

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(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

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(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):

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(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 proposed rulemaking package would require 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 per cent. On September 23, 2010, 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. 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. Based on NIOSH's data and recommendations, and MSHA's 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 this ETS and that this 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.

The proposed rulemaking will allow Pennsylvania regulations to conform to the federal requirements. The Board of Coal Mine Safety ("Board") agreed that this rulemaking would be 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 proposed 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 would assure 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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, formerly known as the Pennsylvania Coal Association ("PCA"), 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 proposed regulation occurred. Three members of the PCA represent the 5 underground 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 5 underground mining companies.

The Board has determined that no small businesses, 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 5 underground mining companies operating in the Commonwealth of Pennsylvania, all 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 not impact small businesses.

(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 38 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 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 5 underground mining companies operating in the Commonwealth of Pennsylvania, all of which employ more than 500 persons. There are no other underground coal mine companies to which this proposed regulation would apply at this time. There are currently no small businesses, persons or entities operating underground mining companies in the Commonwealth of Pennsylvania. Consequently, the regulation will not apply to small businesses, nor any other persons or businesses other than the 5 mining companies previously mentioned. Moreover, the owners and operators of these mines already have 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 38 underground bituminous coal mines in the Commonwealth of Pennsylvania. These mines employ approximately 5,382 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, none of the businesses to which this regulation would apply are small businesses or groups representing small businesses, as they all employ more than 500 persons.

(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, none of the current businesses to which this regulation would apply are small businesses or groups representing small businesses, as they all employ more than 500 persons, nor would it apply to other persons, groups or entities. 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.

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

Program	FY -3	FY -2	FY -1	Current FY
Environmental Protection Operations (#160-10381)	\$84,218,000	\$78,021,000	\$88,879,000	\$74,547,000
Environmental Program Management (#160-10381)	\$31,100,000	\$28,881,000	\$25,787,000	\$24,965,000

(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 small businesses as all of the underground mining companies that would be impacted employ more than 500 persons.

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed 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 not have any effect on small businesses as all of the currently operating underground 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 proposed 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.

There will not be any adverse impact on small business from this rulemaking. This rulemaking merely codifies an existing federal requirement that already applies to underground coal mine operators. On September 23, 2010, MSHA 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. 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 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 5 underground mining companies previously mentioned that currently operate in Pennsylvania, none of which constitute small businesses, as all of them employ more than 500 persons. For that reason, there was no need to consider any other regulatory methods, nor how to minimize any impact of the same to 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>2nd 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>4th Quarter 2013</u> |
| D. The expected effective date of the final-form regulation: | <u>4th Quarter 2013</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>4th 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 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 twice during each calendar year or more as may be necessary.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

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

By: 
(Deputy Attorney General)

APR 23 2013

DATE OF APPROVAL

☒ Check if applicable
Copy not approved. Objections attached.


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

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

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-481

DATE OF ADOPTION MARCH 26, 2013

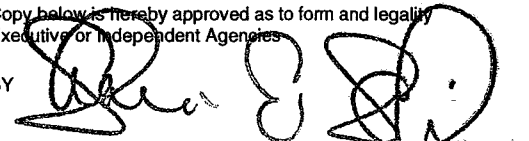
BY 

TITLE **MICHAEL KRANCER
CHAIRMAN**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY


APR 03 2013
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 PROPOSED RULEMAKING

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

Maintenance of Incombustible Content of Rock Dust

25 Pa. Code Chapter 208

NOTICE OF PROPOSED RULEMAKING
[25 PA CODE CHAPTER 208]

PREAMBLE

Sections 106 and 106.1 of the Bituminous Coal Mine Safety Act (52 P.S. §§ 690-106 and 106.1) (“BCMSA”) authorizes the adoption of regulations implementing the BCMSA, including additional safety standards. The Board of Coal Mine Safety (“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.

The Board is seeking to add a regulation to the Department of Environmental Protection’s (“Department” or “DEP”) regulations at 25 *Pa Code* Chapter 208 (relating to underground coal mine safety) to read as set forth in Annex A. The proposed 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 is given under Board order at its meeting of March 26, 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; or Susana Cortina de Cárdenas, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060, scortina@pa.gov.

C. Statutory Authority

The proposed rulemaking is authorized under the authority of Sections 106 and 106.1 of the 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 proposed rulemaking package would require 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 must be not be less than 80 percent. On September 23, 2010, 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. 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 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.

On July 7, 2008, the 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 DEP'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 start considering 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, the Board is proposing these requirements for public review and comment.

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. The proposed rulemaking conforms to the federal regulation in this regard.

By proposing to adopt this federal regulation, the Board believes it will enhance DEP's ability to ensure the safety of miners by reducing the potential or severity of explosions in bituminous coal mines, and by allowing DEP to have independent authority to enforce the federal requirement. This proposed rulemaking seeks to conform Pennsylvania regulations to federal regulations that are already in place.

E. Summary of Proposed Regulatory Requirements

The Board proposes 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. Most of the miners who work underground may be several miles away from a mine opening. Because of the dangerous conditions that miners encounter and the increased probability of explosions with the use of rock dust with incombustible content that is less than 80 percent, safety is a priority. Using additional rock dust to attain the percentage mentioned above is another tool that miners will have available to save a life, as well as protect property.

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

Subsection (b) is proposed to be added to provide 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.

Subsection (c) is proposed to be added to provide 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.

F. Benefits and Costs

Benefits

The proposed rulemaking will reduce the possibility and severity of explosions that may cause bodily harm, loss of life or property. The proposed regulation simply 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 proposed 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 proposed 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.

G. 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.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on May, 1, 2013, to the Independent Regulatory Review Commission ("IRRC"), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the

public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

I. Public Comments

Written Comments:

Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Board of Coal Mine Safety, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board on or before June 10, 2013. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board on or before June 10, 2013. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments:

Comments may be submitted electronically to the Board at RegComments@pa.gov and must also be received by the Board on or before June 10, 2013. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

Persons with a disability who wish to attend the hearing and require an auxiliary aide, service or other accommodation in order to participate should contact (717) 787-4526, or through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

By:

E. Christopher Abruzzo
Acting 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**

COMBUSTIBLE MATERIALS AND ROCK DUSTING

§ 208.71. Maintenance of incombustible content of rock dust.

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

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

(c) 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.



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION
POLICY OFFICE

May 1, 2013

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

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

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on May 11, 2013, with a 30-day public comment period. The Board of Coal Mine Safety (Board) adopted this proposal on March 26, 2013.

The enclosed rulemaking was initiated by the Board to address underground coal mine safety under the authority of the Bituminous Coal Mine Safety Act. The proposed 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 is supported by both mine operators and mine workers.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposed rulemaking. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendation or suggestions submitted by the Commission, as well as the Committees and public commentators, prior to final adoption of the enclosed regulation.

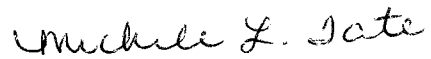
Mr. David Sumner, Executive Director

- 2 -

May 1, 2013

Please contact me at 717.783.8727 or by e-mail at 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- 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 Tolled Regulation
- a. ☐ With Revisions b. ☐ Without Revisions

2013 MAY -1 PM 2:39

RECEIVED
IRRC

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

5-1-13

Alan Cisneros

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

5-1-13

Greg Vitali

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

5/1/13

Patti LeMay

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

5/1/13

Yamilet S. Llanusa

Minority Chair, SENATE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY

5/1/13

Dr. F. H. H.

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

5-1-13

Samar Hassan

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

