

# 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: 7-526

IRRC Number:

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

(4) Short Title: Proximity Detection Systems

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

Primary Contact: Laura Edinger, 717-783-8727; ledinger@pa.gov; RCSOB 16<sup>th</sup> Floor, Harrisburg, PA 17105

Secondary Contact: Hayley Book, 717-783-8727; hbook@pa.gov; RCSOB 16<sup>th</sup> Floor, Harrisburg, PA 17105

(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)

This proposed regulation will add provisions to 25 Pa. Code Chapter 208. These additions include §§ 208.500 – 208.504 (relating to proximity detection systems) to read as set forth in Annex A.

This proposed regulation implements existing Federal regulations published on January 15, 2015 that require underground coal mine operators to equip certain mining machines with proximity detection systems. See 30 CFR part 75; 80 Fed. Reg. 2187. Conditions in underground coal mines, including low visibility, limited space, and uneven ground, present hazards that contribute to machine-related accidents that can cause injury or death. Proximity detection systems, which use electronic sensors to detect motion or the location of one object relative to another, can be used to provide warning and stop mining machines before the machine pins, crushes, or strikes a miner.

(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 proposed regulation incorporates by reference, with one modification regarding the relevant regulatory authority, the provisions of the federal Mine Safety and Health Administration (MSHA) requirements in 30 CFR Part 75.

(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 proposed regulation incorporates recently published federal mine safety requirements regarding certain continuous mining machines. As a result of this proposed regulation, the Department will acquire the independent regulatory authority to enforce the federal MSHA requirements under 30 CFR Part 75 related to proximity detection systems, thus ensuring the continued protection of persons working with or around these machines. 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 proposed 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 proposed rulemaking incorporates by reference recently published federal MSHA requirements in 30 CFR Part 75. Because the state regulations incorporate the federal regulations by reference, there are no provisions in the proposed 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 proposed rulemaking conforms to existing federal MSHA requirements in 30 CFR Part 75. Because other states must also comply with the federal MSHA requirements adopted by this proposed rulemaking, Pennsylvania's ability to compete for business with other states will not be weakened.

The Board of Coal Mine Safety (Board) adopts the proposed rulemaking primarily to 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 proposed 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 proposed 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 proposed 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 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. The nine affected companies must already comply with the federal MSHA regulations in 30 CFR Part 75. Therefore, this regulation will have a nominal affect the nine underground bituminous mining companies and there is no opposition to the proposed regulation from the representatives of these companies sitting on the Board.

(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 75 that are the subject of this proposed rulemaking. Therefore, this proposed rulemaking will not impose any additional regulatory requirements on the underground bituminous coal mine operators in Pennsylvania.

(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 proposed 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 75 that are the subject of this proposed rulemaking. As a result, the rulemaking will not have any additional financial, economic, or social impact on the public or regulated community.

The potential benefits of the proposed rulemaking include the continued prevention of bodily harm and loss of life at underground mine sites. Additionally, this proposed rulemaking makes the existing federal requirements 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 proposed rulemaking as its sole purpose is to conform Pennsylvania regulations to federal MSHA requirements in 30 CFR Part 75. 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 proposed rulemaking are not anticipated since the regulated community must already comply with the relevant federal MSHA provisions. Moreover, although the proposed regulation is intended to protect miners, it may also minimize unnecessary expenses to the regulated community by reducing the risk of accidents. Worker accidents can result in significant costs to a mine operator since it typically takes an operator time to resume operations after such accidents. This could lead to expenses for the mine operator 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 proposed rulemaking are expected to be negligible, as the Commonwealth already conducts mine safety inspections. Nothing in this proposed 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 proposed 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 proposed rulemaking. Moreover, since the regulated community already incurs costs to comply with existing federal MSHA requirements, 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 proposed regulation since the protection of underground mine property and workers will likely be enhanced.

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

<b>REVENUE LOSSES:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated Community</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Local Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>State Government</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Total Revenue Losses</b>	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.

<b>Program</b>	<b>FY-3 2011-12</b>	<b>FY-2 2012-13</b>	<b>FY-1 2013-14</b>	<b>FY 2014-15</b>
<b>Environmental Protection Operations (#160-10381)</b>	\$74,547,000	\$75,184,000	\$84,438,000	\$90,100,000
<b>Environmental Program Management (#161-10382)</b>	\$24,965,000	\$25,733,000	\$28,517,000	\$29,967,000

(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.

Three small businesses operate underground bituminous coal mines in Pennsylvania. The proposed rulemaking is not anticipated to have an adverse impact on these 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 will be no additional costs incurred with respect to reporting, recordkeeping, and other administrative costs required for compliance with the rulemaking since the regulated community must already comply with the relevant federal provisions of 30 CFR Part 75.

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

This proposed 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. 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 proposed regulation.

Alternative methods for achieving the purpose of the proposed rulemaking were not analyzed as the proposed 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 affected groups or persons as no groups were 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 proposed 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.

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. This proposed 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 regarding proximity detection systems.

- a) Less stringent compliance and reporting requirements were not considered because this rulemaking implements existing federal regulations with which the small businesses 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 businesses 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 businesses 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 businesses 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 businesses 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 proposed 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:

- |   |                 |
|---|-----------------|
| A. The date by which the agency must receive public comments:                               | Quarter 1, 2016 |
| B. The date or dates on which public meetings or hearings will be held:                     | Not Applicable  |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Quarter 2, 2016 |
| D. The expected effective date of the final-form regulation:                                | Quarter 4, 2016 |
| E. The date by which compliance with the final-form regulation will be required:            | Quarter 4, 2016 |
| F. The date by which required permits, licenses or other approvals must be obtained:        | Not Applicable  |

(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.