

**PROPOSED RULEMAKING  
BOARD OF COAL MINE SAFETY  
25 PA. CODE CH. 208  
PROHIBITING ELECTRONIC LIQUID-VAPORIZING DEVICES AT  
UNDERGROUND BITUMINOUS COAL MINES**

The Board of Coal Mine Safety proposes to amend Chapter 208 (relating to underground coal mine safety) to read as set forth in Annex A.

The proposed rulemaking was adopted by the Board at its meeting of \_\_\_\_\_.

***A. Effective Date***

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

***B. Contact Persons***

For further information, contact Richard Wagner, Director, Bureau of Mine Safety, P.O. Box 133, New Stanton, PA 15672, (724) 925-5551; or Robert A. Reiley, Acting Director, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105, (717) 787-9376.

***C. Statutory Authority***

The proposed rulemaking is authorized under section 106.1(a) of the Bituminous Coal Mine Safety Act (“BCMSA”) (52 P.S. § 690-106.1(a)), which grants the Board of Coal Mine Safety (“Board”) the authority to adopt 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. Section 106.1(f)(2) of the BCMSA (52 P.S. § 690-106.1(f)(2)), further provides that regulations may address any hazards not addressed by existing safety standards.

***D. Background and Purpose***

On July 7, 2008, the BCMSA was enacted, which was the first significant update of the Commonwealth’s underground bituminous coal mine safety laws since 1961. Section 106 of BCMSA (52 P.S. § 690-106) establishes the Board, which consists of three members representing mine workers, three members representing underground bituminous coal mine operators and the Secretary of the Department of Environmental Protection (“Department”) who serves as the Board’s chairperson.

The purposes of BCMSA, enumerated under section 103(b) (52 P.S. § 690-103(b)), include the establishment and promulgation of improved mandatory standards to protect the health and safety of miners and other individuals in and about mines. To protect the health and safety of miners and other individuals, this proposed rulemaking will amend the smoking prohibition at underground bituminous coal mines to expressly prohibit the use and/or possession of electronic

liquid-vaporizing devices, including electronic cigarettes, and impose a penalty for violations of the prohibition. By prohibiting the use of and/or possession of electronic liquid vaporizing devices at underground bituminous coal mines, this proposed rulemaking addresses both explosive and distraction hazards these devices present at underground bituminous coal mining operations.

This proposed rulemaking will also separately distinguish the prohibition at surface work areas of underground bituminous coal mines from the prohibition inside these mines.

Coal mine fires pose a constant danger to the safety of miners and to their livelihood. Underground mine fires pose an added hazard because of the confined environment with remote exits. The Federal government has enacted safety regulations for underground coal mines that has greatly improved the safety of miners. 30 CFR Part 75. However, mine fires and fire injuries remain serious hazards for all coal mining operations. The combination of an electronic cigarette and a lithium-ion battery is a new and unique hazard. There is no analogy among consumer products to the risk of a severe, acute injury presented by an e-cigarette. Fires or explosions caused by the batteries used in electronic cigarette are uncommon. However, the consequences can be devastating and life-altering for the victims. This is especially a concern in the underground mining environment, where explosions in underground mines are caused by accumulations of flammable gas and/or combustible dust mixed with air in the presence of an ignition source. While much progress has been made in preventing explosion disasters in coal mines, explosions still occur, sometimes producing multiple fatalities. Preventing fires is essential to the health and safety of mine workers.

Miners, their families, mining companies, and others will benefit from the additional safety ensured by the avoided hazards associated with the use or possession of electronic liquid-vaporizing devices at underground bituminous coal mines. Additionally, miners, mine officials, mine operators, and the Department will benefit from clarity regarding how the use and possession of these devices are regulated at underground bituminous coal mines.

#### ***E. Summary of Regulatory Requirements***

This proposed rulemaking amends the existing smoking prohibition at § 208.375, which applies at surface work areas of underground bituminous coal mines.

##### *§ 208.375. Smoking Prohibition: Surface Work Areas*

Subsection (a) retains the existing smoking prohibition at surface work areas of underground bituminous coal mines, which incorporates the Federal regulation at 30 CFR 77.1711.

Subsection (b) is a new subsection that expressly prohibits electronic liquid-vaporizing devices and authorizes the imposition of a penalty for violations of this section. The penalty refers to the penalty imposed under Federal law, so as not to be more stringent. See 30 CFR 100.5(d). Pursuant to the Federal Civil Penalties Inflation Adjustment Act, the maximum penalty is updated every year to reflect inflation and is currently set at \$338.00 as of January 15, 2020. See 85 FR 2299. The penalty will not be exclusive of any other enforcement option the Department determines is warranted under the particular circumstances of the violation.

### *§ 208.376. Smoking Prohibition: Underground Areas*

Subsections (a) – (c) is based on the existing provisions of the smoking prohibition in underground bituminous coal mines from Section 268(b) of the BCMSA (52 P.S. § 690-268(b)) and adds clarification that this prohibition applies to the use and possession of electronic liquid-vaporizing devices. Subsection (a) prohibits the use of smoking materials, subsection (b) prohibits the possession of smoking materials, and subsection (c) authorizes operators to search any individual entering the mine.

Section 208.376(d) is a new subsection that will authorize the imposition of a penalty for violations of this section. Just as in section 208.375, described above, the penalty refers to the penalty imposed under Federal law, so as not to be more stringent. See 30 CFR 100.5(d). Pursuant to the Federal Civil Penalties Inflation Adjustment Act, the maximum penalty is updated every year to reflect inflation and is currently set at \$338.00 as of January 15, 2020. See 85 FR 2299. The penalty will not be exclusive of any other enforcement option the Department determines is warranted under the particular circumstances of the violation.

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

#### *Benefits*

This proposed rulemaking will improve safety by expressly prohibiting the use and/or possession of electronic liquid-vaporizing devices, which present safety hazards, under the existing prohibitions against smoking and possession of smoking materials. The safety of miners in the workplace is a compelling public interest. All miners, their families, mining companies, and others will benefit from the additional safety ensured by the avoided hazards associated with the use or possession of electronic liquid-vaporizing devices at underground bituminous coal mines, such as explosive hazards and distraction hazards. Additionally, miners, mine officials, mine operators, and the Department will benefit from clarity regarding how the use and possession of these devices are regulated at underground bituminous coal mines.

#### *Compliance Costs*

This proposed rulemaking will not create any compliance costs and therefore does not minimize compliance costs. Because this proposed rulemaking prohibits the use or possession of certain items by persons at underground bituminous coal mines, the only requirement to comply is that persons not use or possess these items, which they can do at no cost.

#### *Paperwork requirements*

This proposed rulemaking does not generate additional paperwork because mining operators must comply with the existing statute and regulation.

### ***G. Pollution Prevention***

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) establishes a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has minimal impact on pollution prevention since it is focused on mine safety.

#### **H. *Sunset Review***

The Board is not proposing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to review these regulations for their effectiveness and recommend updates to the Board as necessary.

#### **I. *Regulatory Review***

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on **DATE**, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (“IRRC”) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

#### **J. *Public Comments***

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by **DATE**. Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Board of Coal Mine Safety, P.O. Box 8477, Harrisburg, PA 17105. Express mail should be sent to the Board of Coal Mine Safety, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105.

Patrick McDonnell  
Chairperson  
Board of Coal Mine Safety