Regulatory Analysis Form

(Completed by Promulgating Agency)

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

INDEPENDENT REGULATORY REVIEW COMMISSION

IRRC Number**:** 3190

(1) Agency: Department of Environmental Protection

(2) Agency Number: 7

Identification Number: 523

(3) PA Code Cite: 25 Pa. Code §§ 77.1 and 77.106

(4) Short Title: Noncoal Mining Program Fees

(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)

The final-form rulemaking revises current regulations to increase permit application fees and annual administration fees. It is necessary to increase fees because the revenue from the current fees, which were put in place 2012, does not adequately fund the implementation provisions of the Noncoal Surface Mining Conservation and Reclamation Act ("Noncoal Act"), 52 P.S. § 3301 *et seq*..

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

This final-form rulemaking is promulgated under the authority of sections 7(a) and 11(a) of the Noncoal Act (52 P. S. §§ 3307(a) (authorizing permit filing fee) and 3311(a) (authorizing rulemaking)); section 6 of the Clean Streams Law (35 P.S. § 691.6 (authorizing filing fee)); and section 1920-A of the Administrative Code of 1929 (71 P. S. § 510-20 (authorizing rulemaking)).

(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 final-form rulemaking is not mandated by any federal or state law. However, the rulemaking is necessary to ensure that there is adequate revenue to implement the provisions of the Noncoal Act.

(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.

This final-form rulemaking is necessary because sufficient money is not available for the Department of Environmental Protection (DEP or Department) to support the implementation of the Noncoal Act, the purpose of which is to, among other things, prevent water pollution, maintain water supply, provide for the conservation and improvement of areas of land affected in the surface mining of noncoal minerals, and eliminate hazards to health and safety and generally to improve the use and enjoyment of the lands. *See* 52 P.S. § 3302. The Department is also responsible for issuing, administering, and enforcing permits pursuant to the Clean Streams Law (CSL), 35 P.S. § 691.1 *et seq.*, the objective of which is "not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted." 35 P.S. § 691.4(3). The Department fulfills its responsibilities under the Noncoal Act and CSL through the implementation of its noncoal mining program and collects fees from noncoal mining permit applicants and permittees to cover the costs incurred by the Department to implement the program.

The vast majority of residents in Pennsylvania will benefit from the adequate implementation of the Noncoal Act. Noncoal mining operations occur in every county in Pennsylvania except Philadelphia. The residents of Pennsylvania will directly benefit from this regulation because the additional fees will allow the Department to adequate implement the provisions of the Noncoal Act and the CSL. As a result, the purposes of the Acts which are to protect public health and the environment will be fulfilled. Addionally industry will benefit because there will be sufficient Department staff to issue permits to allow operators to mine and generate revenue for their businesses.

The Department implements the noncoal mining program through the review of permit applications for the various types of noncoal mining operations and the inspection of these operations to ensure operators' compliance with their permits. There are approximately 1,200 noncoal mining operators in Pennsylvania. These operations range from small quarries that produce less than 2,000 tons of material per year to large quarries that produce millions of tons of aggregate per year. The Department issues permits for the term of the expected mining activity, which also varies from a few years to decades. Operators can request modifications of their permits if their plans change, which require further staff review. The Department inspects permitted noncoal mines for compliance with their permits and environmental and safety laws and regulations, including the Noncoal Act, the CSL, Chapter 77 and Chapter 209a (relating to surface mining).

The imbalance between the revenues and expenditures of the noncoal mining program is attributable to several factors. The personnel costs for Department staff in the noncoal mining program have increased over time. In addition, the workload has changed, because the time necessary to review new noncoal mining permit applications has increased due to the complexity of the review of newly proposed noncoal mining operations. Finally, certain indirect costs and overhead costs (offices, computers, other equipment and supplies) were not accounted for in the prior cost analysis.

The fees in the final regulation are more closely aligned with the Department’s workload than previous rulemakings. Based on the final rulemaking analysis, an average of three hours is needed to inspect a small noncoal mine operation, rather than the two hours estimated in a cost analysis from prior years. An average of five hours is needed to inspect the larger operations rather than the seven hours used in the prior analysis. Accordingly, the final-form rulemaking includes different fee levels for small and large operations.

The final-form rulemaking will provide additional funding to sustain the program. The current rate of revenues and expenditures will likely exhaust the reserves by 2020 in the Noncoal Surface Mining Fund, resulting in inadequate funding and potential curtailment of the program. Without the stable funding realized through the imposition of the increased fees, the Department will not be capable of timely issuance, administration, and enforcement of permits to 1,200 operators as required by the Noncoal Act and the CSL. As a result, applicants will not be able to conduct lawful mining activities, which will have a negative impact on the economy. Additionally, inadequate enforcement of existing permits will have a deleterious effect on public health and safety, and the environment.

Because Noncoal Act prohibits noncoal mining without a permit issued by the Department, timely processing of noncoal operator permits (approximately 500 annually) is vital for Pennsylvania's economy as the noncoal industry is currently a $20 billion dollar per year industry in the state, which consistently ranks among the top ten noncoal mineral producers in the nation. Citizens who live in affected areas will be protected by adequate inspections, enforcement, and oversight, and citizens across the Commonwealth will benefit from a healthy and protected natural environment.

(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 provisions are more stringent than federal standards because noncoal mining is not subject to federal standards.

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

Pennsylvania will remain in a competitive position when compared with other states. Direct comparison is not possible because states have differing approaches to assessing fees, like fees assessed based on permitting actions, size of the permit, production, or other factors. Based on an analysis of neighboring states' fees, for a 50-acre mine producing minerals for 30 years, the estimated amounts paid are:

State	**Permit Fees**	**Other Fees**	**Total**	**Additional Costs**
Maryland	$18,000	$1,500	$19,500	
New York	(None)	$240,000	$240,000	
Ohio	$1,500	$18,750	$20,250	Plus Severance Tax
Virginia	$24,750	$9,900	$34,650	
West Virginia	$2,500	(None)	$4,500	Plus Severance Tax
Pennsylvania	$16,125	$51,100	$67,225	

In addition to fees, Ohio and West Virginia charge a tax based on the quantity of minerals extracted. In Ohio, operators pay an additional four cents per ton of salt, two cents per ton of limestone and gravel, and one cent per ton for sandstone, shale, and quartzite. West Virginia assesses a tax based on the value of the mineral at five cents per $100. These are not included in the table as permit fees, but are noted as additional costs to the operator.

New York assesses an annual fee based on the size of the disturbed area, applied in ranges:

- $400 for minor projects
- $700 for mines less than or equal to 5 acres
- $900 for mines between 5 and 10 acres
- $1,500 for mines between 10 and 20 acres
- $4,000 for mines between 20 and 30 acres
- $8,000 for mines greater than 30 acres

Maryland and Virginia charge permit fees of $12 per acre and $16 per acre, respectively, and these are paid with the one-year renewal of the permit. Virginia also charges an annual fee of $330 if filed electronically (used here), or $400 if filed on paper. Maryland charges a one-time reclamation fee of $30 per acre. Ohio charges a one-time fee of $75 per acre and an annual reporting fee of $500 per year.

It is important to note that the markets for noncoal minerals are localized and not driven by state-by-state markets. Mineral materials are a low-cost commodity and the transportation of the minerals represent a substantial portion of the cost to the consumer. It is unlikely out-of-state sources of noncoal minerals can compete within Pennsylvania industry due to increased transportation costs. Further, noncoal mines exist in every county of Pennsylvania (except for Philadelphia) allowing for materials to be readily available at a low cost throughout the state.

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

This regulation will not impact any other regulations.

(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.)

The Department conducted extensive outreach on both the proposed and final rulemaking packages. For instance, the proposed rulemaking was discussed at multiple meetings with the Aggregate Advisory Board, which includes representation from the Pennsylvania House of Representatives, Pennsylvania Senate, Pennsylvania Aggregate and Concrete Association, Citizens Advisory Council, and private industry. This interaction, which ultimately resulted in a recommendation to move forward with presenting the proposed rulemaking to the Environmental Quality Board, ("EQB") took place over a period of 15 months at six meetings of the full board and seven meetings of the Aggregate Advisory Board's Regulation, Legislation and Technical Committee.

The Department presented revenue and cost data to the Pennsylvania Aggregate and Concrete Association periodically since the fee collections established in the 2012 final rulemaking. The Aggregate Advisory Board reviewed the draft 2015 cost analysis at its initial meeting on May 13, 2015.

In addition, the Department provided detailed data about the mining program's expenses and revenue at this meeting. The Aggregate Advisory Board conducted additional review of the cost and revenue data at its meeting on August 21, 2015.

By letter dated June 12, 2015, the Pennsylvania Concrete and Aggregate Association and the Pennsylvania Bluestone Association requested detailed information about the revenue and expenses for both the coal mining and noncoal mining programs. The Department posted data responding to this request on the Aggregate Advisory Board webpage and reviewed the data with the Aggregate Advisory Board's Regulatory, Legislative, and Technical ("RLT") Committee on September 22, 2015, and October 23, 2015. The Department also provided its workload analysis for the mining program, the total fees collected, the number and types of applications and inspections, and the hours worked by Department employees for the coal and noncoal mining programs. The Department reviewed the data, including additional revenue data, with the Aggregate Advisory Board at its November 10, 2015 meeting.

The Department posted additional data on the Aggregate Advisory Board webpage and reviewed the data with the RLT Committee at its January 19, 2016 meeting. The data included the Department's spend plan, which analyzed existing and projected revenue and expenses for the noncoal mining program. At this meeting, the Department introduced the concept of phasing in fee increases and presented a preliminary draft of the proposed revisions to § 77.106, which included a proposed fee schedule.

On February 18, 2016, the RLT Committee met to review the preliminary draft revisions to § 77.106. At a meeting of the full Aggregate Advisory Board, also on February 18, 2016, the Board discussed recommendations to the draft revisions. On May 4, 2016, the Aggregate Advisory Board met and referred the draft fee revisions to the RLT Committee for further review. The RLT Committee met on June 9, June 30, July 18, and August 3, 2016, and provided its recommendation to the full Aggregate Advisory Board on November 2, 2016. The RLT Committee recommended to the full Board that the rulemaking proceed with the fee schedule as drafted. Further, the RLT Committees recommendation would coincide with continued collaboration with the Department on programmatic issues identified by the Aggregate Advisory Board. These issues are outlined in a "Framework Document" presented at the Board's meeting on August 3, 2016. By letter dated October 3, 2016, the Secretary of the Department sent notice to the Aggregate Advisory Board of the Department's "commitment to fully collaborate with the Aggregate Advisory Board on prioritizing and resolving the issues identified in the Framework Document."

Following the Aggregate Advisory Board's acceptance of the RLT Committee's report, the Department recommended that the proposed rulemaking move forward for EQB consideration, and the Aggregate Advisory Board concurred.. The data the Department provided to the Aggregate Advisory Board during the development of the noncoal fee rulemaking are available on the Aggregate Advisory Board's webpage: http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Aggregate-Advisory-Board/Pages/default.aspx

The proposed rulemaking was adopted by the EQB on October 17, 2017. It was published in the *Pennsylvania Bulletin* on February 3, 2018 with a 30-day comment period. Comments were received from one public commentator and IRRC.

This final-form rulemaking was reviewed with the Aggregate Advisory Board at its May 9, 2018 meeting. The Board, with the proviso that the actual dates be inserted in the language for when the various schedules come into effect, concurred with the Department's recommendation to proceed with the final-form rulemaking process.

(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?

See also the response to question #10 above. Approximately 1,200 licensed noncoal mine operators operate in Pennsylvania. Most of these entities who conduct noncoal mining in Pennsylvania are small businesses. Only a few of the licensed noncoal mine operators are not small businesses.

(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.

See also the response to question #10 above. The 1,200 licensed noncoal mine operators in Pennsylvania will be required to comply with the final-form rulemaking.

(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.

See also the response to question #10 above. The amendments increase the cost for permit application fees and annual administration fees. These will impose an added cost to the regulated community, which are approximately 1,200 small businesses. However, the amendments also benefit regulated entities by appropriately funding the regulatory program, which will allow them to continue their operations smoothly. A fully-staffed program can review and issue permits in a timely manner, provide technical assistance, and produce necessary technical guidance documents and policies. This funding also protects public health and the environment from spills or accidents by ensuring the appropriate inspection staff are available. Noncoal mining operations affect many members of the public, as they occur in every county in Pennsylvania except Philadelphia.

To mitigate the impacts on the noncoal operators, the Department introduced an approach that will incrementally increase the fees in three, two-year phases. Also, consistent with current practice, fees vary for different types of operations. For example, permit applications for large noncoal surface mining operations that propose to pump groundwater take significantly more time to review because of their potential hydrologic impact. Therefore, the permit application fee for these operations is higher than for an operation that does not include groundwater pumping. Similarly, if blasting is proposed, then the blasting inspector is involved in the review of the blast plan for the permit application. Therefore, the fee schedule includes a permit application fee for review of blast plans, based on the cost to review those plans. These strategies both account for the Department's workload and avoid charging smaller or simpler operations a higher fee than necessary. In addition, the first phase of the fees has an effective date of January 1, 2020, which provides time for permittees to plan for the increases.

The existing fee structure inadequately covers the cost for DEP to review permit applications, perform inspections, provide compliance assistance, and track permittee reporting requirements. Without an adjustment to the fee schedule, the gap between the fees and program costs will continue to grow and the program will need to curtail the vital programmatic operations that implement the Noncoal Act. A fee sufficient to support the implementation of the Noncoal Act will allow the Department to achieve those purposes for the benefit of the citizens of the Commonwealth.

The total increased cost to the regulated community will be approximately $1.3 million when all phases of the fee are implemented on January 1, 2024.

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

See also the responses to questions #10 and #17 above. Adequate permit review staff allow the Department to prevent environmental problems before they occur by ensuring how operations plan to comply with the environmental laws and regulations. Adequate inspection staff allow the Department to both prevent problems at permitted sites before they occur and discover problems that have occurred in order to ensure they are timely remedied. Timely permit reviews also allow the industry to plan operations smoothly and thereby secure investment. Therefore, timely processing of noncoal operator permits (approximately 500 annually) is vital for Pennsylvania's economy as the noncoal industry is currently a $20 billion per year industry in the state, which consistently ranks among the top ten noncoal mineral producing states in the nation.

Environmental risks from noncoal mining operations could possibly result from collapsed highwalls, mine drainage, dust, noise, or abandoned equipment. The Department's ability to mitigate such environmental risks through implementation of the Act outweighs the cost to the regulated community from the fees adjusted under the regulation. This is because the increased costs (approximately $1.3 million) pay for services that are vital for the $20 billion industry, and at the same time are protective of the Commonwealth's 12.7 million residents.

(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.

See also the responses to questions #10 and #17 above. The fees are increased in three, two-year phases initially, with an inflation factor to be applied after these three phases. This is to avoid a sudden increase in cost for the regulated community. The cost increases for small operators will be the most dramatic. Permit application fee increases for small noncoal permittees, as compared to the current fee schedule, are about 14% in the first phase, 26% in the second phase and 48% in the third phase. The annual administration fees for these small permittees will increase by 100% in the first phase, 125% in the second phase and 150% in the third phase of the fee schedule. This substantial increase in annual fees for small permittees is attributable to three primary factors. First, the workload analysis used to manage the workforce for the mining program was revised. The number of hours needed to inspect a small noncoal mine site was adjusted from 2 hours (this is from the workload analysis from 2009) to 3 hours (in 2015). Second, the cost per hour for inspection work increased from about $52 to $66 from 2009 to 2015. Finally, the second and third phases of the fee schedule include additional cost factors, indirect costs and overhead which were not previously accurately accounted for.

For large noncoal permittees, the permit application fee increases range from about 8% to 16% in the first phase, 22% to 33% in the second phase and 42% to 63% in the third phase. Annual fee increases for these large noncoal permittees are about 0% for the first phase, 3.5% for the second phase and 21% for the third phase. The primary reason that these fees are not increased as much as for the small permittees is that the workload analysis included a reduction for the number of hours (from 7 hours per inspection in 2009 to 5 hours per inspection for 2015) needed to inspect a large noncoal mining permit.

The total increased costs to the industry for the fees is about $1,150,000 four years after the finalization of the fee schedule. After this point, the fees will be adjusted to reflect inflation. For context regarding the cost, this industry brings in approximately $20 billion per year in revenue.

While no direct savings to the regulated community are expected, the Department has taken measures to ensure that the burden of the fee is allocated fairly among operators, according to the workload presented by each permit application. As mentioned in the responses to questions #10 and #17 above, the Department proposes separate fees for large and small operators, and separate fees for operations that use groundwater pumping and blasting. This ensures that operations with minimal complexity (usually smaller ones) owe a lower permit application fee.

(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.

The Department expects no impact on local governments, because these entities are not engaged in noncoal mining activities regulated under the Noncoal Act.

(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.

The regulation will not create any additional costs or savings to the state government because the administration involved in the collection of fees will remain the same as it does under the current regulations in Chapter 77.

(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.

The Department does not anticipate any additional reporting, recordkeeping or other paperwork because the administration involved in the collection of fees will remain the same as it does under the current regulations in Chapter 77.

(22a) Are forms required for implementation of the regulation?

The regulation does not require new forms. The Department will revise existing forms to reflect the final fee schedule once it is adopted.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The Large Industrial Mineral Mine Permit Application form (5600-PM-BMP0315) includes a fee schedule in Module 1:
http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-98752/5600-PM-BMP0315-1.pdf

The Small Industrial Mineral Mine Permit Application (5600-PM-BMP0316) does not include a fee section. http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3871

The Department collects annual administration fees with the license renewal application. These applications are generated by the Department's database. Each application includes a customized annual administration fee section that calculates the fee for the applicant. The Department expects applicants to confirm that the information provided by the Department from the database is correct. The Department resolves any discrepancies during the license renewal review process. When the final-form regulations are approved, the Department will update the database to reflect the final fee amounts.

(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.

	Current FY 2018-19	**FY +1 Year 2019-20**	**FY +2 Year 2020-21**	**FY +3 Year 2021-22**	**FY +4 Year 2022-23**	**FY +5 Year 2023-24**
SAVINGS:	**$**	**$**	**$**	**$**	**$**	**$**
Regulated Community	$0	$0	$0	$0	$0	$0
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Savings	$0	$0	$0	$0	$0	$0
COSTS:						
Regulated Community	$0	$175,000	$350,000	$650,000	$900,000	$1,150,000
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Costs	$0	$175,000	$350,000	$650,000	$900,000	$1,150,000
REVENUE LOSSES:						
Regulated Community	$0	$0	$0	$0	$0	$0
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Revenue Losses	$0	$0	$0	$0	$0	$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	**FY -3 2015/16**	**FY -2 2016/17**	**FY -1 2017/18**	**Current FY 2018/19**
Noncoal Surface Mining Conservation & Reclamation Fund	$3,195,984 (Actual)	$4,485,000 (Actual)	$4,122,000 (Actual)	$3,940,000 (Budget)

(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.

The Department estimates that there are about 1,200 small businesses which will be subject to this regulation.

(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.

The Department does not anticipate any additional reporting, recordkeeping or other paperwork because the administration involved in the collection of fees will remain the same. Each business's determination of the fee amount to be paid is based on simple categories such as whether the mining permit is "large" or "small," and whether blasting or groundwater pumping are involved.

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

It is possible that some small businesses may suspend operations due to the fee increases. This industry is quite diverse and large. Some operators are well capitalized and operate on a continuous basis and others are undercapitalized and operate on an occasional basis. When the Department imposed its initial fee schedule in 2012, 100 operators suspended business between 2011 and 2016. While not all of these closures can be attributed to the fee requirement alone, the Department remains sensitive about how fee increases may impact smaller operators. As a result, the fee schedule in this final rulemaking is not effective until 2020, which gives all operators some time to prepare for the increase. Additionally, the fee schedule is phased in from 2020 through 2024, which will also provide operators the ability to plan ahead for the increases.

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

No alternative method exists to accomplish the revenue generation and public safety elements of this final-form rulemaking. The fee amounts are based upon the actual cost for the Department to do the work, so while every effort is made to reduce the impact for small businesses, it is not possible to eliminate the effect because the fees reflect the cost of implementing the Noncoal Act. Without another funding source, which is not available, it is not possible to mitigate the impact on small businesses. Phasing in the fee increases in two-year increments, beginning in 2020, provides an opportunity for small businesses to plan for the increased costs. Also, the fees are now different for large and small operators. Certain technologies (i.e., groundwater pumping and blasting) require separate fees as well. This ensures that smaller and less complex operations pay a lower cost, which is commensurate with the lower workload their applications require of the Department.

(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.

See also the responses to questions #10, #17, #19, and #24 above. The regulation contains no special provisions focused on the needs of minorities, the elderly, or farmers. Current Department policies do take into account the needs of minorities and low-income citizens in areas of noncoal mining. The Department's Enhanced Environmental Justice Public Participation Policy includes large industrial mineral surface mines on the list of permits that may be subject to additional outreach by Department staff if the proposed mine is within an area whose population is either 30% racial minority or 20% low-income. This outreach involves a plain-language summary of the permit application in terms understandable to a majority of readers, and at least one public meeting organized by the Department and the applicant to explain the underlying issues to the community.

Smaller operators will now pay a lower fee than large operators. The phased in approach built into the fee schedules allows permittees to plan for the increases. Also, the fee schedule takes into account specific operations such as groundwater pumping. In this way, the Department has allowed smaller operators, which do not typically use such technologies, to avoid that fee.

(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.

Because the premise of this rulemaking is full cost recovery to implement the Department's noncoal program, the final permit fee for each permit category reflects the Department's cost and workload analysis. The Noncoal Act authorizes the Department to adjust fees in this manner and the Department did not consider alternative regulatory provisions outside of the fee schedule provision as a less burdensome alternative. However, the Department did consider the impact that an all-at-once fee adjustment would have on the regulated community and determined that a three-phase roll out of the fee adjustment over four years would be a less burdensome acceptable alternative.

The Department has implemented measures to decrease costs for the noncoal mining program, which reduce the need for funding. For example, the noncoal mining program has partnered with the coal mining program to reduce overhead costs and has reduced its administrative costs to less than 5% of the total program costs. However, while the efficiencies have reduced the cost of administering the noncoal mining program, these efficiencies alone could not offset the projected shortfall in funding.

(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 performance 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.

See also the responses to questions #10, #17, #19, #24, and #25. The Department did not consider other regulatory methods that will minimize adverse impacts specifically on small businesses, because the focus of this rulemaking relates to fee schedules to generate sufficient revenue to implement the noncoal mining program. However, consistent with current practice, the Department scaled the fees based on the size and scope of the regulated operation, which may to some extent correlate with the size of the business. The Department also considered the impact that an all-at-once fee adjustment would have on the regulated community and determined that a three-phase roll out of the fee adjustment over four years would be a less burdensome acceptable alternative. Again, the Department considered this flexibility in relation to the industry as a whole and not specifically with regard to small businesses as defined by the Regulatory Review Act. However, the Department anticipates that small businesses will be more likely to benefit from the three-phase roll out of the regulation.

(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.

The data used in the development of the final-form rulemaking is related to the calculations of the fees. The fee amounts are based on a workload planning tool used by the Department to manage staffing levels. The Department reviewed the time necessary to administer the noncoal mining program and the associated staff costs (salary and benefits) and overhead costs (offices, computers, other equipment, supplies, and the like). Revenues used in the analysis were actual revenues received in prior years, and future revenues projected by known expenses and a conservative growth rate. No external data sources were used.

Current calculations of DEP's noncoal mining program reveal a substantial deficit between incoming revenue and expenses used to permit and administer the noncoal mining program:

Fiscal Year	**Revenue**	**Expenses**
2011-12	$1,081,051	$3,381,851
2012-13	$1,704,234	$3,059,000
2013-14	$2,452,449	$3,045,286
2014-15	$2,569,751	$2,912,237
2015-16	$2,532,838	$3,195,984
2016-17	$2,437,195	$4,485,000
2017-18	$2,617,771	$3,589,781

As part of the workload analysis, the Department reviewed the number of hours required to review permit applications and issue permits for each type of noncoal mining operation. The Department also reviewed the wage rate for the employees that conduct the permit reviews, along with the cost of employee benefits and associated overhead costs. The workload analysis data the Department used in the development of the proposed rulemaking is included in a spreadsheet with multiple pages available on the Aggregate Advisory Board's webpage at http://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Aggregate-Advisory-Board/Pages/2015.aspx (under "Aggregate Advisory Board RLT Meeting Agenda (9-22-15) (PDF)" select "2015 Inspection Staff Analysis (XLSM)"). Workload data for the Department's review of permit applications (labeled "authorizations" in the spreadsheet) as well as its administration and enforcement of permits is included in this document.

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

A. The length of the public comment period:	30 Days
B. The date or dates on which any public meetings or hearings will be held:	NA
C. The expected date of delivery of the final-form regulation:	Quarter 3, 2018
D. The expected effective date of the final-form regulation:	January 1, 2020
E. The expected date by which compliance with the final-form regulation will be required:	January 1, 2020
F. The expected date by which required permits, licenses or other approvals must be obtained:	NA

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

The Department will gauge the regulation's effectiveness through ongoing interaction with the industry, advisory boards and the public. The ultimate test of effectiveness is whether the fees providing sufficient funding for the implementation of the Noncoal Act. The Department tracks this on a monthly basis as it receives revenue and incurs costs. The Department will also evaluate the continuing effectiveness of the regulations as it complies with 25 Pa. Code § 77.106(d), under which the Department evaluates every three years the fees income and the costs of implementing the Noncoal program.