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**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: #7-481

IRRC Number: 3010

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

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

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

Primary Contact: Michele Tate, 717-783-8727; fax: 717-783-8926; [mtate@pa.gov](mailto:mtate@pa.gov); RCSOB 16<sup>th</sup> Floor, Harrisburg, PA 17105Secondary Contact: Hayley Book, 717-783-8727; fax: 717-783-8926; [hbook@pa.gov](mailto:hbook@pa.gov); RCSOB 16<sup>th</sup> Floor, 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)

This final rulemaking package requires that where rock dust is to be applied in bituminous coal mines, the incombustible content of the combined coal dust, rock dust, and other dust that is present in a mine's intake and return airways should not be less than 80 percent. On September 23, 2010, the United States Department of Labor and the Mine Safety and Health Administration (MSHA) issued an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners in underground bituminous coal mines face when accumulations of coal dust are not made inert. 75 FR 57857. The final MSHA Rule retains the requirements of the ETS verbatim to ensure continuous protection for underground bituminous coal miners from grave danger due to hazards of coal dust explosions. 76 FR 35978, June 21, 2011. These regulations are codified at 30 CFR §§ 75.403 and .403-1.

After learning of the more stringent MSHA requirement for the maintenance of incombustible content of rock dust, the Board of Coal Mine Safety (Board) determined it should promulgate an identical standard. Accordingly, on May 11, 2013, at 43 Pa.B. 2587, the Board published a proposed regulation with a 30 day public comment period. The Board received comments from the United Mine Workers of America, who fully support the rulemaking. The Independent Regulatory Review Commission (IRRC) provided notice to the Board that it had reviewed the proposed regulation, but had no objections, comments, or recommendations to offer on the regulation. IRRC noted that if the Board delivers the final-form

regulation without revisions to the commission, and the standing committees do not take any action on the final rulemaking, the final regulation will be deemed approved by the commission. No changes were made to the regulation between proposed and final rulemaking.

The final rulemaking will allow Pennsylvania regulations to conform to the federal requirements. The Board agrees that this rulemaking is in the best interests of the miners' safety. The Board's decision is based on its interest in minimizing the possibility and severity of explosions, as well as conforming Pennsylvania regulations to the federal requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This rulemaking was prepared at the direction of the Board that was established under the BCMSA. The seven member Board consists of the Secretary of Department of Environmental Protection, three members representing mine workers, and three members representing the coal mine operators. Three of the members of the Board were nominated by the United Mine Workers of America to represent the viewpoint of miners, and three were nominated by the Pennsylvania Coal Alliance to represent the viewpoint of the coal mine operators. It was through the Board that communications with and solicitation of input from the regulated community in the development and drafting of the final regulation occurred. Three members of the PCA represent the 8 underground bituminous coal mining companies and affiliates that are currently in operation in the Commonwealth of Pennsylvania. They participated in the decision of the Board to prepare this regulation. At this point in time, this rulemaking will only apply to those 8 underground bituminous coal mining companies.

The Board has determined that only one small business, as that term is defined under Section 3 of the Regulatory Review Act, will be affected by this proposal. According to the Small Business Size Regulations under 13 CFR Part 121, for NAICS Code 212112 (bituminous coal underground mining) a small business is one that employs fewer than 500 persons. The Board determined that this rulemaking would only apply to the current 8 underground bituminous coal mining companies operating in the Commonwealth of Pennsylvania, most of which employ more than 500 persons. The Board made this determination by reviewing its own internal data and publicly available data from the companies. As a result, this rulemaking would only impact one small business.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Currently there are 40 bituminous underground mines operating in Pennsylvania. The rulemaking would require them to make certain that the incombustible content of the rock dust is no less than 80 percent in the mines' intake and return airways to prevent the probability or severity of explosions. There is no opposition from the underground bituminous coal industry as it already participated in the decision-making process that led to the Board to prepare this regulation, and the coal industry already has to comply with the federal regulation. This rulemaking will only apply to the current 8 underground bituminous coal mining companies operating in the Commonwealth of Pennsylvania, most of which employ more than 500 persons. There are no other underground bituminous coal mine companies to which this final regulation would apply at this time. The regulation will apply to only one small business, which, like all owners and operators of underground bituminous coal mines, already has to comply with the federal regulation in this regard.

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

Currently there are 40 underground bituminous coal mines in the Commonwealth of Pennsylvania. These mines employ approximately 5,900 persons (not all of whom work underground). All of them already have to comply with the federal regulation and, as a result, conforming Pennsylvania regulations to federal regulations will not have an impact on any persons, groups, entities or small businesses. In addition, only one of the businesses to which this regulation applies is a small business.

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

There is a federal regulation in place already. The owners and operators of these mines already have to comply with the federal regulation in this regard. As a result, assuring that the Pennsylvania regulation conforms to the federal requirements will not have any additional financial, economic or social impact. In addition, only one of the current businesses to which this regulation would apply is a small business, as all but one employ more than 500 persons. The potential benefit of preventing bodily harm, loss of life or property is incalculable.

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

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

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

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

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

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

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

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

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

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

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

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

	<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>	N/A	N/A	N/A	N/A	N/A	N/A
<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 Costs</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<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

(23a) 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>
<b>Environmental Protection Operations (#160-10381)</b>	\$78,021,000	\$77,359,000	\$74,547,000	\$76,221,000
<b>Environmental Program Management (#160-10381)</b>	\$28,881,000	\$27,755,000	\$23,663,000	\$26,297,000

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

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

This regulation will not have any effect on the sole small company that is one of the underground bituminous coal mining companies , as it already has to comply with the federal regulation in that regard.

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

None. There would be no additional costs for the regulated community as it already has to comply with

this requirement at the federal level.

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

None. This regulation will only affect one small business, as all but one of the currently operating underground bituminous coal mining companies in Pennsylvania that would be impacted employ more than 500 persons.

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

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

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

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

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

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

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

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

The Board has determined that at least one of the current 8 underground bituminous coal mining companies in Pennsylvania is a small business, as that term is defined under Section 3 of the Regulatory Review Act. According to the Small Business Size Regulations under 13 CFR Part 121, for NAICS Code 212112 (bituminous coal underground mining), a small business is one that employs fewer than

500 persons. The Board made the determination that at least one of the current 8 underground bituminous coal mining companies in Pennsylvania is a small business by reviewing its own internal data, reviewing publicly available data from the companies in question and consulting the PA Coal Alliance, which is the premier trade association in Pennsylvania that represents the interests of the coal industry in the Commonwealth.

The rulemaking codifies into state regulation existing federal MSHA requirements that underground bituminous coal mines - regardless of business size - must already adhere; therefore, the state regulation does not establish additional regulatory requirements onto the underground bituminous coal mining industry in Pennsylvania. DEP will utilize its existing compliance assistance and regulatory outreach programs to assure understanding and compliance of the state regulation by all underground bituminous coal mining companies in Pennsylvania.

On September 23, 2010, MSHA and the United States Department of Labor issued an ETS under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners in underground bituminous coal mines face when accumulations of coal dust are not made inert. 75 FR 57857. MSHA concluded, from investigations of mine explosions and other reports, that immediate action is necessary to protect miners. The ETS served as an emergency temporary final rule with immediate effect and provided an opportunity for notice and comment, after which time a final rule would be issued. The National Institute for Occupational Safety and Health (NIOSH) conducted a series of large-scale dust explosion tests at Lake Lynn Experimental Mine (LLEM) using the dust survey results to determine the incombustible content necessary to prevent explosion propagation. Based on the results of this testing, NIOSH recommended an 80 percent total TIC in both intake and return airways of bituminous coal mines.

The Final MSHA Rule retains the requirements of the ETS verbatim to ensure continuous protection for underground bituminous coal miners from grave danger due to hazards of coal dust explosions. 76 FR 35978, June 21, 2011.

This rulemaking was prepared at the Board's direction, in response to NIOSH's additional research and testing and the MSHA regulation. At the present time, the regulation will only apply to the 8 underground bituminous coal mining companies previously mentioned that currently operate in Pennsylvania, only one of which is considered to be a small business.

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

NIOSH conducted a series of large-scale dust explosion tests at LLEM using the dust survey results to determine the incombustible content necessary to prevent explosion propagation. Based on the results of this testing, NIOSH recommended an 80 percent TIC in both intake and return airways of bituminous coal mines. Based on NIOSH's data and recommendations, and MSHA's own research, data and experience, the U.S. Secretary of Labor determined that miners were exposed to grave danger in areas of underground bituminous coal mines that were not properly and sufficiently rock dusted in accordance



with the requirements in the ETS, and that the ETS was necessary to protect miners from such danger.

The Final MSHA Rule retains the requirements of the ETS verbatim to ensure continuous protection for underground bituminous coal miners from grave danger due to hazards of coal dust explosions. 76 FR 35978, June 21, 2011. In developing the final rule, MSHA considered its accident investigation reports of mine explosions in intake air courses that involved coal dust, the NIOSH Report of Investigations entitled "Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways", MSHA's experience and data, public comments on the ETS, and testimony provided at the public hearings. MSHA believes that the requirements of the final rule are necessary to continue to protect underground bituminous coal miners from grave danger. These regulations are codified at 30 CFR §§ 75.403 and .403-1.

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

- |                                                                                             |                                    |
|---------------------------------------------------------------------------------------------|------------------------------------|
| A. The date by which the agency must receive public comments:                               | <u>2<sup>nd</sup> Quarter 2013</u> |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>N/A</u>                         |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>4<sup>th</sup> Quarter 2013</u> |
| D. The expected effective date of the final-form regulation:                                | <u>4<sup>th</sup> Quarter 2013</u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u>4<sup>th</sup> Quarter 2013</u> |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>N/A</u>                         |

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

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



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Attorney General

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By:

(Deputy Attorney General)

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
BOARD OF COAL MINE SAFETY**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-481

DATE OF ADOPTION SEPTEMBER 17, 2013

BY

**E. CHRISTOPHER ABRUZZO  
ACTING CHAIRMAN**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

**SHAWN E. SMITH**

**SEP 24 2013**  
DATE OF APPROVAL

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

DATE OF APPROVAL

☒ Check if applicable.  
Copy not approved. Objections attached.

☒ 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**

**Maintenance of Incombustible Content of Rock Dust**

25 Pa. Code Chapter 208



**NOTICE OF FINAL RULEMAKING**  
**[25 PA CODE CHAPTER 208]**

**ORDER**

The Board by this Order amends the Department of Environmental Protection's (Department) regulations at 25 *Pa Code* Chapter 208 (relating to underground coal mine safety) to read as set forth in Annex A. The final rulemaking conforms Pennsylvania law to federal law, thereby establishing that the incombustible content of coal dust, rock dust and any other dust will not be less than 80 percent in bituminous coal mines.

This notice was given under Board order at its meeting of September 17, 2013.

**A. Effective Date**

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information, contact Joe Sbaffoni, Director Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown PA 15401, (724) 439-7469, [jsbaffoni@pa.gov](mailto:jsbaffoni@pa.gov); or Susana Cortina de Cárdenas, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9<sup>th</sup> Floor, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060, [scortina@pa.gov](mailto:scortina@pa.gov). Persons with a disability may use the Pennsylvania 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 website at [www.dep.state.pa.us](http://www.dep.state.pa.us).

**C. Statutory Authority**

The final rulemaking is authorized under the authority of Sections 106 and 106.1 of the Bituminous Coal Mine Safety Act (52 P.S. §§ 690-106 and 106.1) (BCMSA), which grant the Board the authority to adopt 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.

**D. Background and Purpose**

This final rulemaking requires that where rock dust is to be applied in bituminous underground coal mines located in this Commonwealth, the incombustible content of the combined coal dust, rock dust, and other dust that is present in a mine's intake and return airways must be not be less than 80 percent.

On September 23, 2010, the United States Department of Labor and the federal Mine Safety and Health Administration (MSHA) issued an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners in underground bituminous coal mines throughout the country face when accumulations of coal dust are not made inert. 75 FR 57857. MSHA concluded, from investigations of mine explosions and other reports, that immediate action is necessary to protect miners.

The ETS served as an emergency temporary final rule with immediate effect and provided an opportunity for notice and comment, after which time a final rule would be issued. The National Institute for Occupational Safety and Health (NIOSH) conducted a series of large-scale dust explosion tests at the NIOSH Lake Lynn Experimental Mine (LLEM) using the dust survey results to determine the incombustible content necessary to prevent explosion propagation. Based on the results of this testing, NIOSH recommended an 80 percent total incombustible content (TIC) in both intake and return airways of bituminous coal mines in the ETS. In addition, the incombustible content of the dust must be increased to 0.4 percent for each 0.1 percent of methane present.

Based on NIOSH's data and recommendations, and MSHA data and experience, the U.S. Secretary of Labor determined that miners were exposed to grave danger in areas of underground bituminous coal mines that were not properly and sufficiently rock dusted in accordance with the requirements in the ETS and that the ETS was necessary to protect miners from such danger. The Final MSHA Rule retained the requirements of the ETS verbatim to ensure continuous protection for underground bituminous coal miners from grave danger due to hazards of coal dust explosions. 76 FR 35978, June 21, 2011.

In developing the final federal rule, MSHA considered its accident investigation reports of mine explosions in intake air courses that involved coal dust; the NIOSH Report of Investigations entitled "Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways"; MSHA's experience and data; public comments on the ETS; and testimony provided at the public hearings. MSHA believes that the requirements of the final rule are necessary to continue to protect underground bituminous coal miners from grave danger. These regulations are codified at 30 CFR §§ 75.403 and .403-1.

The percentage of incombustible content of rock dust plays an important role in the probability and severity of explosions in bituminous coal mines. Rock dust has been used for 100 years as a precautionary measure to prevent explosions. The workings of these mines lead to the production of explosive coal dust, and adding rock dust with an incombustible content of a certain percentage reduces the potential, as well as the severity, of explosions. This has been amply documented by the above-referenced studies. Inert rock dust acts as a heat sink, that is, a source that absorbs and dissipates heat, so that a certain amount of inert rock dust with coal dust is likely to prevent or reduce the potential for coal dust explosions. For that reason, federal regulation mandates that the incombustible content of the combined coal, rock and any other type of dust used in bituminous coal mines must be no less than 80 percent.

On July 7, 2008, the Pennsylvania General Assembly enacted the BCMSA. The BCMSA is the first significant update of the Commonwealth of Pennsylvania's underground bituminous coal mine safety laws since 1961. 52 P.S. § 690-103(a). One of the significant changes made by the BCMSA is the authority to promulgate regulations for mine safety. The General Assembly established the Board to promulgate the regulations. This seven-member board consists of the Department's Secretary as Chair, three members representing the viewpoint of mine workers and the viewpoint of underground bituminous coal mine operators, respectively. 52 P.S. § 690-106.

A significant problem with the pre-existing law was that its safety standards were becoming outdated. There was no effective mechanism to modify existing standards or to adopt new safety standards to address changes in technology or other hazards. To rectify this problem, the BCMSA contains broad rulemaking authority to adopt regulations to either modernize safety standards in the BCMSA or adopt new safety standards not contained in the BCMSA. The Board was directed to consider whether to adopt federal mine safety standards not in the BCMSA. 52 P.S. § 690-106.1.

After learning of the more stringent MSHA requirements under 30 CFR §§ 75.403 and .403-1 for the maintenance of incombustible content of rock dust, the Board determined that the Commonwealth should incorporate the federal standards into state regulation and provide the Department the necessary independent authority to enforce those standards. Accordingly, on May 11, 2013, at 43 Pa.B. 2587, the Board proposed these requirements for a 30 day public comment period. The Board received comments from the United Mine Workers of America, who fully supports the rulemaking. The Independent Regulatory Review Commission (IRRC) provided notice to the Board that it had reviewed the proposed regulation, but had no objections, comments, or recommendations to offer on the regulation. IRRC noted that if the Board delivers the final-form regulation without revisions to the Commission, and the standing committees do not take any action on the final rulemaking, the final regulation will be deemed approved by IRRC. No changes were made to the regulation between the proposed and final rulemaking.

#### **E. Summary of Comments and Responses to the Proposed Rulemaking**

The United Mine Workers wholeheartedly support the Board's rulemaking. The commentator believes that this rulemaking, which is consistent with the federal standards, will save lives.

The Board agrees and appreciates the commentator's support of the rulemaking. The Board believes that the rulemaking will enhance the Department's ability to ensure the safety of miners by reducing the potential or severity of explosions in bituminous coal mines, and by allowing the Department to have independent authority to enforce the federal requirement. This final rulemaking also conforms Pennsylvania regulations to federal regulations that are already in place.

#### **F. Summary of Final Regulatory Requirements**

The Board proposed the addition of a regulation which will require the use of additional rock dust to reduce the possibility and severity of explosions that may cause bodily harm or loss

of life while working underground, as well as prevent property loss. No changes were made to the regulation from its proposed form.

*25 Pa Code* § 208.71(a) provides that, among other things, the incombustible content of the combined coal dust, rock dust, and other dust must be not less than 80 percent.

*25 Pa Code* § 208.71(b) provides that where methane is present, the percent of incombustible content of such combined dust must be increased 0.4 percent for each 0.1 percent of methane.

*25 Pa Code* § 208.71(c) provides that moisture contained in the combined coal dust, rock dust and other dusts must be considered as a part of the incombustible content of such mixture.

## **G. Benefits and Costs**

### **Benefits**

The final rulemaking will reduce the possibility and severity of explosions that may cause bodily harm, loss of life or property. The final regulation incorporates the provisions of federal regulations into the state's regulations, thus enhancing the Commonwealth's mine safety program and its reputation for excellence.

### **Compliance Costs**

The final rulemaking will not add any compliance costs to those already existing, as a federal regulation is already in place in this regard. This rulemaking imposes standards already imposed by MSHA.

### **Compliance Assistance Plan**

The Department plans to educate and assist the public and regulated community in understanding the final regulation and how to comply with it. This will be accomplished through the Department's ongoing compliance assistance program.

### **Paperwork Requirements**

The regulatory revisions will not increase the paperwork that is already generated because of the existing federal regulation that is already in place.

## **H. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether it 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 May 1, 2013, the Board submitted a copy of the notice of proposed rulemaking, published at 43 Pa. B. 2587 (May 11, 2013) 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 submitted.

Under section 5.1(j.2) of the Regulatory Review Act, on \_\_\_\_\_, 2013, 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 \_\_\_\_\_, 2013, 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 43 Pa.B. 2587 (May 11, 2013).
- (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:

- (1) The regulations of the Department of Environmental Protection, 25 Pa. Code Chapter 208, are amended to read as set forth in Annex A.
- (2) 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.

(3) The Chairperson of the Board shall submit this order and Annex A to the IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(4) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(5) This order shall take effect immediately.

E. Christopher Abruzzo  
*Acting Chairperson*

PENNSYLVANIA  
Underground Coal Mine Safety

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

See 43 Pa. B. 2587 (May 11, 2013)

Board of Coal Mine Safety Regulation #7481 (Independent Regulatory Review  
Commission #3010)

Comment/Response Document

## Pennsylvania Underground Coal Mine Safety Regulations

On May 11, 2013, 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 43 Pa. B. 2587 (May 11, 2013). The Board requested comments from all interested parties on the proposed regulations.

This final rulemaking package requires that where rock dust is to be applied in underground bituminous coal mines located in this Commonwealth, the incombustible content of the combined coal dust, rock dust, and other dust that is present in a mine's intake and return airways must be not be less than 80 percent.

On September 23, 2010, the federal Mine Safety and Health Administration (MSHA) issued an emergency temporary standard (ETS) under section 101(b) of the Federal Mine Safety and Health Act of 1977 in response to the grave danger that miners in underground bituminous coal mines throughout the country face when accumulations of coal dust are not made inert. 75 FR 57857. MSHA concluded, from investigations of mine explosions and other reports, that immediate action is necessary to protect miners. The Final MSHA Rule retained the requirements of the ETS verbatim to ensure continuous protection for underground bituminous coal miners from grave danger due to hazards of coal dust explosions. 76 FR 35978, June 21, 2011.

After learning of the more stringent MSHA requirements under 30 CFR §§ 75.403 and 403-1 for the maintenance of incombustible content of rock dust, the Board determined that the Commonwealth should incorporate the federal standards into state regulation and provide the Department the necessary independent authority to enforce those standards. Accordingly, on May 11, 2013, the Board proposed these requirements for a 30 day public comment period. 43 Pa.B. 2587. No changes were made to the regulation between the proposed and final rulemaking.

During the public comment period, the Board received a comment from the United Mine Workers of America ("UMWA"), who fully supports the rulemaking. On July 10, 2013, the Independent Regulatory Review Commission (IRRC) provided notice to the Board that it had reviewed the proposed regulation, but had no objections, comments, or recommendations to offer on the regulation. IRRC noted that if the Board delivers the final-form regulation without revisions to the commission, and the standing committees do not take any action on the final rulemaking, the final regulation will be deemed approved by the commission.

This document summarizes the written comments received during the public comment period, including the period for IRRC to comment, and provides the Board's response to the single comment that it received. A list of the commentators, including name, affiliation (if any), and city/state/country, can be found below.

ID	Name/Address	Submitted one page summary for distribution to EQB	Provided Testimony	Requested Final Rulemaking following EQB Action
1.	Mr. Dennis O'Dell Administrator United Mine Workers of America United Mine Workers' Headquarters Triangle, VA 222172-1779			

### General Comment

**Comment:** The UMWA wholeheartedly supported and agreed with the Board's rulemaking with regard to the percentage of incombustible content of rock dust. The UMWA remarked on the advances in technology that have led to a better understanding of the dangers inherent to the incombustible content of modern day rock dust particles. Including data about the number of deaths that occurred because of the absence of the final rock dust regulations, the UMWA explained that it was in complete agreement with the Board's actions of finalizing this regulation, and updating the appropriate safety standards.

**Response:** The Board agrees with this comment and appreciates the commentator's support of the rulemaking. The Board contains broad rulemaking authority to adopt regulations to either modernize safety standards or adopt new ones. By adopting this federal regulation, the Board will enhance its ability to ensure the safety of miners by reducing the potential or severity of explosions in bituminous coal mines. This final rulemaking seeks to conform Pennsylvania regulations to federal regulations that are already in place.



**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  
COMBUSTIBLE MATERIALS AND ROCK DUSTING**

**§ 208.71. Maintenance of incombustible content of rock dust.**

**(a) Where rock dust is required to be applied, it shall be distributed upon the top, floor and sides of the underground areas of a coal mine and maintained in quantities so that the incombustible content of the combined coal dust, rock dust and other dust is not less than 80%.**

**(b) Where methane is present in a ventilating current, the percent of incombustible content of the combined dust as required under subsection (a) shall be increased 0.4% for each 0.1% of methane.**

**(c) Moisture in the combined coal dust, rock dust and other dusts shall be considered as a part of the incombustible content of the mixture.**







# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
POLICY OFFICE

October 4, 2013

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

Re: Final Rulemaking: Maintenance of Incombustible Content of Rock Dust (#7-481)

Dear Mr. Sumner:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed the Maintenance of Incombustible Content of Rock Dust final rulemaking for review and comment by the Independent Regulatory Review Commission (IRRC). The Board of Coal Mine Safety (Board) adopted the final rulemaking at its September 17, 2013, meeting.

The enclosed final rulemaking was initiated by the Board to address underground coal mine safety under the authority of the Bituminous Coal Mine Safety Act. The final rulemaking incorporates federal Mine Safety and Health Administration (MSHA) requirements already in place for the maintenance of incombustible content of rock dust in bituminous coal mines. Under the rulemaking, operators of bituminous coal mines must maintain the incombustible content of combined coal dust, rock dust, and other dust to at least 80 percent where rock dust is required to be applied in underground areas of a coal mine. In addition, the incombustible content of the dust must be increased 0.4 percent for each 0.1 percent of methane present in any ventilating current. The rulemaking reduces the potential as well as the severity of explosions in bituminous coal mines, should they occur, thereby protecting lives and property. The Board developed and adopted the proposed regulations to enhance the Department of Environmental Protection's (Department) ability to ensure the safety of miners by reducing the potential or severity of explosions in bituminous coal mines, and to allow the Department to have independent authority to enforce the federal requirement.

The proposed rulemaking was published for public comment in the *Pennsylvania Bulletin* on May 11, 2013, at 43 *Pa.B.* 2587. During the 30-day public comment period, the Board received comments from the United Mine Workers of America, who expressed their full support of the rulemaking. In addition, IRRC provided notice to the Board that it had reviewed the proposed regulation, but had no objections, comments, or recommendations to offer on the regulation. IRRC noted that if the Board delivers the final-form regulation without revisions to the commission, and the standing committees do not take any action on the final rulemaking, the final regulation will be deemed approved by the commission. The Board has not made any changes to the regulation between the proposed and final rulemaking.



Mr. David Sumner

- 2 -

October 4, 2013

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed final-form rulemaking 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,

*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: 7-481

SUBJECT: maintenance of Incombustible content of Rock Dust

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 Tolerated Regulation
- a. ☐ With Revisions      b. ☐ Without Revisions

2013 OCT -4 PM 2:15

RECEIVED  
IRRC

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

10-4-13

*Valerie Kome*

Majority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Rep. Ron Miller

10-4-13

*Jon Keli*

Minority Chair, HOUSE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Rep. Greg Vitali

10/4/13

*Gene Yaw*

Majority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Senator Gene Yaw

10-4-13

*Richard S. Zer*

Minority Chair, SENATE COMMITTEE ON  
ENVIRONMENTAL RESOURCES & ENERGY  
Senator John Yudichak

10/4/13

*Stacy F. Aff*

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

