

Comments of the Independent Regulatory Review Commission



Board of Coal Mine Safety Regulation #7-558 (IRRC #3292)

Prohibiting Electronic Liquid-Vaporizing Devices at Underground Bituminous Coal Mines

May 12, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the March 13, 2021 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Board of Coal Mine Safety (Board) to respond to all comments received from us or any other source.

1. Section 208.375. Smoking prohibition: surface work areas. – Statutory authority; Clarity and lack of ambiguity; Implementation procedures.

Subsection (b) subjects an individual who violates the mandatory safety standards relating to smoking, including electronic liquid-vaporizing devices and e-cigarettes, to a civil penalty. Chapter 5 of the Bituminous Coal Mine Safety Act of 2008 (Act) lists the enforcement remedies available to the Board. 52 P.S. §§ 690-501 – 690-511. For example, under the Act, the Board can issue enforcement orders (§ 690-501), injunctions (§ 690-502), administrative penalties against mine officials and operators (§ 690-503), and certification actions (§ 690-510). Page 2 of the Preamble states that the “proposed regulation would give the Department [of Environmental Protection (Department)] additional authority to assess a civil monetary penalty” The Board should explain its statutory authority to assess a civil penalty.

We have two additional concerns. First, the process to determine that an individual has violated this section is not explained. Second, other remedies available to the Department in paragraph (2) are not provided. We ask the Board to explain how this subsection will be implemented. Further, the Board should consider clarifying this subsection to explain the additional remedies available to the Department, if appropriate.

This comment also applies to Section 208.376(d) (relating to smoking prohibition: underground areas).

2. Section 208.376. Smoking prohibition: underground areas. – Implementation procedures; Clarity and lack of ambiguity.

Subsections (b) and (d) state smoking-related articles that may not be carried into mines. For clarity, the Board should revise these subsections to contain identical lists of items or explain why it is not necessary to do so.

3. Regulatory Analysis Form (RAF).

The RAF provides the number of bituminous coal mines in Questions # 15 – 17 and 19. However, individuals who work at these coal mines are directly impacted by this regulation as acknowledged in Question # 27, which states that “this proposed rulemaking addresses the individual conduct of miners, mine officials, and other persons in and about mines.” The number of individuals affected by the regulation should be included in these questions in the RAF submitted with the final-form regulation. We also ask the Board to estimate the cost to the regulated community in Question # 23 and provide the number of individuals who have been decertified for violating existing smoking prohibitions.