

# 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: 7-496

IRRC Number:

(3) PA Code Cite: 25 Pa. Code Chapters 87, 88 & 90

(4) Short Title: Remining Requirements

(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)

This proposed rulemaking will update the Commonwealth's remining regulations to reflect the federal regulatory requirements in 40 C.F.R. Part 434. The federal requirements are different from the current state requirements in two ways. First, the federal requirements include two options for the statistical methods for determining the pollution baseline, while the state requirements only allow for one of these methods. Second, the federal regulations provide for remining in cases where the pollution baseline cannot be determined.

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

This proposed rulemaking is authorized under the authority of section 5 of The Clean Streams Law (35 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.

No. 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.

This rulemaking will allow for additional reclamation of abandoned mine lands by providing protection to mine operators from long-term treatment liability. The provisions of the rulemaking, that allow for remining in circumstances where calculating the baseline pollution load of discharges is not feasible, have the potential to open up areas to remining where it was not previously possible. Remining typically results in substantial improvements in water quality in addition to the land reclamation.

(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.

Yes. The proposed rulemaking is more stringent than the federal requirements at 40 CFR 434 with respect to discharges for which it is infeasible to calculate a baseline pollutant load. The federal requirements rely exclusively on the pollution abatement plan for these mine sites. The proposed rulemaking at § 87.210 (d)(2), (3) & (5), includes requirements to establish an in-stream pollutant baseline in certain circumstances. These provisions are focused on assuring that the pollution abatement plans prevent any further pollution which will protect, and in many cases, enhance the water quality of Pennsylvania's streams.

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

Pennsylvania has been a national leader in the implementation of remining requirements. Other states are required to comply with the effluent limitations established for coal mining at 40 CFR 434. The proposed rulemaking continues Pennsylvania's leadership in coal remining in the United States.

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

No.

(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.)

During the development of the proposed rulemaking, the Department engaged with the Mining and Reclamation Advisory Board's (MRAB) Regulation, Legislation and Technical committee through a series of meetings over the course of two years. The proposed rulemaking reflects the results of this effort. Progress reports were provided to the MRAB throughout this interaction. The MRAB represents a cross-section of the coal mining industry and citizens, including the mine operators which are 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?

There are about 500 licensed surface coal mining operators in Pennsylvania, most of which are small businesses that will be subject to this regulation if they choose to remine. Generally, the impact on these operators will be positive because the proposed rulemaking will allow for mining of reserves that were previously not feasible to mine. Some additional sampling costs are anticipated. However these costs are not out of line with the costs incurred through the typical planning process that is required for permitting a coal mine site.

(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 about 500 licensed surface coal mining operators in Pennsylvania, most of which are small businesses that will be subject to this regulation if they choose to remine. The proposed rulemaking has a specific scope - remining sites - which limits the number of entities which will need to comply with the requirements. It is a business decision for each applicant as to whether they want to undertake a project which entails remining. The proposed rulemaking provides protection for these mine operators from the potential long-term pollution liability associated with post-mining discharges.

(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 allow mining to occur in areas where it was not previously feasible due to the number or location of pre-existing discharges. Remining results in substantial reclamation that would otherwise not be completed because of the legacy of unregulated mining in Pennsylvania. In addition, the proposed rulemaking provides greater flexibility than the existing regulations because it allows for additional statistical methods to establish a pollutant baseline and determine compliance.

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

The additional costs resulting from this proposed rulemaking are minimal. The costs will only be incurred if the mine operator chooses to take advantage of the protections provided under the regulation. It is likely that additional sites will be feasible to mine due to the implementation of the proposed rulemaking.

(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.

It is not possible to quantify the costs or savings to the regulated community since these will depend upon how many mine permit applications will be subject to the regulations. The decision-making of the applicant and the coal market will ultimately determine the scale of costs or savings. Savings will result from the protection from perpetual liability for discharge treatment which can be very costly, depending upon the volume and water quality of the discharge.

(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 proposed rulemaking is not applicable to local governments so there will be no costs or saving.

(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.

There are no known additional costs to the state government.

(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.

It is not anticipated that additional reporting, recordkeeping or other paperwork will be required as a result of this rulemaking. It may be necessary to revise some of the forms currently used, 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.

	<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>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

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

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
Interstate Mining	\$0	\$30,000	\$30,000	\$30,000
Environmental Protection Operations	\$8,451,388	\$7,659,447	\$8,375,310	\$6,150,471
Environmental Program Management	\$1,556,200	\$1,685,383	\$1,161,917	\$913,736
General Government Operations	\$279	\$66,238	\$0	\$17,422
General Operations	\$408,664	\$376,511	\$762,272	\$506,482
Coal & Clay Mine Subsidence Fund - General Operations	\$91,079	\$287,231	\$143,450	\$94,540
Bituminous Mine Subsidence & Land Conservation Act	\$0	\$69,378	\$79,096	\$124,460
Clean Water Fund	\$0	\$0	\$517,481	\$779,434
Well Plugging Acct	\$67,280	\$55,010	\$41,768	\$31,022
Reclamation Fee O&M Trust	\$5,439	\$28,145	\$16,660	\$15,371

(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.

This regulation is not expected to have an adverse impact on small businesses.

(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.

There are no special provisions.

(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.

During the interaction with the MRAB Regulation, Legislation and Technical committee, the alternative of adopting only one of the two methods in the federal regulations was considered. The analysis was based upon the fact that Method 1 has been used in Pennsylvania since 1985. Method 2 has not been used in Pennsylvania. The recommendation of the committee was to adopt both methods in order to maintain the maximum amount of flexibility. The proposed rulemaking reflects this recommendation.

(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 regulatory methods were not considered because the final regulations must be approved by the federal Office of Surface Mining Reclamation and Enforcement. The criteria for approval include consistency with the federal requirements, which do not allow for the alternatives listed.

(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 was not used as the basis for this regulation.

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

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

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

The coal mining program in Pennsylvania is subject to oversight by the Office of Surface Mining Reclamation and Enforcement. This oversight will routinely review the effectiveness of the coal mining program which will include this specific regulation.