

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p><b><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></b></p>
<p><b>(All Comments submitted on this regulation will appear on IRRC's website)</b></p>		
<p>(1) Agency: Department of Environmental Protection</p>		
<p>(2) Agency Number: Identification Number: 7-532</p>		<p>IRRC Number:</p>
<p>(3) PA Code Cite: 25 Pa. Code Chapters 86, 87, 88, 89, &amp; 90</p>		
<p>(4) Short Title: Federal Office of Surface Mining Reclamation and Enforcement (OSM) Program Consistency Rule</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):                      Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov                      Secondary Contact: Jessica Shirley 783-8727, jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p> <input checked="" type="checkbox"/> Proposed Regulation  <input type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation                     </p>		<p> <input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General                     </p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This proposed rulemaking primarily addresses inconsistencies between the Commonwealth's coal mining program and federal regulations. For general program maintenance, additional revisions were included to correct organization names, statutory citations, remaining requirements, and the use of reference data for the sizing of stormwater control facilities. These regulations are managed and overseen by the Federal Office of Surface Mining Reclamation and Enforcement ("OSM").</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This proposed rulemaking is authorized under the authority of Section 5 of The Clean Streams Law (35 P.S. § 691.5); Sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); Section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); Section 7 (b) of the Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7 (b)); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).</p>		
<p>(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.</p> <p>Portions of the rulemaking are mandated by federal regulations.</p>		

*The following are Required Program Amendments:*

OSM has not approved 25 Pa. Code §86.151(d) because it is less effective than the federal requirement:

We are not approving the word “augmented” in the last sentence of subsection 86.151(d) that we found to be less effective on April 8, 1993 (58 FR 18154). 30 CFR 938.12(d).

OSM has required that the Commonwealth revise its regulations relating to the valuation of collateral bonds at 30 CFR 938.16(m)-(o):

(m) By November 1, 1991, Pennsylvania shall amend its rules at §86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value. 30 CFR 938.16(m).

(n) By November 1, 1991, Pennsylvania shall amend §86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture. 30 CFR 938.16(n).

(o) By November 1, 1991, Pennsylvania shall amend §86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements. 30 CFR 938.16(o).

OSM has also required that the Commonwealth revise its regulations relating to the use of public roads as part of an anthracite mining operation:

(mmm) By October 5, 1993, Pennsylvania shall submit a proposed amendment to §88.1 to require that the definition of haul road include all roads (including public roads) that are used as an integral part of the coal mining activity and to clarify that the area of the road includes the entire area within the right-of-way, including roadbeds, shoulders, parking and side areas, approaches, structures, and ditches. 30 CFR 938.16 (mmm).

In addition, OSM has taken exception to the interpretation of the definition of surface mining activities. OSM has not taken formal action on this because Pennsylvania has committed to correcting the matter at the earliest opportunity. The proposed rulemaking meets this commitment.

(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 regulation is needed to address inconsistencies between Pennsylvania’s coal mining regulatory program and the federal OSM requirements. Failure to address these issues puts the Commonwealth at risk for losing program primacy to the federal government. The loss of program primacy would threaten

the federal Title V grant which funds about fifty percent of the Coal Mining Program which, in FY 16-17 cost about \$25,413,733.00.

Tables in sections 87.103, 88.93, 88.188, 88.293, 89.53, and 90.103 currently use outdated climatological data from the early 1980s. The proposed regulation replaces these tables with a general reference to data available from the National Oceanic and Atmospheric Administration (NOAA). NOAA's data is currently available online through its precipitation and storm event tool, which provides a more accurate account of storm events and, generally, lower precipitation levels. Therefore, in many cases, stormwater control facilities are over-designed and require unnecessary earth disturbance. This revision will result in properly-sized stormwater control facilities and reduced costs for mine operators.

Additionally, mine operators, of which there are approximately 400 in Pennsylvania, will benefit from the added clarity and corrections proposed in this regulation, which will improve the efficiency and implementation of the requirements.

(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.

The primary purpose of the proposed rulemaking is to bring the Commonwealth's coal mining requirements in conformance with the federal requirements. No requirements in this proposed rule are more stringent than federal standards. However, some of the regulatory requirements included in this proposed rulemaking are unique to Pennsylvania. For example, there are no federal counterparts to the remaining financial guarantee or Anthracite Emergency Bond Loan programs.

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

All states must be no less stringent than the OSM requirements. Some States simply adopt the federal requirements by reference. Others, like Pennsylvania, customize the requirements to meet the particular circumstances in the State. Pennsylvania will remain in a competitive position when compared with other States while retaining the flexibility needed for these particular circumstances.

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

The proposed rulemaking includes some corrections to cross-references to other regulations, but does not impact the referenced 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 collaborated with the Mining and Reclamation Advisory Board (MRAB), which is composed of representation from anthracite surface mine operators, the Pennsylvania Coal Alliance, the Pennsylvania Anthracite Council, the County Conservation Districts, the Citizens Advisory Council, the Pennsylvania House of Representatives, and the Pennsylvania Senate to develop this proposed rulemaking. This included discussion at several Regulation, Legislation and Technical (RLT) committee RLT committee meetings. In July 2016, the Department delivered a presentation summarizing the

proposed requirements to the MRAB at their quarterly meeting. At its April 6, 2017, meeting, the MRAB voted to concur with DEP's recommendation that the proposed rulemaking move forward in the regulatory process. The July 2016 presentation was available on the Department's MRAB web page prior to the meeting.

Additional opportunities for stakeholder input were made available when the program amendments were promulgated by OSM and subject to public comment in the Federal Register.

(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?

The regulated community is comprised of about 400 businesses, most of which are small businesses, and will be subject to this regulation. The regulations will apply consistently among all operations for small and large businesses alike.

The proposed amendments are primarily administrative, and therefore the impact on small businesses will be negligible. The proposed amendment relating to stormwater control facilities is likely to save time and monetary resources for all businesses because the result is more appropriately-sized (smaller) stormwater control facilities.

(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.

There are about 400 coal mining companies conducting operations in Pennsylvania that will be subject to this regulation, most of which are small businesses.

(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.

The revisions in this proposed rulemaking will resolve inconsistencies with federal requirements, allow the Commonwealth to maintain program primacy, provide clarity to mine operators regarding compliance standards, and result in properly-sized stormwater facilities. In some cases, the latter benefit will result in reduced costs because current regulations may require larger facilities than necessary.

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

The benefits included in this proposed rulemaking generally focus on eliminating inconsistencies, reducing confusion, and improving efficiency. Further, aligning the Commonwealth's regulations with the federal OSM regulations will allow the Commonwealth to maintain Program primacy and secure the federal Title V grant, which funds approximately fifty percent of the Coal Mining Program. Mining operators may benefit by realizing financial savings from a reduction in stormwater controls.

As these proposed regulatory amendments are primarily administrative, no additional costs or adverse effects are anticipated.

(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.

It is not possible to provide a specific estimate of the savings resulting from the proper sizing of stormwater controls. The potential savings will be based on the number of new facilities to be built, the location of those facilities and the specific designs.

No additional costs or savings to the regulated community are anticipated.

(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.

No additional costs or savings to local governments are anticipated. However, one of the proposed amendments changes the way that the municipality is provided notice by the Department that an application has been received in their jurisdiction. This is an administrative change and, while it will impact compliance with the regulation, it is not anticipated to add costs to local governments.

(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.

No additional costs or savings to the state government are anticipated.

(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.

No additional reporting, recordkeeping or other paperwork is anticipated because the proposed rulemaking either clarifies existing requirements or updates references to outdated citations, names, and data sources.

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

No forms will be needed to implement the requirements included in this proposed rulemaking.

(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.**

No forms will be needed to implement the requirements included in this proposed rulemaking.

(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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Savings</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Costs</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Local Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>State Government</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Revenue Losses</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

<b>Program</b>	<b>FY -3 2014/15</b>	<b>FY -2 2015/16</b>	<b>FY -1 2016/17</b>	<b>Current FY 2017/18</b>
Coal Mining Program	\$22,077,588.18	\$23,798,006.00	\$24,011,703.67	\$25,413,733.00
	Note: this is based on the Title V grant expenditures on a federal FY basis.	Note: this is based on the Title V grant expenditures on a federal FY basis.	Note: this is based on the Title V grant expenditures on a federal FY basis.	Projected based on Title V grant request

(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.
- (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.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

It is estimated that 400 small businesses will be subject to this proposed regulation. This proposed regulation does not include any additional reporting, recordkeeping or other administrative costs required for compliance. This proposed regulation is not expected to have an adverse impact on small businesses. No alternative method other than modification to the regulation exists to make the Commonwealth's regulations consistent with the federal OSM regulations.

(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.

These proposed amendments are primarily administrative, and so minorities, the elderly, small businesses, and farmers will experience minimal, if any, impact. Therefore, no special provisions are included.

(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.

No alternate regulatory provisions were considered during the development of the rulemaking. Although no alternative methods were explored, DEP expects the proposed revisions to provide clarity and potential cost savings to the regulated community.

(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.

The amendments included in this proposed rulemaking will bring the Commonwealth in compliance with minimum regulatory standards set by the federal government. Because the proposed rulemaking clarifies existing requirements and updates references to outdated citations, names, and data sources, no

adverse impacts to small businesses are anticipated and therefore no alternative methods related to small businesses were explored. The Department expects the proposed revisions to provide clarity and potential cost savings to small businesses.

(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.

Data is not the basis for these proposed regulatory amendments. These amendments are proposed to make the Commonwealth's regulations consistent with the federal OSM regulations.

(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 1, 2019 |
| D. The expected effective date of the final-form regulation:                                  | Quarter 1, 2019 |
| E. The expected date by which compliance with the final-form regulation will be required:     | Quarter 1, 2019 |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | Quarter 1, 2019 |

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

Effectiveness will be gauged through ongoing interaction with the industry, advisory boards, and the public.