

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: 7-522

IRRC Number:

(3) PA Code Cite: 25 Pa. Code Chapters 210 & 211

(4) Short Title: Handling and Use of Explosives

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

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

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation

- Emergency Certification Regulation;
- Certification by the Governor
- Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed rulemaking revises current regulations to address the use of explosives for seismic exploration. While permits are currently required for this activity, a supplement to the Department's blasting activity permit application form is necessary, because detailed information is needed for site security and regulatory compliance. This seismic supplement form provides the applicant an opportunity to provide the detailed information. The specifications for this additional information are included in this proposed rulemaking. The rulemaking also updates explosives use requirements and enforcement mechanisms, and eliminates antiquated requirements. The updated requirements will result in more consistency between the requirements for construction blasting and blasting for mining operations. Regarding enforcement, the current regulations entail criminal penalties for blasting-related violations, imposed by means of summary citations and possible misdemeanor charges. The proposed rulemaking provides a system for issuing civil penalty assessments for such violations. The proposed rulemaking also includes a revised fee schedule to cover costs associated with various permit-related work, license renewals, and required on-site safety inspections.

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

This proposed rulemaking is promulgated under the authority of Sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 & 510-20); Sections 3 and 7 of the act of July 1, 1937 (P. L. 2681, No. 537) (73 P. S. §§ 157 & 161); Section 3 of the act of July 10, 1957 (P. L. 685, No. 362) (73 P. S. § 166); Reorganization Plan No. 8 of 1981 (71 P. S. § 751-35) (transferring powers and duties conferred under 1937 and 1957 explosives acts from Department of Labor and Industry to Department

of Environmental Resources); Section 2(f) of the act of May 18, 1937 (43 P.S. § 25-2(f)) (general workplace safety law regarding “pits, quarries, [noncoal mines], trenches, excavations, and similar operations”); Reorganization Plan No. 2 of 1975 (71 P. S. § 751-22) (transferring powers and duties conferred under 1937 workplace safety law regarding pits, quarries, etc., from Department of Labor and Industry to Department of Environmental Resources); Section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b); and Section 11(e) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311(e)).

(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 rulemaking is not mandated by any federal or state law.

(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 blasting and explosives regulations were promulgated in 1972-73, and have undergone only minor revisions since that time. The proposed rulemaking addresses deficiencies in the program created by the lag between advancement in the industry and the lack of meaningful revisions to the regulatory framework since 1973. First, the proposed rulemaking revises current regulations to address the use of explosives for seismic exploration. The use of explosives for seismic exploration is fundamentally different than most other uses of explosives. For example, seismic exploration often necessitates leaving explosive charges in the ground for extended periods of time, and the proposed regulations specify the security measures needed to protect the public safety under these circumstances. The Department has developed an interim seismic supplement to address safety issues at seismic exploration sites. The proposed rulemaking will codify these requirements, providing certainty to the regulated community regarding the regulatory framework for seismic exploration.

The proposed rulemaking also updates explosives use requirements to reflect current practices, eliminates antiquated requirements, and provides a more effective enforcement mechanism. The updated technical requirements will result in more consistency between the requirements for construction blasting and blasting for mining operations, and increase safety for both operators and the public. Regarding enforcement, the current regulations entail criminal penalties for blasting-related violations, imposed by means of summary citations and possible misdemeanor charges. The proposed rulemaking provides a system for issuing civil penalty assessments for such violations, which will provide more efficiency and flexibility to the benefit of both the Department and the regulated community.

The proposed rulemaking also includes a revised fee schedule, which is necessary to cover costs associated with various permit-related work, license renewals, and required on-site safety inspections.

(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 proposed regulation relies upon the federal Bureau of Alcohol Tobacco Firearms and Explosives (ATF) requirements for background checks and approvals in order to possess or use explosives in the U.S. Under this program, an interested party applies for a Federal Explosives License through the ATF. The ATF commences a full review of the application and supporting materials (such as employee data, fingerprint cards, and photographs), and conducts an electronic background check on all “responsible persons” identified on the application.

(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 fees are in line with those in other states. For example, the relevant permits and licenses in Virginia range between \$100 - \$250. This is comparable to the fee schedule in the proposed rulemaking. Pennsylvania will remain in a competitive position when compared 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.

The mining regulations in Chapters 77 and 86 require compliance with Chapters 210 and 211. The revisions to the explosives regulations will bring consistency to the use of explosives whether it is for mining, construction or other purposes.

(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 reviewed the proposed rulemaking with the Mining and Reclamation Advisory Board and the Aggregate Advisory Board since the mining regulations require compliance with Chapters 210 and 211. Outreach with the broader explosives regulated community was accomplished through presentations to the Pennsylvania chapters of the International Society of Explosives Engineers and the trade group representing the seismic exploration contractors. Informal discussions were also held with individual stakeholders.

(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?

Approximately 2,000 individuals are licensed blasters in Pennsylvania. The bulk of the activity in Pennsylvania is conducted by large corporations, including several multinational corporations. However, the regulated community is comprised of about 450 businesses, most of which are small businesses that will be subject to this regulation. The regulations will apply consistently among all operations for small and large businesses alike because the effects are the same regardless of who is conducting the blasting.

(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.

Approximately 450 companies store explosives or conduct blasting operations in Pennsylvania and will be subject to this regulation. The 2,000 individual licensed blasters in Pennsylvania will be required to comply.

(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.

These regulations will increase the cost of storing explosives, and using explosives as a permittee or licensed blaster. A fee report form has been included with this proposed rulemaking. The proposed fees represent reasonable user fees that cover the cost of operating the permitting program, which provides a public safety benefit.

Approximately 450 small businesses will be subject to this rulemaking. The proposed rulemaking updates many of the technical requirements related to use and storage of explosives, increases licensing fees, and provides a system for the assessment of civil penalties. Because these small businesses account for almost all explosives storage and blasting operators in the Commonwealth, no less stringent requirements exist for small businesses that will accomplish the goals of this rulemaking: improving public safety and covering the cost of operating the regulatory program. The actual and potential costs associated with the regulations will be borne by the regulated community. However, this rulemaking is not expected to significantly increase operational costs to these businesses.

This proposed regulation creates no social impact. The proposed technical updates merely reflect current realities and practices in the blasting and explosives industry.

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

The increased costs to the regulated community reflected by the proposed fee schedule are necessary to support the explosives program without reliance on general fund monies. The compliance costs are outweighed by the enhanced safety provided by routine safety inspections and transparent record-keeping. Any cost to an individual operator to meet new technical requirements that reflect industry-driven best practices, as opposed to antiquated practices adopted by Pennsylvania's rulemaking in 1973, is outweighed by the improvement to safety of both the operators and the general public. Moreover, these costs should be low because most operators should already be implementing many of these newer practices. Any potential costs associated with imposition of civil penalties are outweighed by the efficiency gained over the current system involving summary offenses and criminal proceedings.

(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.

The new blasting activity permit fees are expected to cost the permittees, collectively, about \$65,000 per year. This is based on about 500 applications per year at a cost of \$130 per application. Increased magazine licensing fees are expected to cost the regulated community about \$175,000 per year. Increased blaster license fees will cost each individual blaster an additional \$50 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.

This regulation will have a minimal impact to local governments. There are a few municipalities that are licensed to store explosives, typically for bomb squads.

(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 known additional costs to the state government are expected.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The additional reporting, recordkeeping or other paperwork will not be substantial because the requirements currently exist and are only being clarified. Some additional data will need to be reported but it can accompany the reports that are currently required. Some of the forms currently used may need to be revised, but these will depend on the final 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 | \$10,000 | \$10,000 | \$10,000 | \$10,000 |
| Local Government | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| State Government | \$0 | \$0 | \$10,000 | \$10,000 | \$10,000 | \$10,000 |
| Total Savings | \$0 | \$0 | \$20,000 | \$20,000 | \$20,000 | \$20,000 |
| COSTS: | | | | | | |
| Regulated Community | \$0 | \$0 | \$240,000 | \$240,000 | \$240,000 | \$240,000 |
| Local Government | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| State Government | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Total Costs | \$0 | \$0 | \$240,000 | \$240,000 | \$240,000 | \$240,000 |

| | | | | | | |
|-----------------------------|-----|-----|-----|-----|-----|-----|
| REVENUE LOSSES: | | | | | | |
| Regulated Community | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Local Government | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| State Government | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Total Revenue Losses | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |

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

| Program | FY -3 | 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 |
| Noncoal Srf Mng Fund 280-20101 | \$3,382,000 | \$3,059,000 | \$3,045,000 | \$3,547,000 |

(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.
- (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.

An estimated 400 small businesses will be subject to this proposed regulation. This regulation is not expected to have an adverse impact on small businesses. No alternative methods to accomplish the revenue generation and public safety elements of this proposed rulemaking are available.

(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 focus on the needs of minorities, the elderly, small businesses or 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.

No alternate regulatory provisions considered to be less burdensome were identified during the development of the proposed rulemaking.

(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.

These other regulatory methods were not considered because the impact of blasting is not related to whether it is conducted by a small or large business. Ultimately, regulatory compliance puts all of the regulated community in the best position to show that no adverse effects to the public will result from the handling, use or storage of explosives.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The data used in the development of the proposed rulemaking is related to the calculations of the proposed fees. The fee amounts are based on a workload planning tool used by the Department to manage staffing levels. For example, for a blasting activity permit review the workload analysis assigns 2 hours of time. The salary for a blasting and explosives inspector is \$34.65 per hour, benefits and overhead amount to about 80% of the salary cost and rounding results in the fee of \$130.

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

- | | |
|---|-------------------|
| A. The date by which the agency must receive public comments: | December 30, 2015 |
| B. The date or dates on which public meetings or hearings will be held: | NA |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | July 31, 2016 |
| D. The expected effective date of the final-form regulation: | October 31, 2016 |
| E. The date by which compliance with the final-form regulation will be required: | October 31, 2016 |
| F. The date by which required permits, licenses or other approvals must be obtained: | October 31, 2016 |

(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 blasting industry, advisory boards and the public. The ultimate test is the prevention of adverse impacts. The primary purpose of Chapters 210 and 211 is to prevent property damage and personal injuries.