

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY REVIEW COMMISSION

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

(1) Agency
Department of Environmental Protection

(2) Agency Number:

Identification Number: #7-488

IRRC Number: #3067

(3) PA Code Cite: 25 Pa Code Chapter 208 Underground Coal Mine Safety

(4) Short Title: Standards for Surface Facilities

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

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)

This final regulation will add regulatory provisions to 25 Pa. Code Chapter 208. These additions include §§ 208.101 – 208.412 (relating to Standards for surface facilities) as well as the definitions of “Barricaded,” “Berm,” “Certified or registered,” “Flash point,” “Qualified person,” “Roll protection,” “Safety can,” and “Trailing cable” to read as set forth in Annex A.

This final rulemaking implements existing federal regulations, thereby making them independently enforceable by the Commonwealth. Specifically, this final regulation implements many of the federal requirements in 30 CFR Part 77 related to surface installations, thermal dryers, safeguards for mechanical equipment, electrical equipment, trailing cables, grounding, surface high-voltage distribution, low- and medium-voltage alternating currents, ground control, fire protection, maps, personnel hoisting, wire ropes, trolley wires and trolley feeder wires, and slope and shaft sinking. Although the federal regulations in 30 CFR Part 77 enumerate mandatory safety standards for both surface coal mines and surface areas of underground mines, only those regulations in Part 77 governing the surface work areas of underground mines are incorporated into this final rulemaking.

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

Section 106.1 of The Bituminous Coal Mine Safety Act, (BCMSA), 52 P.S. § 690-106.1 authorizes the adoption of regulations to implement BCMSA and to protect the health, safety, and welfare of miners and other individuals in and about mines.

(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 regulation is not mandated by any federal or state law, court order, or federal regulation. The final regulation incorporates by reference, with some modifications and exclusions, the provisions of the federal Mine Safety and Health Administration (MSHA) requirements in 30 CFR Part 77.

(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 regulation implements existing federal mine safety requirements for the surface areas of underground mine sites, thus ensuring the continued protection of persons in and about the surface areas of underground mines. As a result of this final regulation, the Department will acquire the independent regulatory authority to enforce many of the federal MSHA requirements under 30 CFR Part 77. Moreover, there is a compelling public interest in ensuring that miners are safe in the workplace. While estimating an exact number of individuals who will benefit from this rulemaking is difficult, miners, their families, mining companies, and others will benefit from safe surface areas of underground mines. As a result of this final rulemaking, workplace injuries and deaths will likely decline and safer, more advanced equipment at the surface areas of underground mines may be used.

(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 final rulemaking incorporates by reference many of existing federal MSHA requirements in 30 CFR Part 77. Because the state regulations incorporate the federal regulations by reference, there are no provisions in the final regulation that are more stringent than the federal regulations.

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

The final rulemaking conforms to existing federal MSHA requirements in 30 CFR Part 77. Because other states must also comply with the federal MSHA requirements adopted by this final rulemaking, Pennsylvania's ability to compete for business with other states will not be weakened.

The Board of Coal Mine Safety (Board) is adopts the final rulemaking to, among other reasons, obtain independent authority to enforce the federal regulations.

(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 final regulation does not affect any other regulations of the promulgating agency or other state 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.)

This rulemaking was prepared at the direction of the Board which was established pursuant to BCMSA. The seven member Board is chaired by the Secretary of the Department of Environmental Protection and consists of three members who represent mine workers and three members who represent coal mine operators. Three of the members of the Board were nominated by the United Mine Workers of America (UMWA) to represent miners, and three were nominated by the Pennsylvania Coal Alliance (PCA) to represent coal mine operators.

The development and drafting of this final rulemaking was aided by input from the Board which received recommendations and advice on the rulemaking from its constituents. The three members of the Board nominated by the UMWA provided input on the regulations on behalf of mine workers. Likewise, the three representatives on the Board nominated by PCA made recommendations on the regulation on behalf of the nine underground bituminous mining companies and affiliates that currently operate in Pennsylvania. As such, both UMWA and PCA participated in the decision of the Board to prepare this regulation.

The Board has determined that three small businesses, as that term is defined under Section 3 of the Regulatory Review Act, will be affected by this final rulemaking. According to the Small Business Size Regulations under 13 CFR Part 121, for NAICS Code 212112 (bituminous coal underground mining) a small business is one that employs fewer than 500 persons. The Board determined that this rulemaking would only apply to the nine underground bituminous mining companies currently operating in Pennsylvania, three of which employ fewer than 500 persons. The Board made this determination by reviewing its own internal data and publicly available data from the companies.

(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 approximately 40 bituminous underground mines operating in Pennsylvania that are owned by nine underground bituminous mining companies. Three of these nine companies are small businesses. Although this final regulation will affect the nine underground bituminous mining companies, there is no opposition to the final regulation from the representatives of these companies sitting on the Board. Moreover, the nine affected companies must already comply with the federal MSHA regulations in 30 CFR Part 77 that are implemented by this final regulation.

(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 approximately 40 underground bituminous coal mines operating in Pennsylvania that are owned by nine underground bituminous mining companies. Three of these nine companies are small businesses, and these companies collectively employ approximately 5,300 persons. All underground coal mine companies in Pennsylvania must already comply with the federal MSHA regulations in 30 CFR Part 77 that are implemented by this final regulation. Therefore, this final rulemaking will not impose any additional regulatory requirements on the underground bituminous coal mine operators in

Pennsylvania. Moreover, this final rulemaking will make the existing federal requirements to be implemented by this final regulation independently enforceable by the Commonwealth.

(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 regulations this final rulemaking implements have already been promulgated by MSHA. Therefore, the nine owners and operators of underground bituminous coal mines in Pennsylvania already have to comply with the federal regulations in 30 CFR Part 77 that are implemented by this final rulemaking. As a result, the final rulemaking will not have any additional financial, economic, or social impact on the public or regulated community.

The potential benefits of the final rulemaking include the continued prevention of bodily harm and loss of life or property at the surface areas of underground mine sites. Additionally, this final rulemaking makes the existing federal requirements implemented by this final regulation independently enforceable by the Commonwealth.

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

There are no additional costs and adverse effects associated with this final rulemaking as its sole purpose is to conform Pennsylvania regulations to many of the federal MSHA requirements in 30 CFR Part 77. Assuring that the Pennsylvania regulation conforms to federal requirements does not have any additional financial, economic or social impact on any entity or individual, and the potential benefit of preventing bodily harm and loss of life or property is difficult to quantify.

(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.

Costs and/or savings as the result of the implementation of this final rulemaking are not anticipated since the regulated community must already comply with the federal MSHA provisions this final rulemaking implements. Given that the final state regulation merely provides the Board with the independent authority to enforce the regulation, mine operators would not incur any additional costs.

Moreover, although the final regulation is intended to protect miners, it may also minimize unnecessary expenses to the regulated community by reducing the risk of property loss. Explosions, fires, and accidents can result in significant costs to a mine operator since it typically takes an operator a minimum of two months to resume operations after an explosion and other similar catastrophe. This could lead to expenses for the mine operator between two and seven million dollars incurred through lost wages, lost production capacity, payment for services associated with mine rescue operations, and other related expenses.

(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.

This question does not apply because local governments do not engage in underground bituminous coal mining.

(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 costs incurred by the state government as a result of this final rulemaking are expected to be negligible. The mine operators subjected to this final rulemaking must already comply with the federal regulations this rulemaking implements, and the state already conducts mine safety inspections. Nothing in this final rulemaking, other than the fact the existing federal requirements will become independently enforceable in the state, will alter current state government practices or costs.

(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.

This final rulemaking does not require any additional accounting or consulting procedures, additional reporting, recordkeeping, or other paperwork other than that which is already being performed on a routine basis as required under federal MSHA requirements.

(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.

Neither local nor state government is engaged in underground bituminous coal mining operations; therefore, costs and/or savings are not anticipated as a result of this final rulemaking. Moreover, since the regulated community already incurs costs to comply with the existing federal MSHA requirements that this rulemaking implements, additional compliance costs are not anticipated for the regulated community as a result of this rulemaking. There are, however, potential savings to the regulated industry as a result of this final regulation since the protection of underground mine property and workers will likely be enhanced. Explosions, fires, and accidents can result in significant costs to a mine operator since, for example, it typically takes an operator a minimum of two months to resume operations after an explosion and other similar catastrophe. This could lead to expenses for the mine operator between two and seven million dollars incurred through lost wages, lost production capacity, payment for services associated with mine rescue operations, and other related expenses.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A

State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

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

Program	FY-3	FY-2	FY-1	Current FY
Environmental Protection Operations (#160-10381)	\$77,359,000	\$74,547,000	\$75,184,000	\$84,438,000
Environmental Program Management (#161-10382)	\$27,755,000	\$24,965,000	\$25,733,000	\$28,517,000

(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 final rulemaking does not have any adverse effects on the three small businesses operating underground bituminous coal mines in Pennsylvania because they must already comply with the federal MSHA requirements this rulemaking implements.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the final regulation, including the type of professional skills necessary for preparation of the report or record.

There will be no additional costs incurred with respect to reporting, recordkeeping, and other administrative costs required for compliance with the final rulemaking since the regulated community must already comply with federal provisions of 30 CFR Part 77, many of which are implemented by this final regulation.

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

This final rulemaking is not expected to have any effect on the three small businesses subject to this regulation since they must already comply with the existing federal regulations this regulation implements. According to the Small Business Size Regulations under 13 CFR Part 121, for NAICS Code 212112 (bituminous coal underground mining) a small business is one that employs fewer than 500 persons. Three of the nine underground bituminous coal mining companies currently operating in Pennsylvania employ fewer than 500 persons.

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

Alternative methods for achieving the purpose of the final rulemaking were not analyzed as the final rulemaking is based upon federal MSHA requirements that are already in place.

(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.

No special provisions were developed to meet the particular needs of the affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers since none of these entities was identified to be impacted.

(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.

Alternative regulatory provisions were not considered because this rulemaking is based upon an existing federal MSHA rulemaking that is already in place. This final rulemaking will assure that Pennsylvania regulations conform to the federal regulations.

(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 performing 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.

This final rulemaking is not expected to have any effect on the three small businesses subject to this regulation since they must already comply with the existing federal regulations this regulation implements. According to the Small Business Size Regulations under 13 CFR Part 121, for NAICS Code 212112 (bituminous coal underground mining) a small business is one that employs fewer than 500 persons. Three of the nine underground bituminous coal mining companies currently operating in Pennsylvania employ fewer than 500 persons.

- a) Less stringent compliance and reporting requirements were not considered because this rulemaking implements existing federal regulations with which the small business subject to this regulation must already comply.
- b) Less stringent schedules or deadlines for compliance or reporting requirements were not considered because this rulemaking implements existing federal regulations with which the small business subject to this regulation must already comply.

- c) The consolidation or simplification of compliance or reporting requirements for small business was not considered because this rulemaking implements existing federal regulations with which the small business subject to this regulation must already comply.
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation was not considered because this rulemaking implements existing federal regulations with which the small business subject to this regulation must already comply.
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation was not considered because this rulemaking implements existing federal regulations with which the small business subject to this regulation must already comply.

(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. This final regulation merely incorporates already effective federal requirements into state law to make those requirements independently enforceable by the Department.

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

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| A. The date by which the agency must receive public comments: | 3 rd Quarter 2014 |
| B. The date or dates on which public meetings or hearings will be held: | Not Applicable |
| C. The expected date of promulgation of the final regulation as a final-form regulation: | 3 rd Quarter 2015 |
| D. The expected effective date of the final-form regulation: | 3 rd Quarter 2015 |
| E. The date by which compliance with the final-form regulation will be required: | 3 rd Quarter 2015 |
| F. The date by which required permits, licenses or other approvals must be obtained: | 3 rd Quarter 2015 |

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

The Board is committed to ensuring the health and safety of all persons in the underground bituminous coal mine industry. As a result, the Board periodically reviews all regulations within this industry to ensure their continued effectiveness. This periodic review occurs at all Board meetings. The Board meets a minimum of four times each calendar year.