Regulatory Analysis Form

(Completed by Promulgating Agency)

IRRC

Independent Regulatory Review Commission

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SECTION I: PROFILE

(1) Agency:

Department of Environmental Protection

(2) Agency Number:

Identification Number: #7-455

IRRC Number: # 2856

(3) Short Title:

Underground Coal Mine Safety

(4) PA Code Cite:

25 Pa. Code Chapter 208 Underground Coal Mine Safety

5) Agency Contacts & Telephone Numbers

Primary Contact: Michele Tate, (717) 783-8727, mtate@state.pa.us

Secondary Contact: Patricia Allan, (717) 783-8727, pmallan@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

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), e-mail RegComments@state.pa.us

(All Comments will appear on IRRC'S website)

(7) 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

(8) Briefly explain the regulation in clear and non-technical language.

The final-form rulemakings establishes new sections in 25 *Pa Code* Chapter 208 (relating to underground coal mine safety) to read as set forth in Annex A. These regulations establish safety standards relating to belt conveyor flammability, the design, installation and maintenance of mine seals, escapeways, emergency response, and self-contained self-rescue devices. They incorporate by reference safety standards adopted by the United States Department of Labor, Mine Safety and Health Administration ("MSHA") found in 30 CFR Part 75 (relating to mandatory safety standards - underground coal mines). The MSHA regulations being incorporated by reference implement some of the requirements established by MSHA in accordance with the Mine Improvement and New Emergency Response ("MINER") Act of 2006 (MINER Act) (Pub.L. 109-236, June 15, 2006, 120 Stat. 493)(30 U.S.C.A. § 826 and 963-965).

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

A. The date by which the agency must receive public comments:	September 8, 2010
B. The date or dates on which public meetings or hearings will be held:	N/A
C. The expected date of promulgation of the proposed regulation as a final-form regulation:	Second Quarter 2011
D. The expected effective date of the final-form regulation:	Second Quarter 2011
E. The date by which compliance with the final-form regulation will be required:	Second Quarter 2011
F. The date by which required permits, licenses or other approvals must be obtained:	Second Quarter 2011

(10) Provide the schedule for continual review of the regulation.

The Board will review on an ongoing basis the need for regulations implementing the BCMSA.

SECTION II: STATEMENT OF NEED

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

1. Sections 106, 106.1 and 106.2 of the Bituminous Coal Mine Safety Act ("BCMSA") (52 P.S. §§ 690-106, 106.1, and 106.2) directs the Board of Coal Mine Safety ("Board") to consider adopting regulations implementing the United States Department of Labor, Mine Safety and Health Administration's (MSHA") regulations implementing the Mine Improvement and New Emergency Response ("MINER") Act.
2. Section 1917-A of The Administrative Code of 1929 (71 P. S. § 510-17), which authorizes the Department to prevent the occurrence of a nuisance.

(12) 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.

Section 106(h) of the BCMSA directs the Board of Coal Mine Safety ("Board") to consider adopting the MINER Act regulations. The Board is to have acted on the Final-form Order by January 3, 2012.

(13) 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.

These regulations enhance mine safety by ensuring that abandoned areas are isolated from the working mine, reducing the possibility of belt conveyor fires and by enhancing the miners' ability to survive a mine emergency, *i.e.* a fire, cave-in, or the inundation of the mine by gas or water. Abandoned areas are effectively isolated because the regulations adopt effective standards for the design, strength, installation and maintenance of mine seals. The possibility of a belt fire is reduced because the Department will be ensuring that belts have been approved under MSHA's new belt conveyor flame-resistance standard and that the belt conveyor entryway is maintained in a manner to minimize the possibility of a fire. The miners' ability to survive a mine emergency is enhanced in several ways. The Department will be enforcing the MSHA emergency response and emergency response training requirements. To enhance the miners' ability to escape from a mine emergency, the Department will be ensuring that MSHA's requirements for escapeways and self-contained self-rescue devices are met. In case the miners cannot escape the mine, the Department's enforcement of MSHA's refuge alternative requirements will enhance the miners' ability to remain alive in the mine pending rescue.

Currently there are 38 underground bituminous coal mines in the Commonwealth of Pennsylvania. These mines employ approximately 4,420 persons (not all of whom work underground). The Department lacks the data to quantify the potential benefits from reducing the risk of injury, death, damage to equipment or loss of mineable coal due to a mine emergency. Nonetheless, even if only one serious injury or fatality is prevented, the benefits are significant. Operators are already meeting these requirements so there is no cost of compliance.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

No scientific studies were relied upon.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by this rulemaking. The standards codified by this rulemaking generally are also MSHA standards which the operators must satisfy.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

The operators of all underground bituminous coal mines will be required to comply with these regulations. Currently there are 38 mines under the control of 13 operators. These operators range from large corporations to single ownership companies.

SECTION III: COST AND IMPACT ANALYSIS

(17) 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 will be no immediate costs or savings to the underground coal industry associated with compliance. In the long run there should be savings resulting from the prevention or mitigation of emergencies that result in serious injuries, fatalities or damage to the mine workings, equipment or loss of mineable coal.

(18) Provide a specific estimate of the costs and/or savings to **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.

(19) Provide a specific estimate of the costs and/or savings to **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 agencies do not engage in underground bituminous coal mining.

(20) 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.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$0	$0	$0	$0	$0	$0
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2007-2008	FY -2 2008-2009	FY -1 2009-2010	Current FY 2010-2011
Environmental Protection Operations (#160-10381)	$98,574,000	$98,544,000	$85,069,000	$79,344,000
Environmental Program Management (#161-10382)	$39,685,000	$37,664,000	$31,100,000	$29,357,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse affects.
See responses to questions 13, 15, and 17.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

During the public comment period, the Board received comments from 4 individuals. The Department has prepared a comment/response document that addresses all of their comments. This rulemaking has been prepared at the Board's direction. 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 Association to represent the viewpoint of the coal mine operators.

(23) 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.

The least burdensome alternative has been accepted. An alternative scheme was considered that would require operators to get DEP's approval, in addition to MSHA's approval, of all the plans and equipment required by these regulations. This approach was rejected because it imposed unnecessary costs and time delays. Also there is the risk of confusion on the part of operators due to conflicting approvals.

(24) 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.

This rulemaking generally incorporates federal MSHA standards by reference and does not contain standards that are more stringent than federal standards.

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

These regulations will not put Pennsylvania at a competitive disadvantage with other states. The standards contained in these regulations are MSHA standards applicable to all coal mines in the country.

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

No.

(27) 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.

To minimize an operator's workload, costs, and to reduce the possibility of confusion, operators satisfy these reporting requirements by submitting to the Department a copy of the same information submitted to MSHA.

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

None.

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FACE SHEET
FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality.
Attorney General

By:
(Deputy Attorney General)

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BOARD OF COAL MINE SAFETY

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-455

DATE OF ADOPTION JUNE 14, 2011

BY

TITLE MICHAEL KRANCER
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY Andrew C. Clark

DATE OF APPROVAL JUL 5 2011

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(~~Strike inapplicable~~ title)

☐ Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
BOARD OF COAL MINE SAFETY

UNDERGROUND COAL MINE SAFETY

25 *Pa. Code*, Chapter 208

Notice of Final Rulemaking
Department of Environmental Protection
Board of Coal Mine Safety
25 *Pa. Code* Chapter 208
Underground Coal Mine Safety

Order

The Board of Coal Mine Safety (Board) by this order creates 25 *Pa. Code* Chapter 208 (relating to underground coal mine safety). These regulations establish safety standards relating to: belt conveyor flammability; the design and installation of mine seals; escapeways; emergency response; and, self-contained self-rescue devices. These regulations principally incorporate by reference safety standards adopted by the United States Department of Labor, Mine Safety and Health Administration (MSHA) found in 30 CFR Part 75 (relating to mandatory safety standards—underground coal mines). The MSHA regulations/standards being incorporated by reference implement requirements of the Mine Improvement and New Emergency Response Act of 2006, Pub. L. 109-236, 120 Stat. 493 (2006) (MINER Act), which amended various provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 to 965.

This order was adopted by the Board at its meeting of June 14, 2011.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

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 S. 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 by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This final rulemaking is available electronically through the Department of Environmental Protection (DEP) web site (http://www.depweb.state.pa.us).

C. Statutory Authority

These regulations are being promulgated under the authority of sections 106, 106.1 and 106.2 of the Bituminous Coal Mine Safety Act, 52 P.S. §§ 690-106, 690-106.1, and 690-106.2 (BCMSA) and section 1920-A of The Administrative Code of 1929, 71 P. S. § 510-20.

D. Background and Purpose

At the national level, MSHA regulates mine safety under the authority of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.A. §§ 801 to 965 (Mine Safety Act). In 2006, the United States Congress amended the Mine Safety Act by enacting the MINER Act. The MINER Act addresses safety issues that were raised by fatal mine accidents at the Sago and Alma Mines in West Virginia, and the Darby Mine in Kentucky, and the Act directed MSHA to develop regulations implementing its provisions. In addition, when adopting the Consolidated Appropriations Act of 2008, Pub. L. 110–161, 121 Stat. 1844 (2007), Congress included a provision directing MSHA to adopt new flame-resistance standards for belt conveyors. In accordance with these statutory mandates MSHA promulgated regulations addressing the flammability of belt conveyors, the strength of seals, escapeways, refuge alternatives, post-accident breathable air, communications, tracking and mine rescue teams. The MSHA regulations are found in 30 CFR parts 1 through 199, and the operating requirements for underground coal mines are found specifically in 30 CFR Part 75.

The federal Mine Safety Act preempts state laws or regulations that are less stringent than or conflict with MSHA standards. *See* 30 U.S.C § 955. Unlike with some other federal statutes, a state cannot obtain primary authority to enforce the Mine Safety Act within the state's jurisdiction. As a result, a number of states have maintained an independent underground coal mine safety program which implements the state's mine safety laws, particularly states like Pennsylvania with a long history of underground coal mining. The Commonwealth of Pennsylvania has been regulating safety at underground bituminous coal mines since 1889. *See* An Act to Provide for the Recovery of the Bodies of Workmen, Act of May 9, 1889 (P.L. 154, No.171). In 2008, the General Assembly enacted BCMSA, which constitutes the first significant update of Pennsylvania's underground bituminous coal mine safety laws since 1961. A fundamental purpose of BCMSA is to establish and promulgate improved mandatory health and safety standards to protect the health and safety of miners and others in and about underground coal mines located in this Commonwealth. *See* 52 P.S. § 690—103.

One of the significant changes made by BCMSA is to establish a rulemaking process that will enable the expeditious updating of the interim mandatory health and safety standards contained in BCMSA, and will otherwise help to protect the health, safety and welfare of miners and others in and about mines going forward. The General Assembly established the Board of Coal Mine Safety to promulgate regulations implementing BCMSA. This 7-member board consists of the Secretary of DEP, who serves as Chair, and six Board members—three representing the viewpoint of mine workers and three representing the viewpoint of underground bituminous coal mine operators. *See* 52 P.S. § 690—106.

In adopting BCMSA, the General Assembly recognized that the Pennsylvania Bituminous Coal Mine Act has become outdated and lacks an effective mechanism to modify existing standards or to adopt new safety standards to address changes in technology or recognized hazards. To rectify this problem BCMSA establishes broad authority in the Board (and DEP) to adopt regulations to either modernize safety standards in BCMSA or adopt new safety standards not contained in BCMSA. *See* 52 P.S. § 690—106. The Board was directed by the Legislature

in BCMSA to consider adopting federal mine safety standards not included as interim mandatory safety standards in BCMSA. 52 P.S. § 690—106.1. Of particular concern is the adoption of regulations implementing safety standards established by the MINER Act and the MSHA regulations implementing the MINER Act provisions. The Legislature expressly authorized the Board to promulgate regulations the Board deems appropriate to implement federal standards adopted by the MINER Act. 52 P.S. § 690—106.1(h).

In accordance with section 106 of BCMSA, this rulemaking promulgates as regulations Federal mine safety standards not included as interim mandatory safety standards in BCMSA. The rulemaking also addresses safety standards established by the MINER Act. To a great extent, this rulemaking incorporates by reference the applicable MSHA regulations. However, there are a few instances where the MINER Act regulations needed to be strengthened or clarified, and this rulemaking promulgates regulations accordingly in order to assure the safety of miners in the Commonwealth. Adopting the MSHA regulations by reference when applicable will enhance safety at underground coal mines because the potential for confusion by operators as to the appropriate safety standard is minimized. Moreover, any future changes in an MSHA regulation that has been fully incorporated by reference will take immediate effect in Pennsylvania. As a result, these regulations will remain current with the MSHA regulations.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on July 10, 2010, with a 60-day public comment period. *See* 40 Pa. Bull. 3836 (July 10, 2010). The Board received 24 comments from 4 commentators.

E. Summary of Changes to the Proposed Rulemaking

§ 208.1 Definitions

The final-form rulemaking makes a minor edit to the definition for "overpressure" to remove a superfluous reference to a section of the federal regulations and to remove the adjective "highest" for purposes of clarity.

§ 208.3 Access to Material

Some minor editorial changes were made to this section for purposes of textual clarity.

§ 208.11 Seals

The final-form rulemaking is revised. It now limits its scope to the incorporation of federal MSHA standards at 30 CFR 75.335(c) concerning the design and installation of seals.

§ 208.13 Construction and Repair of Seals.

This section was revised to provide that any welding, cutting or soldering within 150 feet of a seal shall be performed in accordance with the MSHA approval.

§ 208.41 Emergency Evacuation

Subsection (b) of this section is modified at final rulemaking to make clear that an individual designated by the mine operator who is adequately trained and is capable of initiating the emergency response plan shall be located on the surface in the event that the designated responsible person is not available. The proposed regulation required that a designated individual with the same training in emergency procedures as the responsible person had to be located on the surface during all shifts. Comments pointed out that this requirement would lead to unnecessary redundancy and potential confusion. The change clarifies the intent of the regulation, which is to assure that a person capable of initiating the emergency response plan is located on the surface in the event the designated responsible person is not available to conduct the emergency response procedures.

F. Summary of Comments and Responses on the Proposed Rulemaking

Access to material

Section 208.3 authorizes DEP to obtain copies of the material an operator submits to MSHA pursuant to the regulations incorporated by reference in this Chapter. One commenter questioned the need for this regulation since the Act contains provisions regarding materials that must be provided to the DEP and to miner representatives. For the most part, DEP will be accepting MSHA's approval of seals and equipment. There are instances where DEP will need copies of this information to approve a plan or to raise concerns to MSHA for its consideration as part of its review of the requested approval. The Department will provide this information to an official representative of the miners as requested, unless specified otherwise in the chapter.

Seal Strength

The Board received several comments concerning the proposed rulemaking's elimination of the MSHA option of a 50 psi seal standard if the operator monitors the atmosphere in the abandoned area and the atmosphere remains inert. The proposed regulations would have required mine operators to design, construct and maintain all seals to withstand an overpressure of at least 120 psi.

In response to comments, the Board has determined to limit the scope of the final rulemaking to the incorporation of federal MSHA standards at 30 CFR 75.335(c) concerning the design and installation of seals.

Construction and repair of seal.

Section 208.13 incorporates by reference the provisions of 30 CFR § 75.337, MSHA's standards for approving the installation and repair of seals; one commenter questioned the need for this section.

The incorporation by reference ensures that DEP and MSHA will be enforcing the same standards to ensure the safe installation and repair of seals. The only difference between this regulation and the MSHA regulation is that a copy of the information to justify welding, cutting or soldering within 150 feet of a seal is to be submitted to the representative of the miners. This enables the persons who could be placed at risk by the welding, cutting or soldering activity to have an opportunity to comment on the adequacy of the operator's proposal.

Training

Section 208.14 establishes the training requirements for persons involved in the installation or repair of seals. It incorporates by reference the provisions of 30 CFR 75.338 (relating to training). A commenter noted that the MSHA rule concerning the training of senior management is ambiguous and is not clear who must be trained and when they must be trained. The commenter suggested that some consideration be given to clarifying this aspect of the regulation.

To eliminate any confusion, DEP will use the MSHA guidance policy on who must be trained and when they must be trained.

Escapeways

The Board received several comments pertaining to escapeways which disagreed with the distinction made in the proposed regulations in § 208.21(a) and the MSHA regulation. The proposed regulations do not incorporate the language in 30 CFR 75.380(c) allowing the two escapeways to end in one multiple compartment shaft or slope separated by walls.

BCMSA directly addresses mine openings or outlets. *See* 52 P.S. 690-274. The provisions of BCMSA specifically require that the two intake openings or outlets to the surface shall not be at a common shaft, slope or drift opening. BCMSA also states that the openings or outlets shall have a distinct means of egress available for use by the employees. For this reason, the regulations at § 208.21(a) do not incorporate by reference the language in 30 CFR 75.380(c) that allows two escapeways to end in one multiple compartment shaft or slope separated by walls. The regulations adhere to the statutory requirement in BCMSA. Both the state and the federal regulations require no fewer than two intake openings or outlets to the surface from every seam of coal being worked. DEP will apply escapeway requirements in accordance with MSHA regulations to primary and secondary escapeways designated by mine operators.

Belts

Section 208.32(a) incorporates by reference 30 CFR 75. 1731 so that DEP will be using the MSHA belt and belt entry maintenance requirements. Subsection (b) makes it clear that the belt conveyor pre-shift and fixed interval inspections address compliance with these maintenance requirements. One commentator does not believe this provision is necessary, however, these requirements are common sense actions that will minimize the risk of a conveyor belt fire.

Emergencies

Section 208.41(a) incorporates by reference 30 CFR 75.1501 (relating to emergency evacuations). The proposed regulation required that a designated individual with the same training in emergency procedures as the responsible person had to be located on the surface during all shifts. The Board received several comments on this section which pointed out that this requirement would lead to unnecessary redundancy, and potential confusion.

The Board agrees with the commenters that this section should be revised to express the intent more clearly. Subsection (b) of this section has been modified on final rulemaking to make clear that an individual designated by the mine operator who is adequately trained and is capable of initiating the emergency response plan shall be located on the surface in the event that the designated responsible person is not available. The change clarifies the intent of the regulation, which is to assure that a person capable of initiating the emergency response plan is located on the surface in the event the designated responsible person is not available to conduct the emergency response procedures.

G. Benefits, Costs and Compliance

Benefits

The final-form regulations enhance mine safety by ensuring that abandoned areas are isolated from the working mine, by reducing the possibility of belt conveyor fires and by enhancing the miners' ability to survive a mine fire, cave-in, or the inundation of a mine by gas or water. The Department will be enforcing the MSHA requirements concerning emergency response and emergency response training, escapeways, self-contained self-rescue devices, and refuge alternative requirements.

Compliance Costs

This rulemaking does not impose any new compliance costs. For the most part this rulemaking imposes standards already imposed by MSHA.

Compliance Assistance Plan

The Department will work with the Pennsylvania Coal Association to assist coal mine operators in complying with these regulations. In addition, compliance assistance will be provided by the mine inspectors as part of their inspections of mines.

Paperwork Requirements

The only new paperwork requirement imposed by this rulemaking is that operators will be required to submit to the Department applications to conduct welding, cutting or soldering within 150 feet of a seal.

H. Pollution Prevention

The rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multi-media pollution prevention approach of existing requirements in 25 *Pa. Code.*

I. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 30, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa. Bull. 3836 (July 10, 2010) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

Under section 5(c) 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 the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

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

K. 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 Pennsylvania Code §§ 7.1 and 7.2.

(2) A public comment period was provided, Notice was submitted to the operator of each mine and where applicable the representative of the miners at the mine as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 40 Pa. Bull. 3836 (July 10, 2010).

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

L. Order of the Board

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

(a) The regulations of the Department of Environmental Protection, 25 Pennsylvania Code, Chapter 208, are promulgated 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.

BY:

Michael L. Krancer
Chairman
Board of Coal Mine Safety

Annex A

(Editor's Note: The following text is new and is printed in regular type to enhance readability.)

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:

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 **[~~highest~~]** pressure over the background atmospheric pressure that could result from an explosion, which includes the impact of the pressure wave on an object. **[~~See 30 CFR 7.502 (relating to definitions).~~]**

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 pursuant to 42 CFR Part 84 (relating to approval of respiratory protective device) for escape only from underground mines.

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

§ 208.2. Scope.

The safety standards and procedures in this chapter apply to all underground bituminous coal mines, operators and miners subject to the act.

§ 208.3. Access to material.

Upon request from the Department, or as required by this chapter, an operator shall submit to the Department a copy of any application, report, plan or other material submitted to MSHA pursuant to a regulation adopted by reference in this chapter. Upon request from the authorized representative of **THE** miners, the Department will provide **TO THE REPRESENTATIVE OF THE MINERS** copies of an application, report, plan or other material submitted **BY AN OPERATOR** to MSHA pursuant to a regulation adopted by reference in this chapter.

SEALS

§ 208.11. Seals.

[~~(a) *Minimum seal strength.* Mine operators shall design, construct, and maintain seals to withstand an overpressure of at least 120 psi.~~]

([~~b~~]**a**) *Seal* [~~*strengths and*~~] *installation.* The provisions of 30 CFR 75.335 [~~(a)(2) and~~](c) (relating to seal [~~strengths, design applications, and~~] installation **APPROVAL**) are incorporated by reference.

([~~e~~]**b**) *Seal Strength greater than 120* psi. The provisions of 30 CFR 75.335(a)(3) shall be used for determining when the strength of a seal shall exceed 120 psi.

([~~d~~]**c**) *Seal installation approval.* The operator shall submit an application to install the MSHA-approved seal design to the Department for its review and approval **CONCERNING SEAL INSTALLATION**. An approved application to install the seal shall be made part of the abandoned area ventilation plan required by section 235 of the act (52 P.S. § 690-235) regarding unused and abandoned parts of mines and follow 30 CFR 75.335(c).

(1) The operator shall provide the representative of the miners, if applicable, the approved seal design installation application at the same time the operator submits the application to the Department.

(2) Any individual installing the seal shall do so in accordance with the approved abandoned area ventilation plan.

§ 208.12. Sampling and monitoring requirements.

The provisions of 30 CFR 75.336 (relating to sampling and monitoring requirements) are incorporated by reference.

§ 208.13. Construction and repair of seals.

(a) *General.* The provisions of 30 CFR § 75.337 (relating to construction and repair of seals) are incorporated by reference.

(b) *Welding, cutting, and soldering.* [~~No individual shall perform any welding, cutting or soldering with an arc or flame within 150 feet of a seal unless otherwise approved by the Department.~~]

[~~(1)~~] The operator shall submit to the Department and the representative of the miners [~~, if applicable, an application containing~~] the same information submitted to MSHA under 30 CFR 75.337(f).

[~~(2)~~] Any welding, cutting or soldering within 150 feet of a seal shall be performed in accordance with the MSHA APPROVAL. [~~application approved by the Department and made part of the abandoned area ventilation plan required under section 235 of the act (52 P.S. § 690-235), regarding unused and abandoned parts of mines.~~]

§ 208.14. Training.

The provisions of 30 CFR 75.338 (relating to training) are incorporated by reference.

§ 208.15. Seals records.

(a) *General.* The provisions of 30 CFR 75.339 (relating to seals records) are incorporated by reference.

(b) *Access to records.* Upon request from the Department, or from the authorized representative of the miners, mine operators shall provide access to any record required by this section.

ESCAPEWAYS

§ 208.21. Escapeways.

(a) *Bituminous and lignite mines.* The provisions of 30 CFR 75.380 (relating to escapeways; bituminous and lignite mines) are incorporated by reference except that the language in 30 CFR 75.380(c) allowing the two escapeways to end in one multiple compartment shaft or slope separated by walls is not incorporated by reference.

(b) *Mechanical and escape facilities.* The provisions of 30 CFR 75.382 (relating to mechanical escape facilities) are incorporated by reference.

(c) *Longwall and shortwall travelways.* The provisions of 30 CFR 75.384 (relating to longwall and shortwall travelways) are incorporated by reference. If a roof fall or other blockage occurs that prevents travel in the travelway, the mine operator shall notify the department.

BELTS

§ 208.31. Approval of conveyor belts.

The provisions of 30 CFR 75.1108(b) and (c) (relating to approved conveyor belts) are incorporated by reference.

§ 208.32. Maintenance of belt conveyors and belt conveyor entries.

(a) *Maintenance standards.* The provisions of 30 CFR 75.1731 (relating to maintenance of belt conveyors and belt conveyor entries) are incorporated by reference.

(b) *Inspections.* Individuals conducting inspections of belt conveyors required under sections 218 and 218.1 of the act (52 P.S. §§ 690-218 and 690-218.1) regarding preshift examination at fixed intervals and supplemental inspection shall address compliance with this section's maintenance requirements.

EMERGENCIES

§ 208.41. Emergency evacuation.

(a) *Emergency evacuation.* The provisions of 30 CFR 75.1501 (relating to emergency evacuations) are incorporated by reference.

(b) *Individual located on the surface.* An individual designated by the mine operator **[~~to take charge during mine emergencies and trained to the same extent in emergency procedures as the responsible person shall be located on the surface during all shifts.~~]** **WHO IS ADEQUATELY TRAINED AND IS CAPABLE OF INITIATING THE EMERGENCY RESPONSE PLAN SHALL BE LOCATED ON THE SURFACE IN THE EVENT THE DESIGNATED RESPONSIBLE PERSON IS NOT AVAILABLE.**

§ 208.42. Emergency evacuation and firefighting program of instruction.

The provisions of 30 CFR 75.1502 (relating to mine emergency evacuation and firefighting program of instruction) are incorporated by reference.

§ 208.43. Use of fire suppression equipment.

The provisions of 30 CFR 75.1503 (relating to use of fire suppression equipment) are incorporated by reference.

§ 208.44. Mine emergency evacuation training and drills.

The provisions of 30 CFR 75.1504 (relating to mine emergency evacuation training and drills) are incorporated by reference.

§ 208.45. Escapeway maps.

The provisions of 30 CFR 75.1505 (relating to escapeway maps) are incorporated by reference.

§ 208.46. Refuge alternatives.

The provisions of 30 CFR 75.1506 (relating to refuge alternatives) are incorporated by reference.

§ 208.47. Emergency response plan; refuge alternatives.

The provisions of 30 CFR 75.1507 (relating to emergency response plan; refuge alternatives) are incorporated by reference.

§ 208.48. Training and records for examination, maintenance and repair of refuge alternatives and components.

The provisions of 30 CFR 75.1508 (relating to training and records for examination, maintenance and repair of refuge alternatives and components) are incorporated by reference.

COMMUNICATIONS

§ 208.51. Communications facilities for refuge alternatives.

The provisions of 30 CFR 75.1600-3 (relating to communications facilities; refuge alternatives) are incorporated by reference.

SELF-CONTAINED SELF-RESCUE DEVICES

§ 208.61. Availability of approved self-contained self-rescue devices; instruction in use and location.

The provisions of 30 CFR 75.1714 (relating to availability of approved self-rescue devices; instruction in use and location) are incorporated by reference.

§ 208.62. Approved self-contained self-rescue devices.

The provisions of 30 CFR 75.1714-1 (relating to approved self-rescue devices) are incorporated by reference.

§ 208.63. Self-contained self-rescue devices; use and location requirements.

The provisions of 30 CFR 75.1714-2 (relating to self-rescue devices; use and location requirements) are incorporated by reference.

§ 208.64. Self-contained self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping.

The provisions of 30 CFR 75.1714-3 (relating to self-contained self-rescue devices; inspection, testing, maintenance, repair, and recordkeeping) are incorporated by reference.

§ 208.65. Additional self-contained self-rescue devices.

The provisions of 30 CFR 75.1714-4 (relating to additional self-contained self-rescuers (SCSRs)) are incorporated by reference.

§ 208.66. Map locations.

The provisions of 30 CFR 75.1714-5 (relating to map locations of self-contained self-rescuers (SCSR)) are incorporated by reference.

§ 208.67. Emergency tethers.

The provisions of 30 CFR 75.1714-6 (relating to emergency tethers) are incorporated by reference.

§ 208.68. Multi-gas detectors.

The provisions of 30 CFR 75.1714-7 (relating to multi-gas detectors) are incorporated by reference.

§ 208.69. Reporting SCSR inventory, malfunctions and retention.

The provisions of 30 CFR 75.1714-8 (relating to reporting self-contained self-rescuer inventory, malfunctions, and retention of SCSRs) are incorporated by reference.

PENNSYLVANIA
Underground Coal Mine Safety

25 Pa. Code Chapter 208 (relating to Underground Coal Mine Safety)
See 40 Pa. Bull. 3836 (July 10, 2010)

Board of Coal Mine Safety Regulation #7-455

(Independent Regulatory Review Commission #2856)

Comment/Response Document

Pennsylvania Underground Coal Mine Safety Regulations

On July 10, 2010, the Board of Coal Mine Safety (Board) published a notice of a proposed rulemaking concerning amendments to 25 Pa. Code Chapter 208 (relating to underground coal mine safety). See 40 *Pa. Bull.* 3836 (July 10, 2010). The proposed regulations were drafted by the Department of Environmental Protection and the action of the Board to publish these rules as proposed was not necessarily an endorsement by the Board of all the proposed regulatory provisions. Rather, the Board requested comments from all interested parties, especially Pennsylvania's mining industry and miners. In particular, the Board called attention to the following sections: 208.11, 208.12, 208.15(b), 208.21, 208.32(b) and 208.41(b). Comments were invited on the need or necessity for the proposed requirements, the clarity of the wording or any other concerns.

These regulations establish safety standards relating to belt conveyor flammability, the design and installation of mine seals, escapeways, emergency response, and self-contained self-rescue devices. The regulations principally incorporate by reference safety standards adopted by the United States Department of Labor, Mine Safety and Health Administration (MSHA) found in 30 CFR Part 75 (relating to mandatory safety standards - underground coal mines). The MSHA regulations/standards being incorporated by reference implement some of the requirements of the Mine Improvement and New Emergency Response Act of 2006, Pub. L. 109-236, 120 Stat. 493 (2006) (MINER Act), which amended various provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 to 965.

The Board received written comments from 4 commentators regarding the proposed underground coal mine safety regulations during the public comment period. This document summarizes the written comments received during the public comment period and provides the Board's responses to each comment. An identifying number has been assigned to each commentator. A list of the commentators, including name, affiliation (if any), and city/state/country, can be found below. In addition, the comments received from the Senate Environmental Resources and Energy Committee and the Independent Regulatory Review Commission (IRRC), if any, are summarized and responses provided.

Table of Commentators

Commentator ID #	Name	Address	Requested Final Rule	Submitted One-Page Summary
1.	Louis Pianetti, Jr.	3504 Burnett Drive Murrysville, PA 15668		
2.	Jerry Hefferan	Rosebud Mining Company 511 Railroad Ave. Homer City, PA 15748		
3.	George Ellis	Pennsylvania Coal Association 212 N. Third St., Suite 102 Harrisburg, PA 17101		
4.	Marc Roda	MARCRODA@COMCAST.NET		

General Comments:

Comment: In general the Board proposes to incorporate MSHA standards by reference, rather than by rewriting the safety standards. The Pennsylvania Coal Association (PCA) agrees with this approach. This proposed rulemaking is more stringent than the MSHA regulations in some respects and in general PCA believes that uniformity with MSHA standards is the appropriate course. Uniformity is important in achieving compliance and differing standards lead to confusion in the regulated community. It appears from reading the preamble to the regulation that the Department of Environmental Protection (DEP) also agrees with this position. On Page 3, DEP explains that, "Adopting the MSHA regulations by reference will enhance safety at underground coal mines because the potential for confusion by operators as to the appropriate safety standard is minimized." (3)

Response: The Board appreciates the commentator's general support for the rulemaking. The Board believes that, when prudent, the MSHA regulations should be adopted by reference in order to limit the potential for confusion by operators as to the appropriate safety standard. However, there are instances where the MSHA standard does not adequately address specific hazards. In these cases the Board needs to build upon the MSHA standard to ensure the health, safety and welfare of Pennsylvania miners and others are maintained.

Comment: Commenter believes that this entire proposal to adopt Chapter 208 as put forth in the proposed rulemaking is unnecessary. MSHA standards addressing the various sections of proposed Chapter 208 are already in place and being enforced in the Commonwealth. MSHA inspectors are at Pennsylvania mine sites essentially every day of the year checking for compliance with these and many other standards. The DEP should continue to enforce the state underground mining law as currently written and concentrate on its areas of strength; mainly certifications and equipment approvals. (1)

Response: In 2008 the General Assembly found it was in the public interest to establish a comprehensive scheme to protect the lives, health, and safety of those who work at mines in the Commonwealth. Through the continuous efforts of mine operators, miners and the DEP, occurrences of deaths and injuries have been declining. The Commonwealth must maintain a strong and independent mine safety program. This rulemaking continues to ensure the Commonwealth maintains a robust mine safety program.

Comment: Commenter strongly urges the adoption of these proposed regulations. Since January 1, 2010, over 44 miners have died in underground bituminous coal mines in the United States. Fortunately, none of these tragedies occurred in a Pennsylvania underground bituminous coal mine. The absence of fatal accidents in Pennsylvania's underground *bituminous* coal mines is due in large part to the Commonwealth of Pennsylvania's mine safety program administered and enforced by the Department of Environmental Protection, Bureau of Mine Safety. Adopting these regulations will increase the safety of miners by enhancing the Commonwealth's mine safety program without significantly increasing the mine operators' cost of doing business. (4)

Response: The Board appreciates the commentator's support.

Definitions:

Comment: "Overpressure" is defined in the proposed rules as "the highest pressure over the background pressure that could result from an explosion, which includes the impact of the pressure wave on the object." "Overpressure" simply refers to an increased pressure that may be associated with an event such as an explosion. Defining "overpressure" as the "highest pressure" may mislead persons in the regulated community. This definition does mirror that contained in 30 C.F.R. § 7.502, but PCA is unclear why it is believed necessary. Also, as used in the proposed regulations, it appears that overpressure is not used as it is defined and we believe that may lead to confusion. Otherwise, since it is the federal definition, we would not otherwise object to it. (3)

Response: The definition of "overpressure" has been revised. The word "highest" has been deleted from the final-form regulation.

Comment: The proposed rules have a provision that requires an operator to submit to DEP a copy of any "application, report, plan or other material submitted to MSHA pursuant to a regulation" either where submission is required by the Pennsylvania regulations or at the request of MSHA. While the proposed regulation appears to be limited to those items already submitted to MSHA, we believe that the regulation is unnecessary because the BCMSA contains the provisions of what must be provided to the DEP and to miner representatives. (3)

Response: Section 208.3 of the final-form rulemaking pertains to any application, report, plan or other material submitted to MSHA pursuant to a regulation adopted by reference in this chapter. It also gives the Department the authority to supply a copy of any application, report, plan or other material submitted to MSHA pursuant to a regulation adopted by reference in this chapter to the authorized representative of miners upon request.

Seals:

Comment: The Board has proposed incorporating by reference some of the MSHA rules on seal strengths and installation. While the Board has proposed adopting MSHA standards with respect to 120-psi seals in § 208.11(a), it proposes that the regulations will eliminate the option of using 50-psi seals. Further, the proposed regulations do not provide for "grandfathering" existing 50-psi seals. The proposed regulations adopt the MSHA sampling and monitoring requirements, which might suggest that existing 50-psi seals are acceptable but that is unclear.

PCA believes it would be better to permit the installation of 50-psi seals on an ongoing basis. There are situations where the use of 50-psi seals is appropriate because of a short term life of the sealed area (i.e. outby seals are planned at a later date to seal a larger area). Given the restrictions on continuing operation with 50-psi seals (e.g. monitoring, evacuation), it should be the operator's choice based upon mine planning as to which sort of seals are utilized. It may be that the inability to use 50-psi seals will postpone the sealing of some areas of mines which could have an adverse effect upon safety because of the need to continue to examine older works where roof and other conditions may be adverse.

Fifty-psi seals will contain the majority of explosions unless an aberrational situation occurs, such as did at the Sago Mine on January 2, 2006. That explosion was estimated to have forces of 90 psi but a review of the literature of mine explosions indicates that mine explosions do not normally generate such forces. The 90-psi pressures at Sago are the highest pressures in a mine explosion in the United States, except for those in shafts. See NIOSH IC 9500 "Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines," Table 2.

MSHA requires a 120-psi seal if the abandoned area's atmosphere is not inert. A 50-psi seal is allowed by MSHA if the atmosphere in the abandoned area is inert and requires regular monitoring from within the sealed area to ensure it remains inert. PCA strongly supports adoption of the MSHA standards on seal strength including 50-psi seals. The regulatory authority should not insert its opinion as to the "best" option for an operator without substantiated documentation beyond vague references to the "Department's experience" but should provide the operator with options and the potential risks that are part of each option. In this case, provided the operator understands the implication of the sampling requirements behind 50-psi seals and the potential effect on the mine's operations then the choice of seal design should be the operator's. While the Board is correct in that sampling does not necessarily include the entire sealed area, it samples the area closest to the seal which is the area where there is likely to be air exchange between the sealed and unsealed areas. This results in a relatively small area of concern. PCA believes that the entire sealed area is not affected by the air exchange through the seals.

Given the requirements in 30 C.F.R. § 75.336 and the very conservative approach MSHA adopted to the levels of methane and oxygen that prompt evacuation of the mine it seems to PCA that the MSHA requirements concerning 50-psi seals could readily be adopted. By "conservative" PCA means that MSHA requires evacuation of an entire mine based upon oxygen levels of 10% which is well below the explosive range and methane at levels above and below the explosive range. *See* 30 C.F.R. § 75.336(c). Moreover, it requires evacuation of the whole mine even when the seals are very distant from active mining areas. (3)

Response: This final-form rulemaking has been revised. In response to comments, the final rulemaking now limits its scope to incorporation of federal MSHA standards at 30 CFR 75.335(c) concerning the design and installation of seals.

Comment: To our knowledge, a properly installed 20-psi seal has never failed in Pennsylvania. MSHA regulations permit a 50-psi seal if the atmosphere in the abandoned areas remains inert. Longwall faces operate with explosive mixtures of methane in gob areas on a routine basis. What separates explosive mixtures of methane in the gob area from the longwall face? (2)

Response: This final-form rulemaking has been revised. In response to comments, the final rulemaking now limits its scope to incorporation of federal MSHA standards at 30 CFR 75.335(c) concerning the design and installation of seals.

Comment: The Commonwealth has no research facility to test the strength/capability of seals or evaluate integrity of seals and yet the Board sets more stringent standards than the MSHA Technical Support Guidance. Based upon the aforementioned, we propose that the Commonwealth of Pennsylvania follow the MSHA Guidelines for Mine Seals. (2)

Response: The final-form rulemaking will require operators to install only MSHA approved seals. The final-form regulations will utilize the MSHA Technical Support Guidance for 120 psi seals.

Comment: The Board does not propose that DEP approve seal design. It does require approval of the plan for installation. DEP believes that pursuant to Section 235 (regarding unused and abandoned parts of mines) of BCMSA, 52 P.S. § 690-235, it has authority concerning sealing of abandoned parts of mines. The language concerning the "application for installation" in the proposed regulation is ambiguous and could be read that DEP is approving the seal design and the installation. Proposed Section 208.11(d) reads as follows:

> (d) Seal installation approval. The operator shall submit an application to install the MSHA-approved seal design to the Department for its review and approval.

Commenter believes that this will need to be clarified by adding "concerning installation" after "approval." (3)

Response: The final regulation has been amended to clarify this section by adding the words "concerning installation" after the word "approval" in the seal installation approval section, which is now codified as § 208.11(c).

Comment: The Board proposes to adopt 30 C.F.R. § 75.337 but to modify it to require DEP approval for welding and cutting and soldering within 150 feet of the seals. 30 C.F.R. § 75.337 already requires MSHA approval and PCA would submit that is adequate. PCA would have no objection to providing a copy of such a plan to the miner's representative as specified in Section 218.13(b)(1). It does not believe that §§ 218.13 (b) and (b)(2) are necessary. (3)

Response: The final regulations have been amended to state that any welding, cutting or soldering within 150 feet of a seal shall be performed in accordance with the MSHA approval and the references to Department approval in §§ 218.13(b) and 218.13(b)(2) have been removed.

Comment: The Board proposes to adopt MSHA's rules in 30 C.F.R. § 75.338 concerning training on seals installation. While this is the same rule as MSHA's, that rule itself concerning the training of "senior management" is ambiguous. It is not clear who must in fact be trained and when they must be trained. Some consideration to clarifying this might be given. Section 75.338 reads as follows:

> (a) Certified persons conducting sampling shall be trained in the use of appropriate sampling equipment procedures, location of sampling points, frequency of sampling, size and condition of the sealed area, and the use of continuous monitorlng systems if applicable before they conduct sampling, and annually thereafter. The mine operator shall certify the date of training provided to certified persons and retain each certification for two years.
>
> (b) Miners constructing or repairing seals, designated certified persons, and senior mine management officials shall be trained prior to constructing or repairing a seal and annually thereafter. The training shall address materials and

procedures in the approved seal design and ventilation plan. The mine operator shall certify the date of training provided each miner, certified person, and senior mine management official and retain each certification for two years. (3)

Response: To eliminate any confusion, the MSHA policy on who must be trained and when they must be trained would be followed.

Escapeways

Comment: The Board proposes to adopt MSHA's rules with respect to escapeways as well as longwall travelways. PCA supports adoption of the federal rules so long as it is made clear that the designation of escapeways under the regulation is in lieu of the escapeway identified in Section 230 of BCMSA and the travelways in Section 274 of BCMSA. Adoption of the federal rules will include far more stringent requirements than BCMSA. Adoption of the federal rules in lieu of the existing BCMSA provisions will not result in a compromise in safety as described in § 106.1(g) of BCMSA because of the additional requirements for maintenance of lifelines, marking, etc. For that reason PCA would propose that § 208.21 (a) read as follows:

> Bituminous mines. The provisions of 30 C.F.R. 75.380 (relating to escapeways: bituminous and lignite mines) are incorporated by reference. An operator may designate escapeways as specified therein in lieu of the escapeway described in Section 230 of the BCMSA and the travelways specified in Section 274 of the BCMSA.

There are two significant differences from the proposed rules and MSHA's rules. The first is a provision that two escapeways can not end at a multiple compartment shaft or slope separated by walls. We believe that this modification is unnecessary from a safety standpoint as well as a statutory interpretation standpoint. This is an attempt to incorporate for escapeways the provisions of § 274 of BCMSA about multiple openings. PCA believes that § 274 does not in fact address escapeways and that permitting escapeways to end at multiple compartment shafts or slopes will bring miners out of the mine by the shortest route, if that happens to be a dual compartment shaft or slope is safer. (3)

Response: BCMSA addresses mine openings or outlets at 52 P.S. § 690-274. The provisions of this section specifically require that the two intake openings or outlets to the surface shall not be at a common shaft, slope or drift opening. It also states that the openings or outlets shall have a distinct means of egress available for use by the employees. For this reason, in § 208.21 (a), the Department did not incorporate by reference the language in 30 CFR § 75.380(c) that allows two escapeways to end in one multiple compartment shaft or slope separated by walls. Both the state and the federal regulations require no fewer than two intake openings or outlets to the surface from every seam of coal being worked.

The Department will apply escapeway requirements in accordance with MSHA regulations to primary and secondary escapeways designated by mine operators. The BCMSA requires that the belt conveyor entry provides an intake escapeway to the main air current. 52 P.S. § 690-230(c)(1)(iii). BCMSA also requires that intake and return entries shall be kept

reasonably drained and reasonably free from refuse and obstructions of all kinds, so that individuals may safely travel throughout the whole length and have a safe means of egress from workings in case of emergencies. 52 P.S. § 690-274(e).

Comment: We strongly disagree with Section 274 which does not permit multiple common shafts or slopes to be used for escapeways. When mine openings are planned and engineered for slopes and shafts suitable multi-compartment facilities should be permitted for escape situations. These shafts and slopes are to be designed with adequate compartment separations to be used as escapeways. The proposed Pennsylvania Regulation Section 208.21 far exceeds Federal Regulation CFR 75.380(d) that allows two escapeways to end in one multiple compartment shaft or slope separated by walls. (2)

Response: BCMSA addresses mine openings or outlets at 52 P.S. § 690-274. The provisions of this section specifically require that the two intake openings or outlets to the surface shall not be at a common shaft, slope or drift opening. It also states that the openings or outlets shall have a distinct means of egress available for use by the employees. For this reason, in 25 Pa. Code § 208.21 (a), the Department did not incorporate by reference the language in 30 CFR § 75.380(c) that allows two escapeways to end in one multiple compartment shaft or slope separated by walls. Both the state and the federal regulations require no fewer than two intake openings or outlets to the surface from every seam of coal being worked.

The Department will apply escapeway requirements in accordance with MSHA regulations to primary and secondary escapeways designated by mine operators. The BCMSA requires that the belt conveyor entry provides an intake escapeway to the main air current. 52 P.S. § 690-230(c)(1)(iii). BCMSA also requires that intake and return entries shall be kept reasonably drained and reasonably free from refuse and obstructions of all kinds, so that individuals may safely travel throughout the whole length and have a safe means of egress from workings in case of emergencies. 52 P.S.§ 690-274(e).

Comment: One additional difference is that if a blockage in the longwall travelway occurs DEP must be notified in addition to MSHA. While there is no time requirement on such notification, it is possible that DEP will take the position that this must occur within 15 minutes as it has with other types of "accidents" and we believe that this should be clarified in the rule. We suggest that language to § 218.21(c) be added that it should be reported to DEP by the end of the shift on which it occurs. (3)

Response: If the blockage in the longwall travelway does occur and results in a "reportable accident" the mine operator would be required to contact the DEP.

Comment: As noted in the Preamble's summary to this section the two escapeways may have a common air intake. This may not adequately protect the miners' safety. The ventilation in both escapeways will be compromised if the common air intake is damaged or contaminated, e.g. by a fire. (4)

Response: BCMSA addresses mine openings or outlets at 52 P.S. § 690-274. The provisions of this section specifically require that the two intake openings or outlets to the surface shall not be at a common shaft, slope or drift opening. It also states that the openings or outlets shall have a distinct means of egress available for use by the employees. For this reason, in 25 Pa. Code §

208.21 (a), the Department did not incorporate by reference the language in 30 CFR § 75.380(c) that allows two escapeways to end in one multiple compartment shaft or slope separated by walls. Both the state and the federal regulations require no fewer than two intake openings or outlets to the surface from every seam of coal being worked.

The Department will apply escapeway requirements in accordance with MSHA regulations to primary and secondary escapeways designated by mine operators. The BCMSA requires that the belt conveyor entry provides an intake escapeway to the main air current. 52 P.S. § 690-230(c)(1)(iii). BCMSA also requires that intake and return entries shall be kept reasonably drained and free from refuse and obstructions of all kinds, so that individuals may safely travel throughout the whole length and have a safe means of egress from workings in case of emergencies. 52 P.S.§ 690-274(e).

Conveyor Belts

Comment: The proposed rules adopt the new MSHA belt conveyor belt flammability standard. We believe this is appropriate. The proposed regulation also adopts the belt maintenance standards and PCA supports this sort of across-the-board adoption. (3)

Response: The Board thanks the commenter for its support for this provision.

Comment: The proposed rule further proposes a rule that requires persons doing preshift examinations and supplemental examinations to "address compliance with this section's maintenance requirements." PCA believes this provision is not appropriate. The conveyor belts are not always operating during examinations which would make it difficult, if not impossible, to identify the sorts of conditions described by the regulation. Further, it will treat one malfunctioning conveyor roller potentially as a hazard and we believe that is not appropriate. This type of condition is often a maintenance issue, as opposed to a safety issue. Further the proposed rule would shift the focus of examinations away from the traditional issues such as accumulations of methane and bad roof conditions to conditions that are not an immediate hazard. There may be occasions when defective rollers or similar issues present an immediate hazard that an examiner must address but the focus of the examination should be on hazards and not specifically on belt maintenance issues. PCA believes that § 208.32 should be deleted. (3)

Response: The Board believes that examining conveyor belts for the following issues would help reduce the potential for conveyor belts from a fire. Subsection (b) makes it clear that the belt conveyor pre-shift and fixed interval inspections address compliance with the maintenance requirements. The maintenance requirements can be summarized as follows:

(1) Damaged belt conveyor components must be repaired or replaced.
(2) Belt conveyors must be aligned to prevent rubbing.
(3) Materials that contribute to a frictional heating hazard are to be excluded from the belt entry.
(4) A spliced conveyor belt must retain its flame-resistant properties.

Emergencies

Comment: The Board proposes to adopt 30 C.F.R. § 75.1501 as to mine emergencies but requires that a person to take charge in an emergency must remain on the surface in addition to the "responsible person" described in the federal standards. This obviously means that the responsible person on the surface cannot be the shift foreman or similar person if they are expected to go underground during any given shift. We do not believe that the inclusion of this requirement is appropriate. This is especially true, given the improved communication and tracking requirements that have been adopted under the federal MINER Act. The whereabouts of the responsible person, should he be underground, will be known to the person on the surface and the surface personnel will be able to communicate with him. It is important that, in many instances, the person who directly responds to an emergency be a person in the chain of supervision at the mine. This provision could be revised as follows:

> Individual located on the surface. An individual designated by the mine operator shall be located on the surface during all shifts. Such person will be trained in emergency response notification procedures. (3)

Response: The Board has revised § 208.41 to require that an individual designated by the mine operator "who is adequately trained and is capable of initiating the emergency response plan" shall be located on the surface during all shifts.

Comment: Section 208.41 of the proposed rulemaking, specifically the requirement that the responsible person be on the surface in the event of a mine emergency is overly punitive to the operators, is unnecessary, and will potentially provide a less safe working environment for our miners. MSHA recognized in its adoption of this standard that the vast majority of responsible individuals required will be certified mine officials such as Mine Superintendents, Mine Foremen and Assistant Mine Foremen. These individuals are directly responsible for maintaining and promoting a safe underground working environment for themselves and the states' miners. By keeping these individuals on the surface in the infinitesimal event of a mine emergency is counterproductive to the goal of maintaining safe coal mines in our state. Anyone who is paying attention will tell you of the shortage of these types of individuals willing to accept the major responsibilities assigned them relative to maintaining the health and safety of the workforces they supervise. They are also held to a higher level of accountability by both the state and federal government in the performance of their duties under the two laws.

Having these types of individuals, who are already in short supply sitting outside waiting for a mine emergency to occur is neither good business nor conducive to maintaining a safe underground working environment. (1)

Response: The Board has revised § 208.41 to require that an individual designated by the mine operator "who is adequately trained and is capable of initiating the emergency response plan" shall be located on the surface during all shifts.

Comment: The Board has proposed adopting MSHA's rules on the emergency evacuation and firefighting program of instruction, the use of fire suppression equipment (which requires

persons knowledgeable in the use of such equipment be present on the working section and at attended equipment), emergency evacuation training and drills, escapeway maps, refuge alternatives, emergency response plan, training and records for examination, maintenance and repair of refuge alternatives. PCA believes such adoption is appropriate. (3)

Response: The Board thanks the commenter for its support for this provision.

Comment: We agree that the (1) hour additional responsible person training should be provided on an annual basis. The responsible person(s) would be instructed during the training session by a MSHA Certified Instructor. The training session would include the following topics: appropriate mine's ventilation system, post accident response, escapeways, communication systems, accident and emergency response. (2)

Response: The Board thanks the commenter for its support for this provision.

Comment: Commenter strongly disagrees with the proposed language "to have current knowledge". This language leaves a very subjective interpretation of the topic's instruction and the employees' respective comprehension. Each PADEP inspector will have his own individual level of standard for the term "knowledge". Who determines how much knowledge is adequate to comply with the regulation? How is the pass/fail determination made of a person's knowledge in order to be in compliance with the regulation? We propose that the (1) hour training is provided by a MSHA Certified Instructor and each topic area is documented to validate instruction. This method of instruction and documentation is utilized for all MSHA Annual Training. (2)

Response: The Board adopted the same standards as MSHA and would enforce the standard in the same manner as MSHA.

Communications

Comment: The Board proposes to adopt the MSHA standards relating to communications facilities for refuge alternatives. PCA believes such adoption is appropriate. (3)

Response: The Board thanks the commenter for its support for this provision.

SCSRs

Comment: The Board proposes to adopt MSHA rules providing miners with multi-gas detectors. While PCA believes such a requirement is appropriate it believes that it needs to be clarified that the provision of the detectors is for the purposes of use during an emergency. MSHA has taken the position that the detectors to be turned on all the time and actually on the person of the miner (as opposed to in his vehicle, for example). The standard says 'provide" a detector but MSHA is interpreting this as ensuring the miner has it turned on and on his person. The problem of course is that if an event occurs toward the end of the shift such detectors will have limited battery life and limited usefulness in the emergency situation. Commenter believes the standard should be revised to state that the detector is to be "provided for use in an emergency." (3)

Response: The Board adopted the same standards as MSHA and would enforce the standard in the same manner as MSHA.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF POLICY

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 7- 455

SUBJECT: Underground coal mine Safety

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Regulation with Notice of Proposed Rulemaking Omitted
- ☐ 120-day Emergency Certification of the Attorney General
- ☐ 120-day Emergency Certification of the Governor
- ☐ Delivery of Tolled Regulation
  a. ☐ With Revisions b. ☐ Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7-22-11	M Watters	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Hutchinson
7-22-11	D Newton	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
7-22-11	J. Costelli	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Senator Mary Jo White
7/22/11		Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
7/22/11	K Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)