

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></p>
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		
<p>(1) Agency:</p> <p style="padding-left: 40px;">Department of Environmental Protection</p>		<p>IRRC Number:</p>
<p>(2) Agency Number: 7</p> <p style="padding-left: 40px;">Identification Number: 565</p>		
<p>(3) PA Code Cite: 25 Pa. Code Chapters 88 and 90</p>		
<p>(4) Short Title: Coal Refuse Disposal Revisions</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p style="padding-left: 40px;">Primary Contact: Laura Griffin, 717.783.8727, laurgriffi@pa.gov</p> <p style="padding-left: 40px;">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</p> <p><input type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p style="padding-left: 40px;"><input type="checkbox"/> Certification by the Governor</p> <p style="padding-left: 40px;"><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 rulemaking would implement Act 74 of 2019 which will resolve the differences between the Commonwealth's regulations and Federal regulations relating to temporary cessation of operations at coal refuse disposal sites. Implementing Act 74 allows the Department to promulgate regulations linking the status of operations generating coal refuse or related material to the coal refuse disposal area. This proposed rulemaking would also clarify several items related to the design of coal refuse disposal sites.</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>The proposed rulemaking is created under the authority of Section 5 of the Clean Streams Law (35 P.S. § 691.5); Section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. § 1396.4b(a)); Section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Environmental Quality Board (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.

Required Consistency of the Commonwealth's Mining Program with Federal Law

For the Commonwealth to maintain primary regulatory authority over coal mining activities in Pennsylvania, the Commonwealth must maintain a Federally approved State program in accordance with the requirements of The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (Federal SMCRA), and with “rules and regulations consistent with regulations issued by the Secretary.” See 30 U.S.C.A. § 1253(a)(1) and (7).

Act 74 of 2019 (Act 74) amended section 6.1 of the Coal Refuse Disposal Control Act (52 P.S. § 30.56a) to align the requirements for temporary cessation with the Federal requirements. Previously, while Federal rules under the Surface Mining Control and Reclamation Act (SMCRA) provided flexibility, Pennsylvania’s Coal Refuse Disposal Control Act had limited the temporary cessation of operations at a coal refuse disposal site to no more than one year. Act 74 removed Pennsylvania’s one-year limitation and clarifies that any rules or regulations promulgated must be consistent with Federal provisions on this subject. Act 74 also gave the Department an opportunity to promulgate regulations that would link the status of operations generating coal refuse or related material to the coal refuse disposal area. The status of a coal refuse disposal site is directly related to the status of the refuse source, and the proposed revisions will ensure that a change in status of one will result in a change in the status of the other. For example, when an underground coal mine is actively mining coal and sending the refuse material to a coal refuse disposal site, both facilities are considered active. If that underground coal mine is approved to temporarily cease operations, the coal refuse disposal site would also be approved for temporary cessation because no refuse material is being sent there. If mining was to recommence, both facilities would be considered active, whereas, if the mine was to permanently cease operations, the coal refuse disposal facility would be considered permanently ceased unless an alternative source of refuse material can be found.

The requirements for temporary cessation of operations include a reference to a system to prevent precipitation from contacting the coal refuse (see 52 P.S. § 30.56a). Act 74 also revised Section 6.1 to include an enumerated list of the circumstances under which this system must be installed. Previously, the requirement was listed in paragraph form which was somewhat unclear.

(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.

Previously, Pennsylvania’s Coal Refuse Disposal Control Act (CRDCA) (52 P.S. § 30.56a) had limited the temporary cessation of operations at coal refuse disposal sites to no more than one year. While the Federal rules under the Surface Mining Control and Reclamation Act, allowed for flexibility when it came to temporary cessation status. Act 74 of 2019 amended section 6.1 of the CRDCA to remove Pennsylvania’s one-year limitation and mandated that any rules or regulations promulgated must be consistent with the Federal provisions on this subject. The State requirements for temporary cessation include a reference to a system to prevent precipitation from contacting the coal refuse. The Act 74 revision to section 6.1 of the CRDCA resulted in an enumerated list of the circumstances under which this system must be installed. The proposed revisions will include the enumerated list which will replace the requirements previously specified in paragraph form.

Act 74 also gave the Department the opportunity to promulgate regulations which would link the status of operations generating coal refuse or related material to the coal refuse disposal area. The status of a coal refuse disposal site is directly related to the status of the source of the refuse and the proposed revisions will ensure that a change in status of one will result in a change in the status of the other. This would ensure that if the status of the refuse source changes, then the status of the coal refuse disposal area would also change and trigger certain requirements under that status.

During the review process for a proposed coal refuse disposal site, the Department provides a technical review of the application and identifies any missing or incomplete information, or other issue in the form of a technical deficiency letter. Several common issues result from ambiguity or incorrect subsection references in the existing regulations. The proposed rulemaking will clarify the intent of the subsection, as in the case of terraces, and resolve incorrect subsection references, as in the case for diverting surface water off the fill.

There are currently 41 coal refuse disposal permits among 23 different operators in various stages of operation who will benefit directly from this proposed rulemaking. Of those 41 sites, there are 33 permits with an “active” status, five permits with an “approved cessation” status, and three permits with a “not started” status. All permits with these three permit status categories will be required to meet the requirements of the proposed rulemaking. A coal refuse disposal site contains the reject coal material from a coal mining operation and in many cases a new one is only needed if a new underground mine is opened. An underground mine and a coal refuse disposal site both require extensive planning and permitting as well as the upfront financial costs, so it is normal for the Department to only permit one new coal refuse disposal site every few years.

All existing and future permittees of coal refuse disposal sites will benefit from the improved clarity of the requirements for coal refuse disposal sites as a result of these proposed regulations. Citizens of the Commonwealth who reside in the vicinity of coal refuse disposal sites will also benefit from the reduced likelihood that precipitation will generate a pollutional discharge from the site as a result of the clarifications of when an operator must install a system for preventing precipitation from coming into contact with the coal refuse.

(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, the standards in the proposed regulation are not more stringent than Federal standards. The statutory language changes as a result of Act 74 ensure that any regulations regarding temporary cessations are consistent with the Federal standards. It also allowed the Department to promulgate regulations that would link the status of operations generating the coal refuse to the coal refuse disposal area. While this provision is not present in the Federal regulations, Federal regulations for coal mining are inherently broad given the various geographic and geologic conditions that comprise the 36 coal-producing states.

Pennsylvania has more specific requirements in the existing regulations when it comes to coal refuse disposal sites. For example, the site selection process of a coal refuse disposal permit is unique to Pennsylvania. The CRDCA and the existing regulations established a two-step process for the permitting of coal refuse disposal sites. The first step includes a preapplication site selection process which is intended to steer applicants to areas previously disturbed by mining. In the absence of previously disturbed sites, the site selection process requires an evaluation of nearby candidate sites with the goal of choosing the site that results in minimal adverse impacts. Following the Department’s

approval of the applicant's site selection, the applicant proceeds to the second step which involves the preparation and submittal of a permit application. It is also worth noting that any promulgated regulations must also be approved by the Federal Office of Surface Mining Reclamation and Enforcement to become part of the approved program.

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

As a result of the Federal requirements, all coal mining states with primacy must have regulations that are at least as stringent as the Federal regulations to maintain their primacy. Therefore, the proposed regulations should be comparable to those of coal mining states and should not affect Pennsylvania's ability to compete with other states. Competition amongst states is more dependent on the quality and accessibility of coal resources reflecting the current and future demands of the coal market. The purpose of both Federal SMCRA and State SMCRA is to balance the protection of the environment with the energy needs of the nation.

(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 will not affect the Department's existing or proposed regulations or those of other State agencies as it is specific to coal refuse disposal sites which are not regulated by other agencies.

(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 consulted with the Mining and Reclamation Advisory Board (MRAB) and the Pennsylvania Coal Alliance (PCA) to develop these proposed regulations. The MRAB is composed of two licensed bituminous surface mine operators, one licensed anthracite surface mine operator, four public members of the Citizens Advisory Council, one anthracite or one bituminous licensed professional engineer, one county conservation district representative, one majority party state senator, one minority party state senator, one majority party state representative, and one minority party state representative. The proposed revisions were first mentioned at the January 23, 2020 MRAB meeting as part of the review of the current regulatory agenda. At the March 16, 2020 MRAB Regulation, Legislation, and Technical (RLT) committee meeting, the draft language was reviewed and the committee suggested changes to the language. A second meeting of the MRAB RLT committee took place on May 18, 2020 to review the draft revised language resulting from the March 16, 2020 committee meeting. The Department reviewed the revised draft with the MRAB again at its meeting on July 16, 2020. A third meeting of the MRAB RLT committee took place on October 15, 2020 to review the revised draft and the committee recommended a minor revision to the permanent cessation section. At the MRAB meeting of October 22, 2020, the MRAB recommended that the Department proceed with the rulemaking.

(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?

Currently, there are 41 active and unreclaimed coal refuse disposal permits among 23 different operators throughout Pennsylvania. Except for one operator, all operators are considered small businesses. The proposed regulations, which would apply to all existing and future permittees of coal refuse disposal sites, will provide clearer requirements during the permitting process as well as the requirements during operation of a coal refuse disposal site. Under the existing regulations, inconsistent interpretation or application of requirements has caused confusion amongst the regulated community and has resulted in costly corrections and multiple submissions of permit applications as well as addressing violations cited during inspections. The proposed regulations are expected to clarify requirements and eliminate the inconsistent interpretation or application of the regulations.

(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.

All existing and future permittees of coal refuse disposal sites will be required to comply with the proposed regulations. 22 of the 23 operators who currently hold coal refuse disposal permits qualify as 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.

All existing and future permittees of coal refuse disposal sites will be required to comply with the proposed regulations. This proposed rulemaking will not create new compliance costs and it is not expected to prevent or avoid costs. The proposed rulemaking will clarify the existing requirements and prevent inconsistent interpretation or application of the requirements. The Federal and State regulations apply to all coal mine operators regardless of size.

This proposed rulemaking will align the Department's regulations with State law and Federal regulations related to the operation of coal refuse disposal areas. The proposed rulemaking will clarify when an operator must install a system for preventing precipitation from encountering coal refuse, which will improve environmental protection by reducing the likelihood that precipitation will generate a polluttional discharge from the site. This proposed rulemaking will also establish a relationship between the coal refuse disposal area and the source of the refuse, which will improve environmental protection by ensuring that disposal areas do not remain unreclaimed long after the source has ceased generating refuse. This proposed rulemaking is not expected to directly improve public health, although it may have an indirect public health benefit to the extent that it reduces the likelihood of polluttional discharges from coal refuse disposal areas.

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

The proposed regulations are a result of statutory changes which will bring the State regulations into alignment with the Federal requirements. State regulations must be at least as stringent as the Federal regulations to maintain primacy over the coal mining program in Pennsylvania. This proposed rulemaking will provide clearer direction on the existing requirements which may avoid costs associated with navigating requirements that could be inconsistently interpreted or applied. A potential cost benefit would be reducing the likelihood that precipitation will generate a perpetual pollution discharge from the site because the proposed regulations clarify when the operator must install the precipitation prevention system.

(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.

All existing and future permittees of coal refuse disposal sites will be required to comply with the proposed regulations. This proposed rulemaking will not create any new compliance costs and it is not expected to prevent or avoid costs. The proposed rulemaking will provide clarity on the existing requirements which may avoid costs associated with navigating unclear requirements that could be inconsistently interpreted or applied. The proposed rulemaking also clarifies the requirements for installing a system that prevents precipitation from coming into contact with the coal refuse. This may be a potential cost benefit as it reduces the likelihood that precipitation will generate a pollution discharge from the site that would result in costly postmining treatment.

(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 compliance costs or savings for local governments associated with this 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.

This rulemaking contains no implementation costs or savings for State government, as most of the regulatory changes reflect existing law and Department policy predicated largely on Federal standards. Some of the revisions made in the regulations may reduce the amount of staff time dedicated to issuing deficiency letters and resolving deficiency issues among operators because the application expectations will be clearer.

(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 legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork are required to implement this regulation.

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

No forms are required for implementation of the regulation.

(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 are required for implementation of the regulation.

(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
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	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
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 2018	FY -2 2019	FY -1 2020	Current FY 2021
Coal Mining Program	\$23,876,588 (Final)	\$24,225,013 (Final)	\$25,589,243 (Final)	\$26,691,566 (Budget for FY 2021)
	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.	Note: this is based on the Title V grant budget on a Federal FY basis.

(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.

22 of the 23 coal refuse disposal operators in Pennsylvania qualify as 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.

There are no projected reporting, recordkeeping, or other administrative costs anticipated for compliance with the proposed rulemaking.

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

All existing and future permittees of coal refuse disposal sites will be required to comply with the proposed regulations. The Federal and State regulations apply to all coal mine operators regardless of size as the potential environmental impacts caused by one group is the same as those caused by another. Of the 23 operators who currently have coal refuse disposal permits, except for one operator, all the other operators qualify as a small business. This proposed rulemaking will not create any new compliance costs and it is not expected to prevent or avoid costs for any member of the regulated community, including small businesses. By providing clarity on the existing requirements, small businesses may avoid costs associated with navigating unclear requirements that could be inconsistently interpreted or applied. Clarification of the requirements for installing a system that prevents precipitation from coming into contact with the coal refuse may be a potential cost benefit as it reduces the likelihood that precipitation will generate a pollution discharge from the site that would result in costly postmining treatment.

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

The proposed regulations are a result of statutory changes which will bring the State regulations into alignment with the Federal requirements. State regulations must be at least as stringent as the Federal regulations to maintain primacy over the coal mining program in Pennsylvania. Being that these changes are statutory requirements, any alternative that would be less intrusive or less costly would not be complying with State and Federal law.

- (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.

This proposed rulemaking is not anticipated to affect any one particular entity. The proposed regulations are a result of changes to the CRDCA which will bring the State regulations into alignment with the Federal requirements. State regulations must be at least as stringent as the Federal regulations therefore establishing less stringent requirements for specific groups is not feasible. The potential environmental impacts caused by any type of group or persons is the same therefore the Federal and State regulations apply to all coal mine operators.

- (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.

The sections of this rulemaking regarding temporary cessation were substantially revised because of interactions with the MRAB RLT committee and stakeholders, such as PCA. In the original version of the proposed regulations, when the operation was expected to be under a temporary cessation status for a period of more than 30 days, the operator would need to complete all the steps now separated into two subsections (§ 88.332(a) and (b) and § 90.167(a) and (b)). An operator also would have been required to

complete a cost estimate of the cost for the Department to complete the reclamation. After presenting this proposed regulation to the MRAB RLT committee at the March 16, 2020 meeting, there were some concerns expressed over the items required any time an operation would undergo temporary cessation for a period of more than 30 days and the financial burden an operator would undertake in performing the cost estimate requirement. The proposed regulation was rewritten to separate the required items for an operation that will be under temporary cessation for 30 days or more and those for 90 days or more. The cost estimate requirement was also replaced with a confirmation that the bond is sufficient for the Department to complete the reclamation if necessary.

An additional substantial change that took place following an MRAB RLT committee meeting regarded the consequences for an operation that fails to comply with the regulations or the permit while under temporary cessation status. The proposed revisions included a requirement in §§ 88.332 and 90.167 that if an operator failed to comply with the regulations of Chapters 86-90 or the approved permit while under approved temporary cessation status, the mining operation would be placed into permanent cessation status. There were concerns expressed by the MRAB RLT committee or PCA that any violation, no matter how minor, would trigger the permanent cessation status. Concern about placement of a provision dealing with permanent cessation in the temporary cessation subsection was also expressed. As a result, the Department revised the provision to further explain what actions would lead to permanent cessation and moved the entire provision into the permanent cessation subsections of Chapters 88 and 90.

Both revisions alleviated the concerns of the MRAB and stakeholders such as PCA, resulting in a recommendation from MRAB to proceed with rulemaking on October 22, 2020.

(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.

For the Commonwealth to maintain primary regulatory authority over coal mining activities in Pennsylvania, the Commonwealth must maintain a Federally approved State program in accordance with the requirements of The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328), and with “rules and regulations consistent with regulations issued by the Secretary.” *See* 30 U.S.C.A. § 1253(a)(1) and (7).

The proposed regulations are a result of changes to the CRDCA which will bring the State regulations into alignment with the Federal requirements. State regulations must be at least as stringent as the Federal regulations. Therefore, establishing less stringent requirements for some businesses is not feasible. The Federal and State regulations apply to all coal mine operators regardless of size.

(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 this regulation. Existing Federal and State legal requirements provided the foundational basis for this rulemaking.

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

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| A. The length of the public comment period: | <u>30 Days</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>None planned</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 1, 2023</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication in the PA Bulletin</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Upon publication in the PA Bulletin</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

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

The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.