

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: #7-489

IRRC Number:

(3) PA Code Cite: 25 Pa. Code Chapters 77, 86, 87, 88, 89, 90, 211

(4) Short Title: Land Reclamation Financial Guarantees and Bioenergy Crop Bonding

(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 Environmental Quality Board (Board) proposes to amend 25 Pa. Code Chapter 86 by adding sections 86.162b (Land Reclamation Financial Guarantees) and 86.162c (Bioenergy Crop Bonding) to read as set forth in Annex A. The additions to Chapter 86 proposed by this rulemaking will implement Acts 95 and 157 of 2012. Act 95 of 2012 (Act 95) provides a financial guarantee to surface mining operators reclaiming coal mine sites with bioenergy crops. Act 157 of 2012 (Act 157) establishes Land Reclamation Financial Guarantees (LRFG) which offer financial guarantees to supplement the bonding obligations of qualifying surface mining operators. The bonding incentive programs established by Acts 95 and 157 are voluntary and are intended to assist surface mine operators achieve their statutory bonding obligations.

As part of this rulemaking, the Board also proposes to amend Chapters 77, 86, 87, 88, 89, 90 and 211 to correct certain citations to the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P.S. §§ 1396.1- 1396.19b), the Dam Safety and Encroachments Act (32 P.S. § § 693.1-693.27), and the Solid Waste Management Act (35 P.S. § § 6018.101-6018.1003). These corrections are necessary to account for the addition of section 19.2 at the end of SMCRA, which was added by Act 157, and to correct citation mistakes in Chapters 77, 86, 87, 88, 89, 90 and 211.

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

The rulemaking is proposed under the authority of Section 5 of The Clean Streams Law (52 P.S. § 691.5); Sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.4(a) and 1396.4b); and Section 1920-A of the Administrative Code of 1929 (71 P.S. 510-20).

(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.

Act 95 of 2012 authorizes Bioenergy Crop Bonding, and Act 157 of 2012 establishes LRFGs. The regulations in this proposed rulemaking are necessary to give meaning to and clarify the statutory requirements. Participation in Bioenergy Crop Bonding and LRFGs is voluntary.

There are no relevant court decisions.

(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 rulemaking will accomplish three things. First, it will correct citations to statutes as they appear in Chapters 77, 86, 87, 88, 89, 90 and 211. Second, it will establish regulations to implement Act 95. Third, it will establish regulations to implement Act 157.

The citation corrections will improve the clarity and accuracy of existing regulations.

Furthermore, this rulemaking proposes to establish the regulations for Bioenergy Crop Bonding (Act 95) and LRFGs (Act 157). Both offer financial guarantees that aid surface mining operators in meeting their statutory bonding obligations. Given their overlapping subject matter, it is logical to include the proposed regulations implementing Acts 95 and 157 in the same rulemaking package.

The bonding assistance offered by the Act 95 and Act 157 financial guarantees is quite helpful to surface mining operators because it reduces capital costs. Unlike traditional surety and collateral bonds, which require securities, financial guarantees provide reclamation liability coverage to surface mining operators without the need for posting a security. Securing a bond encumbers cash flow, and since financial guarantees do not require securities, more capital is available to surface mining operators for their operations. As such, the financial guarantees offered by Act 95 and Act 157 reduce the financial impact of statutory bonding obligations on surface mining operators.

At this time, there are approximately 500 licensed surface mining operators in Pennsylvania that would benefit from the financial guarantees offered by Acts 95 and 157. A majority of these operators are small businesses. These operators have suffered from the recent dip in coal markets, and the financial assistance offered by these financial guarantees is likely to keep some surface mining operators in business.

Additionally, the proposed regulations implementing Act 157 provide a discretionary source of funding for Alternate Bonding System (“ABS”) legacy sites by allowing an optional transfer of interest and premiums from the LRFG Account to the Reclamation Fee Operation and Maintenance (“O&M”) Trust Account. ABS legacy sites are surface mining sites that have not been completely reclaimed due to an

insufficient bond being posted under the ABS and include those sites that have abandoned mine discharges. The Reclamation Fee O&M Trust Account provides funds for the reclamation of ABS sites and the treatment of abandoned mine discharges emanating from ABS sites. The transfer of funds from the LRFG Account to the Reclamation Fee O&M Trust Account has the potential to offset an increase in the Reclamation Fee imposed on operators, which is welcomed by the industry, and may help fund projects aimed at eliminating the environmental and safety hazards associated with ABS legacy sites.

(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.

There are no comparable federal standards.

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

There are no comparable programs in other states. These programs may provide surface coal mining operators in Pennsylvania with an advantage over operators in other states by offering assistance to meet bonding obligations.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

There is a tangential relationship between these regulations and the regulations at 25 Pa. Code § 86.17 (relating to permit and reclamation fees) in that the premiums collected and interest earned pursuant to the LRFG program may be transferred into the Reclamation Fee O & M Trust account which was established under 25 Pa. Code § 86.17.

(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 regulatory development process involved several meetings with the Mining and Reclamation Advisory Board (MRAB) and the Regulation, Legislative and Technical Committee of the MRAB. The MRAB representatives include coal mine operators, engineers and the public. The MRAB recommended that the Department proceed with the rulemaking process for these regulations at their October 24, 2013 meeting. The MRAB recommended that language be added to the regulation relating to the appropriation of money from the Gross Receipts Tax as described in section 19.2b(b)(7) of SMCRA. The proposed regulations include language that addresses the MRAB recommendation.

The mine operators represented on the MRAB are small businesses and represent the interest of small businesses.

(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?

This rulemaking proposes to implement Acts 95 and 157 which establish financial guarantee programs that will assist surface coal mining operators in the Bituminous and Anthracite coal regions meet their statutory bonding obligations. Currently, there are approximately 500 surface coal mining operators licensed in Pennsylvania, all but five of which are small businesses as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012. While these regulatory programs are available to all surface mining operators, their greatest benefit will be to surface mining operators that are small businesses.

The surface mining operators choosing to participate in the programs implemented by this proposed rulemaking will benefit from the financial guarantees offered by Acts 95 and 157. These financial guarantee programs help surface mining operators meet their statutory bonding obligations without encumbering capital. More specifically, the financial guarantees offered by Acts 95 and 157 provide bond coverage for operators without the need for collateral. Posting collateral and other securities to obtain bonds is financially burdensome on surface mining operators because it encumbers capital that could otherwise be used to conduct mining operations. As such, the financial guarantee programs that will be implemented by this regulation free up capital available to surface mining operators thus easing the financial strain imposed by statutory bonding requirements.

Another impact of this proposed regulation, potentially viewed as adverse, is that it could increase administrative work. Both financial guarantee programs established by Acts 95 and 157 require an application, and time and resources spent on paperwork may increase accordingly. It is not anticipated that the additional paperwork associated with these programs will be particularly burdensome. Moreover, the financial guarantee programs established by Acts 95 and 157 are entirely voluntary, so those surface mining operators not wanting to spend time or resources on more paperwork may choose not to participate in the programs.

This proposed rulemaking also has the potential to impact the bioenergy industry. Act 95 and the proposed regulations that will implement it encourage the use of bioenergy crops for reclamation purposes. Therefore, Act 95's financial guarantee program may be a boon to the bioenergy industry.

(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.

This rulemaking proposes to implement Acts 95 and 157 which establish financial guarantee programs that will assist surface coal mining operators in the Bituminous and Anthracite coal regions meet their statutory bonding obligations. Currently, there are approximately 500 surface coal mining operators licensed to surface mine coal in Pennsylvania, all but five of which are small businesses as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012. The financial guarantee programs offered by Acts 95 and 157 are entirely voluntary, so only those surface mining operators choosing to participate in either or both of the programs will be required to comply with the proposed regulations. It is not known how many operators will choose to participate.

(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 surface mining operators choosing to participate in the programs implemented by this proposed rulemaking will benefit from the financial guarantees offered by Acts 95 and 157. These financial guarantee programs help surface mining operators meet their statutory bonding obligations without encumbering capital. More specifically, the financial guarantees offered by Acts 95 and 157 provide bond coverage for operators without the need for collateral. Posting collateral and other securities to obtain bonds is financially burdensome on surface mining operators because it encumbers capital that could otherwise be used to conduct mining operations. As such, the financial guarantee programs that will be implemented by this proposed regulation free up capital available to surface mining operators thus easing the financial strain imposed by statutory bonding requirements.

More importantly, the financial guarantees established by Acts 95 and 157 are offered to surface mining operators at little or no cost. The Bioenergy Crop Bonding program established by Act 95 is offered at no cost to operators, meaning that the operator can obtain the financial guarantee without paying a premium. Similarly, the LRFG program established by Act 157 offers a financial guarantee to a surface mining operator at a minimal cost which is incurred through an annual premium payment that is 1.5% of the total amount of the LRFG issued to the operator. Accordingly, if a surface mining operator obtained a LRFG in the amount of \$10,000, its annual premium payment would be \$150. The operator would continue to make this annual premium payment until the bond were released or reduced in accordance with 25 Pa. Code Section 86.170 through Section 86.172. An annual premium payment of \$150 to secure \$10,000 in bond coverage puts less financial strain on an operator than obtaining a surety bond in the amount of \$10,000 which would have to be backed by a security to cover the entire \$10,000 bond.

Because participation in the programs established by both Acts 95 and 157 is voluntary, quantifying the financial and economic impact is not possible. However, it is expected that these financial guarantee programs will benefit surface mining operators, all but five of which are small businesses, as described above.

To provide an example of how a LRFG is intended to function, assume that a surface mining site requires an operator to post a bond totaling \$100,000 to cover reclamation liability. Instead of obtaining a \$100,000 bond from a surety, which would require collateral and other securities to back the bond, a surface mining operator could choose to participate in the LRFG program established by Act 157 and obtain a \$10,000 financial guarantee. While the operator would have to pay a 1.5% premium on the \$10,000 financial guarantee, it would not have to post a security for the financial guarantee. As such, the operator would have \$10,000, less premium payments, to conduct surface mining activities, and only \$90,000 would then have to be backed by a security.

The no-cost financial guarantee made available through Bioenergy Crop Bonding would be provided in a similar manner. Instead of obtaining \$10,000 in bond, a participating surface mining operator could obtain Bioenergy Crop Bonding in the amount of \$10,000, and thus avoid the need to secure that \$10,000 sum, so long as the remaining site permitted to the participating surface mining operator was reclaimed with bioenergy crops and met other requirements proposed in the Bioenergy Crop Bonding regulations.

These examples demonstrate two ways in which the financial guarantees offered by Acts 95 and 157 will benefit operators. First, they provide bond coverage to the operator at little or no cost. Second, they allow operators to cover their reclamation liabilities with a financial instrument other than a bond. Bonds require securities which encumber capital. The smaller the bond an operator must seek from a surety or similar entity, the more capital an operator has available to conduct mining activities and ultimately turn a profit.

Another benefit of the LRFG portion of this rulemaking is that it provides a discretionary funding source for ABS legacy sites. ABS legacy sites are surface coal mining sites that were not completely reclaimed due to deficiencies in the old statutory bonding system which has since been superseded. The Department is responsible for ensuring that the ABS legacy sites are completely reclaimed and for ensuring that any discharges of water emanating from these sites are treated in perpetuity. The premiums collected and interest earned on the account supporting the LRFG program may, at the Department's discretion, be transferred into the Reclamation Fee O&M Trust Account which is exclusively used to reclaim ABS legacy sites and treat discharges emanating therefrom. The discretionary transfer of funds generated by the LRFG program may thus be used to eliminate environmental and health and safety hazards, benefitting all citizens of and visitors to Pennsylvania.

This rulemaking also promotes and provides an incentive for the use of bioenergy crops for mine reclamation. An expanded use of bioenergy crops has the potential to benefit the bioenergy crop industry.

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

The financial guarantee programs of Acts 95 and 157 explained more fully in previous sections of this Regulatory Analysis Form suggest that surface mining operators choosing to participate in either of these programs stand to benefit from this rulemaking. One of the most important benefits is that a surface mining operator does not need to post collateral to receive a LRFG or Bioenergy Crop Bonding.

Except for the potential slight increase in paperwork, there are no adverse effects of this proposed rulemaking. Moreover, both financial guarantee programs are voluntary so any adverse impacts that may manifest can be avoided by choosing not to participate in the programs. Therefore, the potential financial benefits made available through this proposed rulemaking to surface mining operators, a majority of which are small businesses, significantly outweigh any of the adverse effects identified herein, and any adverse effects may be avoided by choosing not to participate.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are approximately 500 surface mining operators licensed to mine in Pennsylvania, all but five of which are small businesses. However, because participation in the financial guarantee programs of Acts 95 and 157 is voluntary, only those surface mining operators choosing to participate in the financial guarantee programs will be affected by this proposed rulemaking.

Compliance with the proposed rulemaking will impose minimal costs on surface mining operators, if any costs at all. Since the level of participation is not yet known, quantifying exact costs or savings to those impacted by this proposed rulemaking is impossible. However, Act 157 and the regulations proposed in this rulemaking implementing it require a participating operator to pay an annual premium of 1.5% of the total amount of the financial guarantee the operator obtains. Accordingly, if an operator obtains a LRFG pursuant to Act 157 in the amount of \$10,000, the operator will have to pay an annual premium of \$150. The operator will have to continue paying this premium until its bond is reduced or released in accordance with 25 Pa. Code Chapter 86.

The cost of the premium payment, though, avails the participating operator of financial benefits that greatly outweigh the cost of the premium payment. For example, a surface mining site may require an operator to post a bond totaling \$100,000 to cover reclamation liability. Instead of obtaining a \$100,000 bond from a surety, which would require collateral and other securities to back the bond, a surface mining operator could choose to participate in the LRFG program established by Act 157 and obtain a \$10,000 financial guarantee. While the operator would have to pay a 1.5% premium on the \$10,000 financial guarantee, it would not have to post a security for the financial guarantee. As such, the operator would have \$10,000, less premium payments, to conduct surface mining activities, and only \$90,000 would then have to be backed by a security.

Similarly, Bioenergy Crop Bonding makes financial guarantees available to participating operators at no cost. As such, an operator can apply for an obtain Bioenergy Crop Bonding without paying any fee or premium so long as the operator's permitted remining site is reclaimed with bioenergy crops and other requirements of the proposed rulemaking are met. Thus, an operator obtaining Bioenergy Crop Bonding incurs no costs to participate in the Act 95 program and avoids the need to post a security for the amount of the Bioenergy Crop Bonding, making more capital available to the operator.

These examples demonstrate two ways in which the financial guarantees offered by Acts 95 and 157 will benefit operators. First, they provide bonding coverage to the operator at little or no cost. Second, they allow operators to cover their reclamation liabilities with a financial instrument other than a bond. Bonds require securities which encumber capital. The smaller the bond an operator must seek from a surety or similar entity, the more capital an operator has available to conduct mining activities and ultimately turn a profit.

(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.

The proposed rulemaking is not expected to impact local government.

(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.

Costs and savings to the state will depend on the number of surface mining operators choosing to participate in the financial guarantee programs established by Acts 95 and 157. Revenue generated by the annual premium payment required to participate in the LRFG program will fund the LRFG Account, and those premium payments, plus interest earned on the LRFG Account, may be transferred into the Reclamation Fee O&M Trust Account. More specifically, Act 157 requires a portion of the funds in the LRFG Account to be designated to underwrite LRFGs and allows for a portion of the funds in the LRFG Account to be held in reserve. Those funds held in reserve in the LRFG Account may, under Act 157, be transferred to the Reclamation Fee O&M Trust Account to facilitate reclamation of ABS legacy sites and treat discharges emanating therefrom. Thus, the LRFG program has the potential to provide a source of funding to two accounts that help ensure the state can fund reclamation of forfeited or abandoned mine sites.

The annual payments and interest earned on the LRFG Account will not be used to offset the costs associated with administering the program. As such, the state will incur costs by administering the LRFG program, but those costs will be minimal. Likewise, administering the Bioenergy Crop Bonding program will result in costs to the Commonwealth, but those costs will be minimal. The cost to administer both of these programs depends upon participation.

(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.

Surface mining operators choosing to participate in either of the programs must complete and submit a form for the particular program. There are forms for the LRFG program and for the Bioenergy Crop Bonding program. These forms have been drafted to collect the information necessary to implement the programs.

Beyond these forms, there are no additional legal, accounting, or consulting procedures are expected for the groups identified in items (19)-(21) above.

(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	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Savings	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
COSTS:						
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$5,000.00	\$10,000.	\$11,000.	\$12,000.	\$13,000
Total Costs	\$0.00	\$5,000.00	\$10,000.	\$11,000.	\$12,000.	\$13,000
REVENUE LOSSES:						
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Revenue Losses	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

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

Program	FY -3	FY -2	FY -1	Current FY
N/A	N/A	N/A	N/A	N/A

(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.

(a) Currently, there are approximately 500 surface coal mining operators licensed in Pennsylvania, all but five of which are small businesses as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012. The surface mining operators choosing to participate in the programs implemented by this proposed rulemaking will benefit from the financial guarantees offered by Acts 95 and 157. These financial guarantee programs help surface mining operators meet their statutory bonding obligations without encumbering capital. More specifically, the financial guarantees offered by Acts 95 and 157 provide bond coverage to operators without the need for collateral. Posting collateral and other securities to obtain bonds is financially burdensome on surface mining operators because it encumbers capital that could otherwise be used to conduct mining operations. As such, the financial guarantee programs that will be implemented by this regulation free up capital available to surface mining operators thus easing the financial strain imposed by statutory bonding requirements.

(b) The financial guarantees established by Acts 95 and 157 are offered to surface mining operators at little or no cost. The Bioenergy Crop Bonding program established by Act 95 is offered at no cost to operators, meaning that the operator can obtain the financial guarantee without paying a premium. Similarly, the LRFG program established by Act 157 offers a financial guarantee to a surface mining operator at a minimal cost which is incurred through an annual premium payment that is 1.5% of the total amount of the LRFG issued to the operator.

(c) Because participation in the programs established by both Acts 95 and 157 is voluntary, quantifying the financial and economic impact is not possible. However, it is expected that these financial guarantee programs will benefit surface mining operators, a majority of which are small businesses, as described above. For example, a surface mining operator could choose to participate in the LRFG program or the Bioenergy Crop Bonding program and obtain a \$10,000 financial guarantee. An operator obtaining a financial guarantee under either program would not have to post a security for the financial guarantee, thus making available capital that would be encumbered by a bond.

This example demonstrates two ways in which the financial guarantees offered by Acts 95 and 157 will benefit operators. First, it provides bonding coverage to the operator at little or no cost. Second, it allows operators to cover their reclamation liabilities with a financial instrument other than a bond. Bonds require securities which encumber capital. The smaller the bond an operator must seek from a surety or similar entity, the more capital an operator has available to conduct mining activities and ultimately turn a profit.

This proposed rulemaking also has the potential to impact the bioenergy industry. Act 95 and the proposed regulations that will implement it encourage the use of bioenergy crops for reclamation purposes. Therefore, Act 95's financial guarantee program may be a boon to the bioenergy industry.

Both financial guarantee programs established by Acts 95 and 157 require participants to submit applications. This slight increase in paperwork is not expected to be particularly burdensome. Moreover, the financial guarantee programs established by Acts 95 and 157 are entirely voluntary, so those surface mining operators not wanting to spend time or resources on more paperwork may choose not to participate in the programs.

(d) There are no less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions have been implemented. This proposed rulemaking will implement programs that provide financial incentives to surface mining operators, many of which are small businesses. Participation in the programs established by Acts 95 and 157 is voluntary.

(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 alternative regulatory provisions were considered. The approach was to provide the essential elements required by the statutes.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses.

The financial guarantee programs enacted by Acts 95 and 157 are voluntary. As such, only those surface mining operators choosing to participate in either program will be subject to the requirements of the proposed rulemaking. Moreover, these financial guarantee programs were enacted to assist surface mining operators, many of which are small businesses, in meeting their statutory bonding obligations.

The compliance and reporting requirements in this proposed rulemaking are minimal. In fact, participation in these programs, except for the 1.5% annual payment required by the proposed regulations implementing Act 157, requires generally the same information a surface mining operator must collect and submit to obtain a mining permit. Therefore, a surface mining operator is likely to have all of the information needed to participate in both the Bioenergy Crop Bonding program and the LRFG

Program readily available.

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

Since many surface mining operators are small businesses, the proposed compliance and reporting requirements of these beneficial financial guarantee programs are tailored to accommodate small business.

There are no schedules or deadlines for compliance and reporting proposed in this rulemaking, and participation in the programs is voluntary.

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

Since many surface mining operators are small businesses, the proposed compliance and reporting requirements of these beneficial financial guarantee programs are tailored to accommodate small business.

- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.

Design and operational standards do not factor into this proposed regulation.

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

Participation in the programs implemented by this proposed rulemaking is voluntary. Therefore, any surface mining operator that is a small business can choose to ignore the programs.

There is no adverse impact expected on small businesses. In fact, this regulation will provide assistance to coal mine operators, most of which are small businesses.

(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.

There is no data upon which this regulation is based.

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

- | | |
|---|------------------|
| A. The date by which the agency must receive public comments: | October 31, 2014 |
| 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: | October 31, 2015 |
| D. The expected effective date of the final-form regulation: | October 31, 2015 |
| E. The date by which compliance with the final-form regulation will be required: | October 31, 2015 |
| F. The date by which required permits, licenses or other approvals must be obtained: | NA |

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

The regulations include a requirement for periodic review of the limits and process. This is required at least every five years. In the initial implementation period, it is anticipated that an annual review will be conducted to identify process improvements.