AEDs will be incorporated as part of the first-aid materials at underground mines and shall 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 does not necessitate additional recordkeeping specifically associated with maintenance and inspection of the AEDs. This equipment will be inspected as a normal part of the preshift inspection routine that shall be done for underground mines similar to other equipment used at an underground mining operation. The incorporation of the AED equipment does not generate additional recordkeeping that is not already being performed in conjunction with routine preshift inspections.

G. Benefits, Costs and Compliance

Benefits

The intent of this final-form rulemaking is to ensure that an AED is available if a miner has 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 final-form 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 will provide notification to bituminous coal mine operators affected by these regulations to inform them of this final-form rulemaking.

Paperwork

This final-form rulemaking is not expected to add to paperwork requirements.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they are 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, to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on October 17, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 18, 2012, and approved the final-form rulemaking.

J. *Findings*

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 the comments were considered.

(3) These regulations do not enlarge the purpose of the proposed rulemaking published at 41 Pa.B. 5959.

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

K. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 208, are amended by adding § 208.70 and amending § 208.1 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 IRRC 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 on March 1, 2013.

MICHAEL L. KRANCER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 6969 (November 3, 2012).)

Fiscal Note: Fiscal Note 7-463 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY

CHAPTER 208. UNDERGROUND COAL MINE SAFETY

GENERAL PROVISIONS

§ 208.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

AED—Automated external defibrillator—A portable device that uses electric shock to restore a stable heart rhythm to an individual in cardiac arrest.

Act—The Bituminous Coal Mine Safety Act (52 P. S. §§ 690-101—690-708).

Approval or approved—The term as defined in section 104 of the act (52 P. S. § 690-104).

MSHA—The term as defined in section 104 of the act.

Miner—The term as defined in section 104 of the act.

NIOSH—The term as defined in section 104 of the act.

Operator—The term as defined in section 104 of the act.

Overpressure—The pressure over the background atmospheric pressure that could result from an explosion, which includes the impact of the pressure wave on an object.

psi—Pounds per square inch.

Representative of the miners—The term as defined in section 104 of the act.

SCSR—Self-contained self-rescue device—A type of closed-circuit, self-contained breathing apparatus approved by MSHA and NIOSH under 42 CFR Part 84 (relating to approval of respiratory protective devices) for escape only from underground mines.

Underground bituminous coal mine or mine—The term as defined in section 104 of the act.

AUTOMATED EXTERNAL DEFIBRILLATORS

§ 208.70. Automated external defibrillators.

(a) *Location.* A mine operator, in consultation with emergency medical technicians, shall provide for use in an emergency one AED at the following locations:

(1) At a location on the surface in close proximity to the mine entry at the same location where the first aid equipment is stored.

(2) 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.

(b) *Training.*

(1) Emergency medical technicians and emergency medical technician paramedics at the mine shall complete training in the use of an AED. The mine operator may include the required AED training in its continuing education plan for emergency medical personnel. Training in the use of the AED for emergency medical technicians and emergency medical technician paramedics shall be provided in accordance with the standards of the American Heart Association, the American National Red Cross or through an equivalent course of instruction approved by the Department of Health.

(2) Mine personnel, other than emergency medical technicians and emergency medical technician paramedics, shall receive yearly training in the operation of the AED. Training may be provided as part of the annual refresher training provided under 30 CFR 48.8(c) (relating to annual refresher training of miners; minimum courses of instruction; hours of instruction).

(c) *Maintenance and inspection.* AEDs shall be maintained and inspected according to manufacturer's operational guidelines.

(d) *Good Samaritans.* Section 8331.2 of 42 Pa.C.S. (relating to Good Samaritan civil immunity for use of automated external defibrillator) applies to miners who render care with an AED.

[Pa.B. Doc. No. 12-2385. Filed for public inspection December 7, 2012, 9:00 a.m.]

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