

# Regulatory Analysis Form

(Completed by Promulgating Agency)

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

(1) Agency:

Department of Environmental Protection

(2) Agency Number:

Identification Number: #7-463

**INDEPENDENT REGULATORY  
REVIEW COMMISSION**

2012 AUG 30 PM 2:51

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IRRC Number: #2920

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

(4) Short Title: Requirements for Automated External Defibrillators (AED)

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

Primary Contact: Michele Tate, 783-8727; fax: 783-8926; [mtate@pa.gov](mailto:mtate@pa.gov); RCSOB 16<sup>th</sup> Fl., Harrisburg, PA 17105

Secondary Contact: Patricia Allen, 783-8727; fax: 783-8926; [pallen@pa.gov](mailto:pallen@pa.gov); RCSOB 16<sup>th</sup> Fl., Harrisburg, PA 17105

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

☐ Proposed Regulation

☒ Final Regulation

☐ Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

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

The rulemaking package would require the placement of Automated External Defibrillators (AED) at various areas of bituminous underground mine operations. An AED is a portable device that uses electric shock to restore a stable heart rhythm. The Board unanimously agreed that this rulemaking would be in the best interests of the miners' safety. The Board is responding to a letter from a citizen, who requested that AEDs be placed at coal mines for miners' safety.

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

Sections 106 and 106.1 of the Bituminous Coal Mine Safety Act (52 P.S. §§ 690-106 and 106.1) (BCMSA) which authorizes the adoption of regulations implementing the BCMSA including additional safety standards. The Board is authorized to promulgate regulations that are necessary or appropriate to implement the requirements of the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines.

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

This regulation is not mandated by any federal or state law or court order, or federal regulation

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

The rulemaking package would require the placement of Automated External Defibrillators at various areas of underground mine operations. An AED is a portable device that uses electric shock to restore a stable heart rhythm. The use of the AEDs by trained individuals will help save the lives of miners who may suffer from a heart attack while working underground. Most of the miners who work underground may be several miles away from a mine opening. Because of the dangerous conditions and the strenuous activities miners encounter, safety is a priority. AEDs are another tool that miners will have available to save a life. The Board agreed that this would be in the best interests of mine safety. The Board is responding to a letter from a citizen, who requested that AEDs be placed at coal mines for the safety of miners.

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

Data is not the basis for this regulation.

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

There are 36 bituminous underground mines operating in Pennsylvania. The rulemaking would require them to install and maintain Automated External Defibrillators. Industry representatives have been supportive of the efforts to develop the proposed standards included in the rulemaking.

(13) 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.

Currently there are 36 underground bituminous coal mines in the Commonwealth of Pennsylvania. These mines employ approximately 4,420 persons (not all of whom work underground).

(14) 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.

The estimated cost for an AED unit is \$1,500. Each mine site would be required to maintain one unit on the surface of the facility and on or near each working section. These locations were recommended by representatives from industry and mine workers. The cost to the regulated community would be one unit on the surface and the average mine has 3 working sections, making the estimated cost to industry approximately \$6,000 per mine. The minimum cost per mine would be approximately \$3,000. The average maintenance per a unit is \$100 per a year. A mine operator would incur an average maintenance cost of \$400 per a year.

(15) 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.

(16) 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.

(17) 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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Savings</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS:</b>						
<b>Regulated Community</b>	N/A	\$6,000	\$400	\$400	\$400	\$400
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Costs</b>	N/A	\$6,000	\$400	\$400	\$400	\$400
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A

<b>State Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Revenue Losses</b>	N/A	N/A	N/A	N/A	N/A	N/A

(17a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
Environmental Protection Operations (#160-10381)	\$98,544,000	\$84,218,000	\$78,021,000	\$78,140,000
Environmental Program Management (#161-10382)	\$37,664,000	\$31,100,000	\$28,881,000	\$28,035,000

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

The use of the AEDs by trained individuals will help save the lives of miners who may suffer from a heart attack while working underground. Most of the miners who work underground may be several miles away from a mine opening. Because of the dangerous conditions and the strenuous activities miners encounter, safety is a priority. AEDs are another tool that miners will have available to save a life. The Board, which is made up of representatives from miner and mine operators, agreed that this rulemaking would be in the best interests of the mine safety. The costs of implementing the regulation are minimal, and the potential benefit of saving lives in the event of an emergency is incalculable.

(19) 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.

This rulemaking was developed in response to a request from a concerned citizen, who requested that AEDs be placed at coal mines for miners' safety. This rulemaking was 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.

(20) 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.

No other alternative regulatory provisions were considered. The rulemaking was originally suggested by a concerned citizen, proposed as a petition by a representative of the coal mine operators and was endorsed by all seven members of the Board of Coal Mine Safety.

(21) 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.

There is no companion federal standard. This rulemaking further enhances Pennsylvania's mine safety standards, and will benefit Pennsylvania citizens and workers.

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

Pennsylvania would be the first state to require AEDs in underground bituminous mines. Due to the overwhelming support from both mine operators and mine workers in addition to the nominal cost of the units, Pennsylvania will continue to be competitive with other states. This regulation will have no impact on Pennsylvania's ability to compete with other states.

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

No.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This rulemaking does not require any additional accounting or consulting procedures or additional reporting, recordkeeping or other paperwork. This equipment will be inspected as a normal part of the pre-shift inspection routine that must be done for underground mines, similar to other equipment used at an underground mining operation. The incorporation of the AED equipment will not generate any additional recordkeeping that is not already being performed in conjunction with routine pre-shift inspections.

(25) 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.

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

A. The date by which the agency must receive public comments: Fall 2011

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:

Fall 2012

D. The expected effective date of the final-form regulation:

Fall 2012

E. The date by which compliance with the final-form regulation will be required:

Fall 2012

F. The date by which required permits, licenses or other approvals must be obtained:

N/A

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

The Board will review on an ongoing basis the need for regulations implementing the Bituminous Coal Mine Safety Act.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
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**(Pursuant to Commonwealth Documents Law)**

DO NOT WRITE IN THIS SPACE

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  
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-463

DATE OF ADOPTION AUGUST 2, 2012

BY \_\_\_\_\_

TITLE **MICHAEL KRANCER  
CHAIRMAN**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

**SHAWN E. SMITH**

**AUG 28 2012**

DATE OF APPROVAL

(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**

**REQUIREMENTS FOR AUTOMATED EXTERNAL DEFIBRILLATORS (AEDs)**

*25 Pa. Code, Chapter 208*





**Notice of Final Rulemaking**  
**Department of Environmental Protection**  
**BOARD OF COAL MINE SAFETY**  
**[25 Pa. Code Ch. 208]**  
**Requirements for Automatic External Defibrillators**

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

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

**A. Effective Date**

This final rulemaking will go into effect 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 through the Department's web site: <http://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) (MINER Act). The Board is further authorized to promulgate regulations that are necessary or appropriate to implement the requirements of the BCMSA and to protect the health, safety and welfare of miners and other individuals in and about mines.

**D. Background and Purpose**

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 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 an independent underground coal mine safety program. The Commonwealth has been regulating safety at underground bituminous coal mines since 1889. See 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 52 P.S. § 690-103(a).

One significant change made by the BCMSA is the delegation of authority to promulgate regulations for mine safety and the General Assembly established the Board to promulgate such regulations. The seven-member Board consists of the Secretary of the Department of Environmental Protection (DEP) as chairperson and three members representing the view point of mine workers and the viewpoint of underground bituminous coal mine operators respectively. See 52 P.S. § 690-106.

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. 52 P.S. § 690-106.1(a).

In this rulemaking the Board is responding to a letter from a citizen, Karen J. Hampton, of Fairview, Pennsylvania, 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.

This regulation 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.

On November 5, 2011, at 41 *Pa.B.* 5959, the proposed rulemaking was published for comment, with a 30-day comment period, in the *Pennsylvania Bulletin*. No comments were 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 pursuant to the Regulatory Review Act, 71 P.S. § 745.1 et seq.

#### **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 for the final rulemaking in response to comments on the proposed regulation.

§ 208.70(a). The proposed § 208.70(a) required that a mine operator provide for use in an emergency one AED at two specified locations: “at a location on the surface of the mine;” and “on or near each coal production section.” The proposed regulation 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 has changed the regulation for the final rulemaking. 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 in the final regulation to mirror the requirement for first aid equipment locations in 30 CFR § 75.1713-7(a)(3). 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.” The final regulation also adds a requirement in § 208.70(a) that mine operators consult with emergency medical technicians when providing for placement of AEDs in the required locations.

§ 208.70(b). The proposed § 208.70(b)(1) and (2) used the term “emergency medical personnel” in prescribing training requirements, but the current regulations do not include a definition for this term. The BCMSA defines the terms “emergency medical technician” and “emergency medical technician paramedic” in 52 P.S. § 690-601. In response to a comment that this subsection lacked clarity, the Board has changed the final regulations at § 208.70(b) to replace the term “emergency medical personnel” with the two statutory terms, because that more precisely expresses the intent of the regulation.

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

There were several comments related to the clarity of the proposed regulation.

A commentator questioned the reference in proposed § 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 has changed the final-form regulation to delete the reference to the guidelines.

A commentator noted that proposed § 208.70(a)(1) requires an AED to be placed at “a location on the surface of the mine” without further specification. The commentator thought this requirement is vague and raised a similar concern with respect to proposed § 208.70(a)(2) which requires 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 has coordinated the final-form regulation with the MSHA regulation pertaining to minimum requirements for placement of first aid equipment in 30 CFR § 75.1713-7. Section

208.70(a)(1) has been amended in final-form regulation 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 in the final regulation to mirror the requirement for first aid equipment locations in 30 CFR § 75.1713-7(a)(3). The amended 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 in order to better effectuate the purpose of the regulation. The Board agreed with this comment and changed the final regulation to add a requirement in § 208.70(a) that mine operators consult with emergency medical technicians when providing for placement of AEDs in the required locations.

A commentator noted that proposed §§ 208.70(b)(1) and (2) use the term "emergency medical personnel" in prescribing training requirements, but that the regulation is not clear regarding who specifically are "emergency medical personnel." The current regulations do not include a definition for this term, however, the BCMSA defines the terms "emergency medical technician" and "emergency medical technician paramedic" in 52 P.S. § 690-601. In response to this comment, the Board amended the final regulations at § 208.70(b) to replace the term "emergency medical personnel" with the two statutory terms, because that more precisely expresses the intent of the regulation.

Several comments were submitted suggesting additional requirements be included to certain aspects of the proposed regulation.

A commentator noted that § 208.70(b) requires training in the use of AEDs but in the event the victim is in full cardiac arrest the AED would direct the administration of Cardio Pulmonary 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 already must include training in CPR; the training in CPR is part of annual mine safety refresher course for mine personnel. Thus, the Board believes including such a requirement in this regulation would be redundant.

A commentator raised concerns related to proposed § 208.70(c) which addresses 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 related to 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 in order to account for conditions. The AEDs will be incorporated as part of the first-aid materials at underground mines and will

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 will not necessitate any additional recordkeeping specifically associated with maintenance and inspection of the AEDs. This equipment will be inspected as a normal part of the pre-shift inspection routine that must be done for underground mines, similar to other equipment used at an underground mining operation. The incorporation of the AED equipment will not generate any additional recordkeeping that is not already being performed in conjunction with routine pre-shift inspections.

## **G. Benefits, Costs and Compliance**

### *Benefits*

The intent of this rulemaking is to ensure that an AED is available should a miner have 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 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 of Environmental Protection will provide notification to all bituminous coal mine operators affected by this regulation to inform them of the final promulgation of these regulatory changes.

### *Paperwork*

This regulation is not expected to add to paperwork requirements.

## **H. Sunset Review**

This proposed regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the proposed regulation effectively fulfills the goals for which it was 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 (Nov. 5, 2011) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(g) 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 these final-form regulations, the Board has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on \_\_\_\_\_ these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ and approved the final-form regulations.

#### **J. 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 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 41 *Pennsylvania Bulletin* 5959 (Saturday, Nov. 5, 2011).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

#### **K. Order of the Board**

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

- (a) The regulations of the Department of Environmental Protection, 25 *Pa. Code* Chapter 208, are amended 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.

MICHAEL KRANCER,  
*Chairman*





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.

\* \* \* \* \*

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

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<sup>1</sup> consistent with the Equipment Approval Task Force guidelines:

(1) AT A [A] location on the surface [of the mine] IN CLOSE PROXIMITY TO THE MINE ENTRY AT THE SAME LOCATION WHERE THE FIRST AID EQUIPMENT IS STORED.

(2) [On or near each coal producing] 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 [personnel] 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 [personnel] 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** [personnel], 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 an automated external defibrillators) applies to miners who render care with an AED.

PENNSYLVANIA  
Underground Coal Mine Safety

*25 Pa. Code* Chapter 208 (relating to Underground Coal Mine Safety)

See 41 *Pa. B.* 5959 (Nov. 5, 2011)

Board of Coal Mine Safety Regulation #7-463  
(Independent Regulatory Review Commission #2920)

Comment/Response Document

## Pennsylvania Underground Coal Mine Safety Regulations

On November 5, 2011, the Board of Coal Mine Safety (Board) published notice of a proposed rulemaking concerning amendments to 25 Pa. Code Chapter 208 (relating to underground coal mine safety). See 41 Pa. Bull. 5959 (Nov. 5, 2011). The Board requested comments from all interested parties on the proposed regulations.

In this rulemaking the Board is responding to a letter from a citizen who requested that Automatic External Defibrillators (AED) 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.

This regulation 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 Board received no comments from members of the public regarding the proposed underground coal mine safety regulations during the public comment period. Comments were received from the Independent Regulatory Review Commission (IRRC) on January 4, 2012 pursuant to the Regulatory Review Act, 71 P.S. § 745.1 et seq. 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. This document summarizes the written comments received during the public comment period, including the period for IRRC to comment, 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.

<b>ID</b>	<b>Name/Address</b>	<b>Submitted one page summary for distribution to EQB</b>	<b>Provided Testimony</b>	<b>Requested Final Rulemaking following EQB Action</b>
1.	David Sumner Executive Director Independent Regulatory Review Commission (IRRC) 333 Market Street, 14 <sup>th</sup> Floor Harrisburg, PA 17101			

## **General Comments Related to Clarity**

**Comment:** The commentator questioned proposed § 208.70(a), which requires mine operators to locate AEDs “consistent with the Equipment Approval Task Force Guidelines.” IRRC raised two concerns with the incorporation of these guidelines into the regulation. First, these guidelines can be amended outside of the procedures in the Regulatory Review Act without notice and opportunity for public comment, and could be amended without consideration of the effect on this regulation and compliance by the regulated community. Second, the guidelines as currently written do not provide clear direction regarding the location of AEDs, which is one of the purposes of this section. The commentator recommended deleting the reference to the guidelines from § 208.70(a). (1)

**Response:** The Board agrees with this comment and has amended the final-form regulation accordingly.

**Comment:** The commentator noted that the proposed § 208.70(a)(1) requires an AED to be placed at “a location on the surface of the mine” without further specification. The commentator stated that this requirement is vague because the term “surface of the mine” is too indefinite and could encompass many acres. The commentator raised a similar concern with respect to proposed § 208.70(a)(2) which requires an AED to be placed “on or near each coal producing section.” The commentator found this description to be too vague and indefinite and thus could raise compliance difficulties. The commentator noted the importance for emergency personnel to be able to quickly locate and bring the AED to the victim, and recommended that the proposed regulation be changed to make the required location of AEDs more precise. (1)

**Response:** The Board agrees with this comment and has amended the regulation to establish more precise locations for the AEDs. The Board has coordinated the regulation with the MSHA regulation pertaining to minimum requirements for placement of first aid equipment in 30 CFR § 75.1713-7. Section 208.70(a)(1) has been amended in final-form regulation 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 in the final regulation to mirror the requirement for first aid equipment locations in 30 CFR § 75.1713-7(a)(3). The amended 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 emergency personnel to know the location of the AED equipment.

**Comment:** The commentator recommended that the regulation require that mine operators consult with emergency medical technicians to determine the best placement of AEDs in order to better effectuate the purpose of the regulation. (1)

**Response:** The Board agrees with this comment and has amended the final regulation to add a requirement in § 208.70(a) that mine operators consult with emergency medical technicians

when providing for placement of AEDs in the required locations on the surface and underground at the mine.

**Comment:** The commentator noted that proposed § 208.70(b)(1) and (2) use the term “emergency medical personnel” in prescribing training requirements, but that the regulation is not clear regarding who specifically are “emergency medical personnel.” The current regulations do not include a definition for this term, however, the BCMSA defines the terms “emergency medical technician” and emergency medical technician paramedic” in 52 P.S. § 690-601. The commentator recommends replacing the term “emergency medical personnel” with the statutory terms. (1)

**Response:** The Board agrees with this comment, and has amended the final regulations at § 208.70(b) to replace the term “emergency medical personnel” with the two statutory terms, because that more precisely expresses the intent of the regulation.

**Comment:** The commentator notes that § 208.70(b) requires training in the use of AEDs but in the event the victim is in full cardiac arrest the AED would direct the administration of Cardio Pulmonary Resuscitation (CPR). Since the AED cannot do CPR, this would have to be performed by the rescuer. For this reason, the commentator recommends that the regulation specifically include a requirement for CPR training in addition to training in use of the AED equipment. (1)

**Response:** 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 already must include training in CPR; the training in CPR is part of annual mine safety refresher course for mine personnel. Thus, including such a requirement in this regulation would be redundant.

**Comment:** The commentator states two concerns related to proposed § 208.70(c) which addresses maintenance and inspection of AEDs in accordance with the manufacturer’s operational guidelines. (1)

First, the mechanisms may be susceptible to malfunction and deterioration when exposed to dust and moisture found in a mine, and there is clearly a safety concern when placing an electronic device in a mine where a spark could ignite an explosion. The commentator suggests that if the Board believes there is a need for the AEDs to meet specific safety requirements to be used in a mine or that AEDs need to be protected from the elements present in a mine, it would be appropriate to add specific requirements for AEDs to subsection (c).

Second, the commentator notes that the Regulatory Analysis Form states that the regulation will not require any additional recordkeeping or paperwork, and the commentator questions this statement in relation to the requirements in proposed § 208.70(c) for maintenance and inspection. The commentator recommends describing minimum recordkeeping requirements in this section.

**Response:** The Board disagrees with the commentator’s suggestion that placement of AEDs at the mine will necessitate any additional recordkeeping specifically associated with

maintenance and inspection of the AEDs. This equipment will be inspected as a normal part of the pre-shift inspection routine that must be done for underground mines, similar to other equipment used at an underground mining operation. The incorporation of the AED equipment will not generate any additional recordkeeping that is not already being performed in conjunction with routine pre-shift inspections. The Board thus reaffirms its statement in the RAF that the regulation will not require any *additional* recordkeeping or paperwork in order to comply with the requirements related to placement, maintenance and inspection of the AEDs. The Board also believes it is unnecessary to add specific requirements for AEDs to be used in a mine or to assure protection from elements. Underground mining operations are accustomed to adapting or taking special care of equipment used in the mine in order to account for the conditions found there. The AEDs will be incorporated as part of the first-aid materials at underground mines and will receive the same protection from elements, and treatment for safety purposes, as all other equipment used at the underground mine. So long as the AEDS are kept in good working order, the mine operator will assure compliance with this section.







# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

POLICY OFFICE

August 30, 2012

David Sumner  
Executive Director  
Independent Regulatory Review Commission  
14th Floor  
333 Market Street  
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Requirements for Automated External Defibrillators (#7-463)

Dear Mr. Sumner:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a copy of a final-form rulemaking for review and comment by the Independent Regulatory Review Commission (Commission). The Board of Coal Mine Safety adopted the final-form rulemaking at its August 2, 2012, meeting.

The enclosed rulemaking, which is authorized by the Bituminous Coal Mine Safety Act (52 P.S. §§ 690-101-690-708) (BCMSA), amends 25 *Pa Code* § 208.1 (definitions) and establishes § 208.70 (relating to Automated External Defibrillators) (AED) to require the placement of AEDs at various locations at an underground mine operation. An AED is a portable device that uses electric shock to restore a stable heart rhythm. The rulemaking was developed in response to a request by a concerned citizen and would require that each mine site maintain one AED on the surface of the facility and at each working section of the underground mine. These locations were recommended by representatives from industry and miner workers. The use of the AEDs by trained individuals will help save the lives of miners who may suffer from a heart attack while working underground. Most of the miners who work underground may be several miles away from a mine opening. Because of the dangerous conditions and the strenuous activities miners encounter, safety is a priority. AEDs are another tool that miners will have available to save a life.

The proposed rulemaking was adopted by the Board on October 26, 2010, and published in the *PA Bulletin* for public comment on November 5, 2011, at 41 *Pa.B.* 5959. During the 30-day public comment period, no members of the public submitted comments to the Board on the rulemaking. On January 4, 2012, the Independent Regulatory Review Commission (IRRC) issued several comments on the rulemaking, predominantly concerning the clarity of several provisions. Amendments were adopted at final rulemaking to enhance the clarity of the regulations, including changes to prescribe the placement of AEDs with more specificity and coordinate the storage location of AEDs with the first-aid equipment used at the mine. The regulation also requires that emergency medical technicians and emergency medical technician paramedics at the mine be trained in the proper use of an AED.



The Department will provide assistance as necessary to facilitate the Commission's review of the enclosed final-form rulemakings under Section 5.1(e) of the Regulatory Review Act.

Please contact me at 717.783.8727 or by e-mail at [mtate@pa.gov](mailto:mtate@pa.gov) if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate  
Regulatory Coordinator

Enclosures





COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF POLICY

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT

I.D. NUMBER: 7- 463

SUBJECT: Requirements for Automated External Defibrillators (AEDs)

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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RECEIVED  
IRRC

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

8-30-12 M. Bean Watson

Majority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

8-30-12 D. Neuf

Minority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

8/30/12 Kit Ours

Majority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

8/30/12 [Signature]

Minority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY

8/30/12 [Signature] Cooper

INDEPENDENT REGULATORY REVIEW COMMISSION

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ATTORNEY GENERAL (for Final Omitted only)

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LEGISLATIVE REFERENCE BUREAU (for Proposed only)

