

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;"><b>(All Comments submitted on this regulation will appear on IRRC's website)</b></p>		<p><b><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></b></p>
<p>(1) Agency: Department of Environmental Protection</p>		<p>IRRC Number:</p>
<p>(2) Agency Number: 7 Identification Number: 554</p>		
<p>(3) PA Code Cite: 25 Pa. Code Chapter 77</p>		
<p>(4) Short Title: Noncoal Program Corrections and Clarifications</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):                  Primary Contact: Laura Griffin, 717-783-8727, laurgriffi@pa.gov                  Secondary Contact: Jessica Shirley, 717-783-8727, 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>The proposed amendments provide updates and clarifications for the requirements for mining noncoal minerals in Pennsylvania. Chapter 77 was finalized in 1990 to implement the Noncoal Surface Mining Conservation and Reclamation Act. Since 1990, the Department of Environmental Protection's (Department) experience in implementing the noncoal mining regulatory program has highlighted several issues that necessitate clarification of the regulations in Chapter 77. Many of the revisions in this proposed rulemaking are administrative in nature.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This proposed rulemaking is authorized under section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P.S. § 3311(a)), which authorizes the Environmental Quality Board (Board) to promulgate regulations as it deems necessary to carry out the provisions and purposes of the act; section 5 of The Clean Streams Law (35 P.S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.</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.

The regulation is not mandated by any federal or state law or court order or federal regulation.

There are two decisions of the Environmental Hearing Board (EHB) that are pertinent to parts of the proposed rulemaking. The coal exploration requirements in the existing regulations are somewhat confusing related to the conflation of requirements for exploration by drilling and a permit waiver. This was pointed out in *Lower Milford Twp. v. DEP (Geryville Materials, Inc., permittee)*, EHB Docket No. 2006-109-L (June 26, 2009). The proposed rulemaking creates a new section for exploration by drilling (§ 77.113) in an effort to dispel the confusion.

In *Karnick v. DEP (Wayco Sand and Gravel, permittee)*, EHB Docket No. 2016-135-M (April 24, 2018), the EHB pointed out the error in section 77.593(2), which makes reference to “subsection (a)” when there is no subsection (a), but rather there is subsection (1). This error is proposed to be corrected in this rulemaking.

(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 proposed regulation is needed to update the requirements for mining noncoal minerals in Pennsylvania and provide additional clarity to the regulated community and to the Department regarding compliance standards.

There are about 1,200 licensed noncoal mine operators that will benefit from the improved clarity of these proposed updates. Citizens of the commonwealth who reside in the vicinity of noncoal mine sites will also benefit, because clarity provides certainty as to the requirements and protections provided in the regulated environment. It is not possible to quantify the benefits because of the nature of the revisions.

(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.

Noncoal mining is not subject to federal standards. The noncoal regulatory program is implemented under the act and The Clean Streams Law.

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

While other states regulate noncoal mining, there are fundamental differences based on geology, geography and population. The geology controls the minerals that are available to be mined. Conceptually, regulatory approaches are similar from state-to-state taking into account these differences.

This proposed rulemaking will not put the Commonwealth at any competitive disadvantage 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.

(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 worked with the Aggregate Advisory Board to develop these proposed regulations. The Aggregate Advisory Board is comprised of the Secretary of the Department of Environmental Protection, three aggregate surface mining operators, four members of the public from the Citizens Advisory Council, one member from county conservation districts, one Senate member from the majority party, one Senate member from the minority party, one House member from the majority party, and one House member from the minority party.

Interaction with the Aggregate Advisory Board began in October 2018 with a discussion of concepts at a meeting of the Aggregate Advisory Board's Regulatory, Legislative and Technical (RLT) committee meeting. The Department continued interaction with the Aggregate Advisory Board at several meetings of the RLT committee throughout 2019. On May 6, 2020, the Aggregate Advisory Board voted to concur with the Department's recommendation that the proposed rulemaking proceed with the regulatory 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?

There are about 1,200 licensed noncoal mine operators in Pennsylvania. While there are several multinational corporations who mine noncoal minerals in Pennsylvania, a majority of the regulated community meet the definition of small businesses.

The main impact of the proposed rulemaking on the regulated community should be improved clarity of the requirements for mining noncoal minerals in Pennsylvania. Outside of the improved clarity expected from this proposed regulation, one proposed change related to insurance requirements may have an additional impact on noncoal operators who extract more than 2,000 tons of marketable minerals in a

year. The proposed rulemaking seeks to increase the minimum insurance coverage amounts required for these operators. The Department estimates there are around 200 operators that will need to increase their insurance coverage, and many of these operators are small businesses. Operators who produce less than 2,000 tons of marketable minerals in a year are not subject to the insurance requirement, and all of these operators would be considered 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.

There are about 1,200 licensed noncoal mine operators in Pennsylvania that will be required to comply with the regulations. However, as noted in the response to Question 15, the proposed increase in insurance coverage amounts will only apply to a subset of the mine operators (about 200) who extract more than 2,000 tons of marketable minerals in a year.

(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 will be some moderate increased costs for approximately 200 operators, who produce more than 2,000 tons of marketable minerals per year, that would be required to increase their insurance coverage. Insurance costs vary depending on specific circumstances, so it is not possible to quantify the precise impact. Another factor to be considered is that many current licensed operators maintain more than the required minimum coverage, so they will not incur any additional cost as a result of the proposed increase in the minimum coverage limits. However, for those operators who chose to maintain the minimum coverage limits, the proposed rulemaking increases the overall limits from \$500,000 to \$1,000,000. Assuming that \$1,000,000 in liability coverage will cost about \$1,000 per year, the increase in costs will be approximately \$500 per year. Since it is anticipated that about 200 operators will have to increase their insurance coverage amounts, the proposed regulation would result in a collective additional cost to the regulated community of \$100,000 per year.

However, increasing the insurance coverage requirements is important as the last time the minimum insurance requirement amounts were modified was 1990. A minimum insurance coverage amount of \$1 million reflects the amount of insurance needed by today's standards to adequately provide for bodily injury or property damage caused by noncoal operations. This proposed increase will help to ensure that a noncoal operator has enough insurance coverage to adequately compensate persons injured or property damaged as a result of noncoal operations. An additional benefit is that the increased insurance coverage would reduce the financial risk of a catastrophic event for noncoal operators by ensuring they have adequate coverage to handle the costs associated with these events should they occur.

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

The overall benefit of the proposed rulemaking is improved clarity of the requirements for mining noncoal minerals in Pennsylvania for the regulated community, making business planning decisions easier.

The primary area where there is an anticipated increased cost associated with this proposed rulemaking is related to the minimum insurance coverage amounts increase. While there will be an increased cost to

operators who produce more than 2,000 tons of marketable minerals per year, this may benefit the operator by reducing the likelihood of a catastrophic loss. The public will also benefit, because there will be a reduced risk that any damage caused by mining will not be fully mitigated either by the operator or through a claim filed against the insurance.

(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 will be some moderate increased costs for approximately 200 operators, who produce more than 2,000 tons of marketable mineral per year, that would be required to increase their insurance coverage.

Insurance costs vary depending on specific circumstances, so it is not possible to quantify the precise impact. Another factor to be considered is that many current licensed operators maintain more than the required minimum coverage, so they will not incur any additional cost as a result of the proposed increase in the minimum coverage limits. However, for those operators who chose to maintain the minimum coverage limits, the proposed rulemaking increases the overall limits from \$500,000 to \$1,000,000. Assuming that \$1,000,000 in liability coverage will cost about \$1,000 per year, the increase in costs will be approximately \$500 per year. Since it is anticipated that about 200 operators will have to increase their insurance coverage amounts, the proposed regulation would result in a collective additional cost to the regulated community of \$100,000 per year.

(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.

There are no costs or savings for local governments anticipated as a result of this proposed rulemaking.

(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.

There are no identifiable costs or savings for state government anticipated as a result of this proposed rulemaking.

(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.

There are no additional reporting, recordkeeping or other paperwork requirements established in the proposed rulemaking. Some existing forms may need to be revised as described in more detail in response to parts (a) and (b) of this question.

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

The proposed rulemaking does not require any new forms. However, some existing forms are used for implementing the current program and will continue to be used upon finalization of the rulemaking package. For example, there are two forms related to noncoal exploration. The forms were revised in the aftermath of the Geryville Materials case referred to in the answer to Question 9. The proposed regulations reflect the approach taken in the forms, so it is unnecessary to substantially revise the forms in response to the proposed rulemaking. Please note that an effort is underway to implement ePermitting, which will ultimately replace these forms with on-line web forms.

The proposal to establish thresholds for the permit waiver will need to be reflected on the permit waiver form (and instructions) if it is approved as a final-form regulation. This will entail the inclusion of more detail on the form justifying the amount of material needed for the exploration.

(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 form for exploration by drilling can be found at this link:

<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3032>

Similarly, there is a form for the permit waiver, which can be found at the following link:

<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3033>

The regulations also make reference to “modules” in section 77.141(b)(2). These modules are related to the application for a large noncoal permit and are available here:

<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3818>

(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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Local Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>State Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Savings</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>COSTS:</b>						
<b>Regulated Community</b>	\$0.00	\$0.00	\$100,000	\$100,000	\$100,000	\$100,000
<b>Local Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>State Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

<b>Total Costs</b>			\$100,000	\$100,000	\$100,000	\$100,000
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Local Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>State Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Revenue Losses</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

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

<b>Program</b>	<b>FY -3(FY 16-17)</b>	<b>FY -2(FY 17-18)</b>	<b>FY -1(FY 18-19)</b>	<b>Current FY</b>
Noncoal Regulatory Program	\$3,751,374.10	\$3,589,781.10	\$3,673,145.63	\$3,600,000 (est.)

(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.

There are about 1,200 licensed noncoal mine operators in Pennsylvania, a majority of which meet the definition of small businesses.

(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.

While a nominal increase in costs is anticipated for small businesses, the overall increased costs is estimated to be about \$100,000 spread between about 200 operators who may have to increase their minimum insurance coverage as a result of the proposed regulation.

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

The probable effects of the proposed regulation on Pennsylvania's 1,200 licensed noncoal mine operators, a majority of which are small businesses, are that they will benefit from the improved clarity of the requirements for mining noncoal minerals in Pennsylvania, making business planning decisions easier. Approximately 200 of these operators, who produce more than 2,000 tons of marketable minerals per year, may have an increase in their costs due to the proposed increase in minimum insurance coverage requirements.

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

There are no apparent less costly alternative methods that would achieve the purpose of the proposed regulation.

(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.

There are no special provisions related to minorities, the elderly, small businesses, and farmers.

(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.

During interaction regarding the proposed rulemaking with the Aggregate Advisory Board, several versions of preliminary drafts were discussed. Several items from earlier drafts were rejected, because the discussions suggested that the changes were not necessary or might decrease clarity rather than improve it.

The proposed rulemaking as provided here was determined to be the least burdensome, acceptable alternative.

(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;

The existing regulatory scheme establishes simpler standards for operators who produce less than 2,000 tons of marketable minerals in a year. The proposed rulemaking maintains this scheme. There are no proposed revisions that will impose adverse impacts on small businesses.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

There are no new reporting requirements in the proposed rulemaking.

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

There are no new reporting requirements in the proposed rulemaking.

- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and

There are no new reporting requirements in the proposed rulemaking.

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The existing regulations already account for some exemptions for small mines. However, the emphasis on environmental protection is maintained.



(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 Pennsylvania Department of Transportation’s Bulletin 14 was used to establish the upper threshold for justification for a permit waiver to conduct exploration. Exploration is necessary to identify new aggregate sources.

The 1,000-ton upper threshold for the waiver was identified based on the 200-ton minimum requirement of the Pennsylvania Department of Transportation’s specifications for certification in Bulletin 14 with the recognition that more than one size of material may need to be produced from a particular potential mine. Page F-6 of Bulletin 14 includes the following statement:

(2) Qualification Samples (Sample Class: QS) are obtained from new aggregate sources where a crushing and screening plant is in operation and sufficient material (minimum 200 tons of each aggregate size intended to be produced) has been processed and stockpiled.

Bulletin 14 is available at this link:

[http://www.dot.state.pa.us/public/pdf/construction/bulletins\\_supporting\\_docs/Bulletin%2014%20-%20Supporting%20Information.pdf](http://www.dot.state.pa.us/public/pdf/construction/bulletins_supporting_docs/Bulletin%2014%20-%20Supporting%20Information.pdf)

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

- |   |  |
|---|--|
| A. The length of the public comment period:   | <u>45 Days</u>                                       |
| B. The date or dates on which any public meetings or hearings will be held:                   | <u>Not Applicable</u>                                |
| C. The expected date of delivery of the final-form regulation:                                | <u>Quarter 4 2021</u>                                |
| D. The expected effective date of the final-form regulation:                                  | <u>Upon publication in the Pennsylvania Bulletin</u> |
| E. The expected date by which compliance with the final-form regulation will be required:     | <u>Upon publication in the Pennsylvania Bulletin</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>Upon publication in the Pennsylvania Bulletin</u> |

(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.