

# Regulatory Analysis Form

(Completed by Promulgating Agency)

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

## INDEPENDENT REGULATORY REVIEW COMMISSION

IRRC Number:

(1) Agency

Environmental Protection

(2) Agency Number: 7

Identification Number: 556

(3) PA Code Cite: 25 Pa. Code Chapter 105 Dam Safety and Waterway Management

(4) Short Title: Dam Safety and Waterway Management

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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 Board is proposing amendments to 25 Pa. Code Chapter 105 (relating to waterway management and dam safety) to clarify existing regulations; delete or update obsolete requirements and references; incorporate new or revised definitions; and correct typographical errors in certain sections of Chapter 105. The proposed regulatory revisions would allow the Department to focus resources on projects that pose significant threat to public health, welfare, safety and the environment. These amendments would provide for efficient management and oversight of low-impact structures and activities to ensure compliance with objectives of the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27). The proposed regulatory revisions would add new subsections or update existing regulations to clarify application requirements for mitigation plan, alternatives analysis, impacts analysis, cumulative impacts analysis, environmentally beneficial projects or activities, and aquatic resource assessment and mitigation criteria. The Board previously promulgated amendments to Chapter 105 regulations to update fees in 2013 (43 Pa.B. 967), and to make specific technical revisions regarding dam safety in 2011 (41 Pa.B. 219); however, the Chapter 105 regulations have not been substantively revised since 1991 (21 Pa.B. 4911).

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

This proposed rulemaking is authorized under sections 5, 7, 10, 11 and 17 of the Dam Safety and Encroachments Act (act) (32 P.S. §§ 693.5, 693.7, 693.10, 693.11 and 693.17); sections 5 and 402 of The Clean Streams Law (35 P.S. §§ 691.5 and 691.402); sections 302 and 402 of the Flood Plain Management Act (32 P.S. §§ 679.302 and 679.402); section 11(2) of the Conservation District Law (3 P.S. § 859(2)); and sections 514(a), 1901-A(1) and (20), 1908-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 194(a), 510-1(1) and (20), 510-8, 510-17 and 510-20), unless otherwise noted.

(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 proposed rulemaking is not mandated by any federal or state law, federal or state court order, or federal regulation. No state or federal court decisions mandate a new or revised rulemaking. The Board, however, is proposing to provide clarifying revisions to Chapter 105 relating to water-dependent projects and practicable alternatives based on the Environmental Hearing Board's (EHB) January 18, 2018 opinion in *Clean Air Council et al v. DEP*, 2018 EHB 35, 40 and the U.S. Court of Appeals for the Third Circuit decision in *Del. Riverkeeper Network v. Sec'y of the Pa. Dep't of Env'tl. Prot.*, 870 F.3d 171, 183 (3d Cir. 2017).

While not mandated, this proposed rulemaking is consistent with the Commonwealth's authority under the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*), as amended. Under Section 510 of the Clean Water Act, the function of developing water quality standards and antidegradation implementation requirements has long been a function reserved to the states. 33 U.S.C. § 1370. See also, 40 C.F.R. § 131.4. Section 303 of the Clean Water Act (33 U.S.C. § 1313), authorizes states to establish water quality standards within their jurisdictions. In section 303(a)(2) of the Clean Water Act (33 U.S.C. § 1313(a)(2)), Congress mandated that the state water quality standards adopted by states pursuant to their own laws prior to October 18, 1972, remain in effect unless the U.S. Environmental Protection Agency (EPA) determines they are inconsistent with the Clean Water Act (CWA). Section 303(c)(1) of the Clean Water Act (33 U.S.C. § 1313(c)(1)), gives states the authority to review and revise water quality standards for surface waters within their borders.

This proposed rulemaking would be consistent with the Department's current coordination efforts with the U.S. Army Corps of Engineers (Corps) under section 17(d) of the Dam Safety and Encroachments Act (32 P.S. § 693.17(d)). See also 25 Pa. Code § 105.24 (relating to coordination of permits). Section 404(e) of the Clean Water Act (CWA) (33 U.S.C. § 1344(e)), provides for the issuance of Department of the Army (DA) general permits (GPs) on a statewide basis, which operate in conjunction with a State regulatory program that protects the aquatic environment in a manner that the Corps has determined to be equivalent to the DA regulatory program, provided that the activities permitted under each category of such GPs are similar in nature and result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This joint coordination process is undertaken through the implementation of the Pennsylvania State Programmatic General Permit (PASPGP) which has been issued by the Corps pursuant to Clean Water Act Section 404(e) in Pennsylvania since 1991 and is based upon consistency with the requirements of 40 CFR, Part 230 (relating to section 404(b)(1) guidelines for specification of disposal sites for dredged or fill material). The Department and Corps also utilize a joint

permit form to coordinate efficient processing of applications for larger-scale projects that are not eligible for PASPGP. The Department coordinates with the Corps and other states and federal agencies and commissions regarding projects that require compensatory mitigation through the existing state and federal permitting processes.

The proposed regulatory revisions to update the compensatory mitigation requirements framework in § 105.20a would be consistent with the Department's authority under section 2 of the Dam Safety and Encroachments Act (32 P.S. § 693.2), Sections 4 and 5 of The Clean Streams Law (35 P.S. §§ 691.4 and 691.5) and the existing Chapter 105 requirements relating to mitigation. These proposed amendments would also generally be consistent with the existing requirements established by the U.S. Environmental Protection Agency (EPA) and the Corps under the April 10, 2008 joint final rule entitled *Compensatory Mitigation for Losses of Aquatic Resources* (2008 Federal Mitigation Rule) (73 FR 15,594). See 33 CFR Part 332 and 40 CFR Part 230, subpart J.

Upon the Board's promulgation of this proposed rule as a final-form regulation, the Department will submit the final-form regulation to EPA for approval as an amendment to Pennsylvania's water quality standards in effect for Clean Water Act purposes.

(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 is needed to clarify Chapter 105 requirements for project applicants, while enabling the Department to administer the Dam Safety and Encroachments Act and the Chapter 105 regulations in a more efficient and effective manner. The proposed amendments would add new subsections or update existing regulations to clarify the application requirements for a mitigation plan, alternatives analysis, impacts analysis, cumulative impacts, environmentally beneficial projects or activities, and aquatic resource assessment and update the existing compensatory mitigation criteria for unavoidable impacts to aquatic resources. The proposed regulations do not add new permit application or registration fees or revise current permit application or registration fees.

This proposed rulemaking would provide regulatory clarity to improve the quality of permit applications received from project applicants. The proposed amendments specify what information project applicants must include in their applications to meet certain existing regulatory standards under Chapter 105. Through administration of the Chapter 105 program in recent years, the Department has determined that providing additional clarifying information will foster a better understanding of the Chapter 105 regulations by the regulated community and improve the quality of applications or registrations received from project applicants. Notably, the proposed amendments provide added clarity regarding the information an applicant must include in the mitigation plan, alternatives analysis, antidegradation demonstration, impacts analysis, cumulative impacts analysis and updates the compensatory mitigation framework for unavoidable impacts to aquatic resources. The antidegradation demonstration is currently required as part of the Environmental Assessment (EA) and is explained in the EA form instructions (3150-PM-BWEW0017) and referenced in the Joint Application for a Pennsylvania Water Obstruction and Encroachment Permit form instructions (3150-PM-BWEW0036). These Chapter 105 application forms can be accessed on the Department's website at <http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=4088>. The proposed amendments would also clarify that the impacts analysis and compensatory mitigation requirements are not the same as evaluations or assessments of protected water uses made under 25 Pa.

Code Chapter 93. These proposed amendments are intended to address common deficiencies in permit application submittals. The proposed amendments are also intended to remove unnecessary barriers and delays for applicants seeking to undertake low impact structures and activities.

The regulated community, including businesses in the agriculture, forestry, commercial and residential construction, transportation, utilities, mineral resources sectors; municipalities; non-profit organizations; state agencies and commissions; and individuals would benefit from the proposed revisions to Chapter 105. These benefits would include new or revised waivers for certain low impact structures and activities, exemptions for annual charges for certain activities in submerged lands of the Commonwealth, consolidated permit application submittal, and flexibility for disturbance fee submittal to the Department. Amendments to allow electronic submittal of seals, certifications and signatures would also benefit the regulated community by allowing application submittal flexibility and the environment by reducing the need for additional paper submissions. Benefits would also include savings in resources associated with permit applications, project delays, project completion and realizing environmental improvements in a more expeditious manner. In addition, the proposed regulatory revisions will allow the Department to focus attention on projects that may pose higher risks or more significant threats to public health, welfare, safety and the environment.

The Department met with stakeholders, including representatives of several county conservation districts, United States Department of Agriculture (USDA)- Natural Resource Conservation Service (NRCS), State Conservation Commission (SCC), Pennsylvania Association of Conservation Districts (PACD), and Pennsylvania Department of Conservation and Natural Resources (DCNR) representatives during the development of this proposed rulemaking. The proposed revisions to Chapter 105 are intended to provide efficiencies in the regulatory oversight of these types of low impact projects. The proposed addition of definitions, such as crop production, and new structures and activities eligible for the waiver of permit requirements (waivers) would benefit the agricultural community, fire departments, environmental organizations, parks and recreation organizations, and a wide variety of industries that perform environmental and geologic testing in advance of permit submission and use standard mats and pads for erosion control best management practices (BMPs) in wetlands.

The proposed regulations would provide additional exemptions from annual charges for occupying submerged lands of the Commonwealth. The proposed exemptions would include projects and activities constructed for the significant benefit of the environment such as stream restoration and reclamation. In addition, projects that are temporary in nature will be exempt from these prohibitive costs. The annual charges for these types of projects had been a detriment and the Department anticipates that these proposed exemptions would enable non-profits, environmental groups and others to conduct more of these types of beneficial projects.

Legacy abandoned structures that pose hazards exist in aquatic resources are generally a product of Pennsylvania's industrial history. Remnants of these structures pose a threat to waterway users and, in some cases, also impact public health. Proposed revisions to § 105.47(b) would add clarifying language regarding removal of abandoned water obstructions and encroachments. This proposed amendment would specify that the permittee or owner must remove structures that pose a threat to public health, safety or the environment or no longer serve a purpose.

The Board is proposing the addition of a new subsection under § 105.15 to clearly outline environmental assessment requirements associated with aquatic resource restoration projects such as a stream or

floodplain restoration. The addition of this subsection is needed to differentiate application requirements for environmentally beneficial projects that reestablish or rehabilitate aquatic resources to natural characteristics and aquatic resource functions from the application requirements for other types of projects regulated under the act and Chapter 105.

### *Waivers*

Waivers provide important efficiencies in regulatory oversight for low-impact and environmentally friendly projects. The Board is proposing to add new waivers and simplify requirements for aquatic resource restoration projects after evaluating the implementation history of the program as it relates to these activities. The proposed structures and activities eligible for a permit waiver under § 105.12(a) will be required to comply with requirements of the act and Chapter 105, therefore subsection 105.12(d) is proposed for addition to emphasize the need for these structures and activities to be properly designed and comply with other requirements in Chapter 105. Subsection 105.12(c) would be amended to include restrictions on the applicability of waivers where a structure or activity otherwise eligible for a waiver under § 105.12(a) would occupy submerged lands of the Commonwealth. This eligibility restriction is proposed to ensure that the Commonwealth retains these lands for public trust purposes. This subsection would include additional eligibility requirements to eliminate potential impacts to: threatened or endangered species; historic, cultural, or archaeological resources; and locally recognized historical sites. The Board is proposing to add language to specify that this restriction does not apply to Commonwealth agencies or commissions.

The new activities proposed for permit waiver eligibility would include the removal of legacy structures or sediments in aquatic resources; allow for the construction and maintenance of a streambank fencing conservation practice associated with crop production or a temporary fencing for protection of a conservation planting practice located in or along a body of water or along watercourses and their floodways; low-impact and non-motorized recreational activities such as walking or biking trails; elevated boardwalks in wetlands when utilized for educational and interpretive purposes; temporary emergency placement, and operation and maintenance of dry fire hydrants or other structures associated with water withdrawal for crop production or fire protection; archeological, geotechnical or environmental testing, monitoring activities, or investigative activities of a temporary nature ; and placement, maintenance and removal of temporary mats and pads used as a best management practice for minimizing erosion and sedimentation at wetland crossings.

Each of these proposed waivers will provide a time savings benefit for the regulated community and the Department, while not resulting in an adverse risk to public health, safety or the environment. Many of the proposed revisions were initiated from consultation meetings with stakeholders. For example, the Pennsylvania Turnpike Commission, and a Chapter 105 Agricultural Workgroup comprised of representatives from several county conservation districts, U.S. Department of Agriculture- Natural Resource Conservation Service (NRCS), State Conservation Commission (SCC), Pennsylvania Association of Conservation Districts (PACD), and Department of Conservation and Natural Resources (DCNR) representatives helped to formulate the waiver for streambank fencing conservation practices associated with crop production or a temporary fencing for protection of a conservation planting. This waiver would allow for the placement of fencing in or along a body of water or along a watercourse and floodways when used as a conservation practice associated with crop production, grazing, or government set aside programs or provide temporary protection for the establishment of riparian buffer or other conservation plantings. Chapter 105 regulations require authorizations for water obstructions, not only in the stream, but also in the

floodway which is a minimum of 50 feet from each streambank. Costs associated with application fees for this type of conservation practice may disincentivize their implementation.

DCNR representatives worked with stakeholders regarding the need for permit waivers for walking or biking trails and the elevated boardwalks in wetlands when utilized for educational and interpretive purposes. Many of these stakeholders are non-profit or local municipal organizations that receive environmental grants to construct or maintain trails for the use of the general public. The proposed amendments will waive permit application requirements for these low impact activities and incentivize projects. In particular, this waiver will enable nonprofit organizations to better employ volunteers and participants that assist in implementation of trail construction and maintenance practices.

The Board proposes to add a waiver under § 105.12(a) for the temporary emergency placement, operation and maintenance of dry fire hydrants for water withdrawals. This waiver would allow placement of temporary pumps, hoses or pipes in a watercourse or a body of water in an emergency. Agricultural entities could use this waiver for crop production during times of drought and community fire companies could obtain water for fire protection, especially in rural areas.

The Board also proposes to add a permit waiver for construction, operation or removal of temporary archeological, geotechnical or environmental testing, monitoring activities, or investigative activities. These activities are generally short-term, low risk activities which are necessary to collect data, evidence, or other information to complete a Department permit application.

Lastly, the Board proposes to add a permit waiver for the use of temporary mats or pads when used as an erosion and sediment control best management practice for wetlands. This new waiver will provide the opportunity for persons working around wetlands to install, maintain and remove these practices to adequately protect water resources and ensure a safer work environment. It is important to note that although the requirement to obtain a permit would be waived for these activities, they are still regulated under the act and Chapter 105. Wetlands must be restored to their previous condition after temporary use of mats or pads.

#### *Environmentally Beneficial Projects*

The addition of a new subsection in § 105.15 for environmentally beneficial projects would remove the need for entities to complete unnecessary permit application or registration requirements, avoid unnecessary costs and provide for more timely completion of projects. Benefits associated with environmental restoration projects include cleaner water, improved habitats for wildlife, fish and other aquatic life, improved recreational opportunities for citizens, economic development in communities, developing resilience from flooding and other effects of extreme storm events.

The proposed regulatory amendments have the potential to affect any person, business, or local or state government entity proposing to construct, operate, maintain, modify, enlarge or abandon a dam, water obstruction or encroachment located in, along or across or projecting into aquatic resources. The specific number of entities effected by the amendments is not known, however most of the approximate 8,000 industry, and local or state government entities historically regulated have already developed experience and technical capacity under the existing Chapter 105 regulations.

The proposed amendments will not have a significant effect on these entities as most of the amendments clarify existing requirements, incorporate existing authorized regulated practices, and are being provided for transparency and consistency, so compliance costs are not expected to increase.

*Compensation for impacts to aquatic resources*

The amendments to § 105.20a would benefit applicants by providing the compensatory mitigation framework for unavoidable impacts to aquatic resources, including wetlands, watercourses and their floodways and other bodies of water in one consolidated section. The existing Chapter 105 regulations currently provide standardized replacement criteria for wetlands, but not watercourses and their floodways or other bodies of water. The proposed amendments would be consistent with section 2 of the act, The Clean Streams Law, the existing mitigation requirements in Chapter 105 and current scientific principles and practices. The proposed amendments to Chapter 105 are generally consistent with the EPA and Corps joint final rule entitled *Compensatory Mitigation for Losses of Aquatic Resources* (2008 Federal Mitigation Rule) (73 FR 19,594; April 10, 2008) and will improve compensatory mitigation planning, implementation and management by emphasizing a watershed approach in selecting project locations, requiring measurable, environmental performance standards for all forms of aquatic resource compensation.

The proposed amendments will establish equivalent standards for permittee-responsible compensatory mitigation where the permittee maintains responsibility for the construction and long-term success of the site, as well as mitigation banks and in-lieu fee mitigation methods. Availability of mitigation banking and an in-lieu fee mitigation program in Pennsylvania would provide the opportunity for an alternative to the permittee in designing, constructing and operating individual mitigation sites, considered as “permittee responsible” mitigation sites. Larger-scale compensatory mitigation projects, made possible by mitigation banking and in-lieu fee programs, also provide for greater natural resource improvements. The addition of these compensatory mitigation options through this proposed rulemaking would reflect updated practices and provide greater flexibility and predictability for applicants. This will translate into time savings for both applicants and the Department while benefitting natural resources through improved quality of mitigation projects. Potential benefits to social and environmental wellbeing from mitigation banking and in-lieu fee methods would be recognized through the restoration of historically impaired or impacted aquatic resources, such as removal of legacy sediment.

(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.

The proposed amendments are consistent with Pennsylvania’s authority under the federal Clean Water Act to review and revise water quality standards and to adopt standards more stringent than Federal requirements. See, 33 U.S.C. §§ 1313 and 1370; See also, 33 U.S.C. 131.4. The Chapter 105 regulations were promulgated under state law authority in the act and The Clean Streams Law, not Section 404 of the Clean Water Act (33 U.S.C. § 1344). The act and The Clean Streams Law are generally more comprehensive and protective than Section 404 of the Clean Water Act. For example, the act and implementing Chapter 105 regulations provide for the regulation of dams, contain more stringent protections for wetlands, include the Commonwealth’s submerged lands license program requirements and expressly incorporates PA. CONST. Article I § 27 environmental rights and Commonwealth trustee obligations, whereas Clean Water Act Section 404 and the Corps implementing regulations do not.

The proposed amendments to Chapter 105 relating to dam safety are more stringent because the Corps does not have companion regulations under Federal law that apply to non-federal dams. Pennsylvania has a unique history with dams that has influenced the need for a state regulatory program that ensures the protection of public health and safety. Proposed amendments to Chapter 105 application information requirements derives from separate and distinct state law authority under the act and The Clean Streams Law, but the Department coordinates with the Corps through the administration of the Pennsylvania State Programmatic General Permit and joint permitting processes when it is practical to do so. See, 32 P.S. § 693.17(d) and 25 Pa. Code § 105.24 (relating to coordination of permits). The proposed amendments relating to compensatory mitigation, while based on state law authority, are generally consistent with Federal requirements under the 2008 Federal Mitigation Rule and the Department's coordination efforts.

(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 Commonwealth's Chapter 105 wetland protection and dam safety regulatory program has traditionally been one of the leading wetlands and dam safety programs in the Mid-Atlantic States, as well as nationally. Dam safety, water obstruction and encroachment regulations vary across different regions of the United States. The proposed amendments to Chapter 105 would generally be similar to surrounding states' regulatory requirements.

This proposed rulemaking reflects a continuing commitment to effective compensation for unavoidable impacts to aquatic resources by incorporating current mitigation practices into the regulatory framework. The proposed regulatory revisions reflect the existing obligation established for the regulated community under the 2008 Federal Mitigation Rule. See, 33 CFR Part 332 and 40 CFR Part 230, subpart J. These Federal regulations were intended to improve compensatory mitigation planning, implementation, and management nationwide by applying similar standards to all compensation projects and emphasizing a watershed approach to selecting project sites. In 2014, the Association of Wetland Managers (ASWM) reported that thirteen states have formalized stream mitigation programs, the majority of which were initiated after the Corps and the EPA issued the 2008 Federal Mitigation Rule and at least thirty-two stream mitigation guidance documents and policies have been developed by states and Corps districts throughout the United States. ASWM also provides that nineteen states have wetland restoration as a core element in their wetland program. The nineteen states include: California, Delaware, Florida, Georgia, Kansas, Massachusetts, Montana, Maine, Nebraska, New Mexico, New Hampshire, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Vermont, Wisconsin and West Virginia.

The Board proposes to address compensation for unavoidable impacts to aquatic resources in a manner that is generally consistent with the 2008 Federal Mitigation Rule by: maintaining a no net loss of wetlands requirement; revising siting criteria on a watershed basis; allowing mitigation banking, in-lieu fee, and permittee responsible mitigation options; providing for long-term monitoring; and requiring financial assurances, where applicable. The Board also references the Department's Function Based Aquatic Resource Compensation Protocol and Aquatic Resource Assessment Protocol guidance documents and provides applicants with the flexibility to submit mitigation proposals using other demonstrated acceptable methodologies. The addition of these guidance documents and methodologies will provide the regulated community with clarity and a more predictable process in evaluating the appropriate level of compensatory mitigation needed to offset impacts for a given project. The proposed amendments would clarify that these assessments are not the same as evaluations or assessments of protected water uses made under 25 Pa. Code Chapter 93. These compensatory mitigation actions are

necessary to allow the Department to fulfill its purpose of protecting, maintaining, and improving the Commonwealth's aquatic resources.

The Department compared the proposed waivers for addition under § 105.12(a) with existing waivers in other neighboring states. The proposed waiver for an emergency temporary structure associated with water withdrawal for crop production or fire protection is similar to an existing waiver in New York. Specifically, proposed subsection § 105.12(a)(20) would waive water obstruction or encroachment permit requirements for the temporary emergency placement, operation and maintenance of a water obstruction or encroachment, including dry fire hydrants, associated with water withdrawal for crop production or fire protection. The water obstruction or encroachment for water withdrawal may not alter the bed or bank of the watercourse or body of water. This waiver does not apply to parking or other areas for ancillary activities. This waiver is similar to a waiver established for irrigation purposes established by the New York Department of Conservation. Other states either do not specify waivers or they do not have any other comparable waivers identified similar to proposed § 105.12(a)(20).

New Jersey has a permit by rule authorization which provides approval for certain activities and conditions within the floodway or across a regulated water. Under the permit-by-rule, the construction of trails or boardwalks, construction of footbridges, conducting geotechnical and archeological activities, construction of fencing to manage livestock may be conducted. Specifically, the following proposed amendments to § 105.12(a) are comparable to existing regulations in New Jersey.

Subsection 105.12(a)(17) is proposed as a new subsection to allow construction and maintenance of a streambank fencing conservation practice associated with crop production or temporary fencing for protection of a conservation planting or practice located in or along a body of water or along watercourses and their floodways. This proposed waiver is not intended for fencing that would collect flood debris or restrict the flow of aquatic resources or that would extend across streams or watercourses. Similarly, New Jersey Department of Environmental Protection has a permit-by-rule authorization which provides approval for the construction of fencing to manage livestock.

Subsection 105.12(a)(18) is proposed as a new subsection that would waive water obstruction or encroachment permit requirements for low impact and non-motorized recreational activities such as walking or biking trails with certain specific length and design restrictions. The New Jersey Department of Environmental Protection has a similar authorization under a permit-by-rule which provides for the construction of trails or boardwalks, construction of footbridges within the floodway or across a regulated water.

Subsection 105.12(a)(19) is proposed as a new subsection that would waive authorized elevated boardwalks in wetlands when utilized for educational and interpretive purposes. This waiver would require the development and submittal of a plan to the Department for approval. Similarly, New Jersey Department of Environmental Protection has a permit-by-rule authorization for the construction of boardwalks within the floodway or regulated water.

Subsection 105.12(a)(21) is proposed as a new subsection that would waive water obstruction or encroachment permit requirements for the construction, operation or removal of temporary environmental testing, monitoring activities, or investigative activities of a temporary nature. This waiver will include boring or placement of sensors to sample or test soil or rock material and other similar activities, however it will not apply to parking or other ancillary areas. Similarly, the New Jersey

Department of Environmental Protection has a permit-by-rule authorization for conducting geotechnical and archeological testing activities.

The proposed revisions to the existing regulation will not affect Pennsylvania's ability to compete with other states as many of the proposed revisions are consistent with existing practices and clarify existing requirements.

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

This regulation will not affect any other regulations for the Department 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.)

The Department engaged several groups of key stakeholders in the development of the proposed rulemaking, including: a Chapter 105 Agricultural Workgroup comprised of representatives from several county conservation districts, NRCS, SCC, PACD, and DCNR; a county conservation district workgroup comprised of staff from conservation districts, PACD, and SCC; and representatives from several state agencies and commissions, including DCNR, the Pennsylvania Fish and Boat Commission, the Pennsylvania Turnpike Commission, and the Pennsylvania Department of Transportation.

The Department also met to update and discuss the draft Chapter 105 regulations with SCC on November 12, 2019, February 11, 2020, and March 10, 2020; and the Citizens Advisory Council on November 19, 2019 and February 18, 2020.

Another outreach effort occurred on February 19, 2020 when the Department met with and discussed the proposed rulemaking with the Pennsylvania Chamber of Business and Industry.

The Department also met with the Water Resources Advisory Committee (WRAC) on July 25, 2019 and on October 30, 2019, and the Agricultural Advisory Board (AAB) on November 7, 2019 to provide an update of the regulatory revisions. The draft proposed amendments were presented for review and discussion with the AAB on January 27, 2020. The AAB concurred with the Department's recommendation to move the proposed rulemaking forward in the regulatory review process. The draft proposed amendments were also presented for review and discussion with WRAC on January 30, 2020. WRAC also concurred with the Department's recommendation.

(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?

The proposed regulatory amendments have the potential to affect any person or entity that proposes to construct, operate, maintain, modify, enlarge or abandon a dam, water obstruction or encroachment located in, along or across aquatic resources in Pennsylvania. The number of entities specifically

affected by the amendments related to water obstructions and encroachments is not known; however, below is information on the past number of entities affected by the Chapter 105 regulations.

The Chapter 105 regulations apply to any owner or operator of a dam. There are approximately 2,333 owners of 3,256 dams that are affected by the existing regulation. This table shows a breakdown of the ownership per dam hazard potential category type. Of the 2,319 dams listed as privately owned, 537 are further listed as business owned. The Dam Hazard Potential Category listed in the table reflects:

Dam Ownership	Dam Hazard Potential Category			
	Category 1	Category 2	Category 3	Category 4
County Owned	78	0	2	22
Municipally Owned	183	10	38	331
Privately Owned	340	73	221	1685
State Owned	89	5	17	162

- Category 1: Substantial population at risk, 10 or more people, or numerous small businesses or a large business or school.
- Category 2: Few people at risk, less than 10 people or a small number of small businesses.
- Category 3: No population at risk, but significant damage to private or public property and short duration public inconvenience.
- Category 4: No population at risk and only minimal damage to private or public property and no significant public inconvenience.

In fiscal year 2017-2018, the Department authorized an estimated 3,100 general permits and 300 individual permits for water obstructions or encroachments to different entities, including individuals, utility companies, residential and commercial developers, contractors, state and local government agencies, and others. It is not expected that the proposed rulemaking would expand the group of entities. Information obtained from the Pennsylvania Department of Community and Economic Development’s State Profile website disclosed that 8,000 businesses across the agricultural, forestry, construction, transportation, warehousing, and mineral industry sectors operate in Pennsylvania. These business sectors are representative of potential applicants for water obstruction and encroachment permit authorizations. Since the proposed amendments remove the antiquated provisions, improve clarity and consistency through cross-referencing, and include existing program provisions in the Dam Safety Program and the Water Obstructions and Encroachments Program, the Department anticipates a positive effect on the regulated community since they are already familiar with the proposed concepts.

(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.

Any person proposing to construct, operate, maintain, modify, enlarge or abandon a dam, water obstruction or encroachment located in, along or across aquatic resources in Pennsylvania will be required to comply with this regulation. Data on the magnitude and portion of specific number of business entities, including small businesses, required to comply with the proposed amendments is not known.

(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 Department is not able to identify the total number of persons, businesses, and organizations that would be affected by the proposed regulatory amendments, or potential exact associated costs or savings to those entities. Since there are no fee increases, nor new fees, and the group of impacted entities is not expected to increase, a significant financial or economic impact is not expected. The proposed amendment to § 105.13(d) will enable applicants to submit a single permit application for a project extending through multiple counties, providing a reduction in the base administrative application fee of \$1,750 that would otherwise have been charged for each additional county. In particular, the Department occasionally receives applications for long linear utility projects that cross several counties, and in those cases, applicants will save on the cost of the administrative filing fee based on the number of counties spanned by the project. The Department estimates four projects per year could fall into this category crossing four counties on average, which would roughly translate to a savings of \$5,250 per application.

Rather than a cost savings, it is anticipated that new permit waivers and added exemptions from submerged lands license agreement (SLLA) charges, would incentive low-impact, environmentally sensitive, and environmentally beneficial activities that may have been deterred or abandoned in the past due to associated application fees, SLLA charge or both.

The proposed revisions are expected to benefit the regulated community and the Department by improving the Department's recordkeeping regarding dam ownership; and improve efficiency through addition of activities where a permit requirement is waived; reducing cost and improving timeliness of permit applications due to improved clarity of application completeness and essential requirements necessary for Department review; highlighting existing financial responsibility alternatives of permittees and environmental improvement by providing an alternative to permittee-responsible mitigation (which has been demonstrated to perform poorly); improving the flexibility of addressing the compensation of impacted aquatic resources through mitigation banking, an in-lieu fee program mitigation where responsibility for compensatory mitigation project is transferred to a mitigation banker or in-lieu fee sponsor, and permittee responsible mitigation; and an incentive, through Submerged Lands License Agreement charge exemptions, for permittees to complete projects and activities related to construction, implementation, operation or maintenance of an environmental remediation or reclamation project, aquatic resource restoration, or agricultural conservation practices.

The proposed amendments to Chapter 105 are consistent with the 2008 Mitigation Rule and improve the compensatory mitigation planning, implementation and management by emphasizing a watershed approach in selecting project locations, requiring measurable, environmental performance standards for all forms of aquatic resource compensation. The proposed amendments will establish equivalent standards for permittee-responsible compensatory mitigation where the permittee maintains responsibility for the construction and long-term success of the site, as well as mitigation banks and in-lieu fee mitigation methods. A survey conducted by the Department in 2006 determined permittee-responsible compensatory mitigation has an average range in cost of \$60,000 to \$90,000 per acre, not including land purchase costs. Adjusted for inflation, that cost ranges from approximately \$78,350 to \$117,520 in 2020. Mitigation costs for stream and floodway impacts in 2006 ranged in costs from \$400 to \$600 per linear foot. Those mitigation costs in 2020 are estimated to be \$520 to \$785 per linear foot. Availability of mitigation banking and an in-lieu fee mitigation program in Pennsylvania provides the opportunity for an alternative to the permittee in designing, constructing and operating individual mitigation sites, considered as "permittee responsible" mitigation sites. Also, larger-scale projects, made possible by mitigation banking and in-lieu fee programs, also provide for greater natural resource improvements. Adding these mitigation options through this proposed rulemaking will reflect updated

practices and provide greater flexibility and predictability for applicants. This will translate into time savings for both applicants and the Department while improving natural resources through improved quality of mitigation projects. Potential benefits also exist to social and environmental wellbeing from mitigation banking and in-lieu fee program by restoring historically impaired or impacted aquatic resources, such as removal of legacy sediment.

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

The proposed revisions are intended to clarify existing regulations to assure proper planning, design, construction, operation, maintenance and monitoring of dams, reservoirs, water obstruction and encroachments to ensure protection of health, safety, environment, and property of the public and protect water quality and natural regime of watercourses and other aquatic resources. The proposed amendments would foster a greater understanding of the Chapter 105 permit application requirements and generally lead to the submittal of higher quality applications to the Department. Further, the regulated community and natural resources will benefit from adding categories of structures and activities eligible for permit waivers; and addition of new projects or activities eligible for SLLA charge exemptions or revised SLLA charges for groin structures. Providing greater detail in the regulations and updating regulations to reflect current practices and for accuracy purposes would provide a benefit to regulated entities without incurring additional costs.

(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 proposed revisions to the existing regulation do not create any new or additional costs associated with legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork above what is already required in the existing regulation or existing practices. In addition, no new permit application fees are being proposed in this rulemaking.

Compensatory mitigation for unavoidable aquatic resource impacts may be accomplished through three approaches: permittee-responsible compensatory mitigation, mitigation banking and in-lieu fees. Inclusion of these options in the regulations regarding compensation for aquatic resource impacts will provide an incentive-based approach of existing practice and should result in an overall cost savings for the regulated community. Addition of mitigation banking and in-lieu fee compensation with traditional permittee-responsible compensatory mitigation will provide more alternatives for offsetting unavoidable impacts to aquatic resources. Mitigation banking and an in-lieu fee program offer several advantages over permittee responsible mitigation including extensive planning and mitigation site selection, scientific expertise, mitigation site review time, and long-term monitoring. Using traditional permittee-responsible mitigation, permittees may be uncertain whether compensatory mitigation will be successful in mitigating aquatic resource impacts, or if additional costs in corrective actions and ongoing compliance monitoring that may be necessary to ensure successful mitigation; while not creating these alternatives, this proposed regulation will provide additional flexibility to alleviate uncertainties. The Environmental Protection Agency (EPA) identified that aquatic resource mitigation banking represents an increasingly important economic component of the environmental consulting sector, showcasing synergies between effective environmental protection and economic expansion. Sixty-two percent of banks identified in an Environmental Law Institute (ELI) 2002 study were privately-owned

entrepreneurial mitigation banks; entrepreneurial providers of bank credits have emerged as a nationally-organized industry, contributing hundreds of millions of dollars annually to domestic product.

Under the Department's enhanced mitigation banking program, mitigation bankers can create, restore, and enhance wetlands and waterways at different sites and then sell the mitigation credits earned at these sites to permit applicants to meet the Chapter 105 mitigation requirements. This allows for timelier application reviews and better controlled and more effective wetland and stream mitigation projects. While 8 acres of wetland mitigation have been approved for the 2018-2019 fiscal year, it is expected that many more acres of wetland mitigation will be approved over upcoming fiscal years as more entrepreneurial bankers become established and permitted. Overall, the net positive effect on competitiveness of regulated firms occurs because such policies promote cost-cutting efficiency improvements, which in turn reduce or completely offset regulatory costs, and foster innovation in new mitigation strategies.

The proposed amendment to § 105.13(d) allowing projects crossing county boundaries to submit one permit application or registration, as opposed to a permit application or registration in each county, will result in additional cost savings for the regulated community. The Department estimates that it receives roughly 25 multi-county projects per year on average based on experience in recent years. Most of these applications are for linear projects from non-governmental entities, such as utilities, and typically span two counties. About 15 of those projects were individual permit applications. Applicants for individual permits will save money by not having to pay an additional \$1,750 administrative filing fee per county. The Department occasionally receives applications for long linear utility projects that cross several counties, and in those cases the applicant would save on the cost of the administrative filing fee based on the number of counties spanned by the project. The Department estimates four projects per year could fall into this category crossing four counties on average, which would roughly translate to a savings of \$5,250 per application.

The incentive for an applicant to obtain one of the proposed waivers, is that the current cost for an individual permit application includes a \$1,750 administrative filing fee plus \$800 per 0.1-acre permanent disturbance fee and \$400 per 0.1-acre temporary disturbance fee. Likewise, if qualifying for general permit under the current regulations, applicants may see a savings of up to \$750 under the proposed waivers for a given project. Projects eligible for proposed waivers are considered environmentally beneficial, emergency, educational, or temporary type structures and these costs are a disincentive to implementation. Under the proposed exemptions of certain projects and activities from SLLA charges, entities would be incentivized to complete eligible projects, whereas the current minimum annual charge is \$750. The projects associated with the proposed charge exemptions are environmentally beneficial projects or temporary in nature.

(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 waivers and inclusion of options for offsetting unavoidable aquatic resource impacts are expected to provide an overall time savings during project planning, permit processing, and project implementation.

The proposed revisions to existing regulations should not result in additional costs for local governments since the amendments do not create any new or additional costs associated with legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork above what is already required in the existing regulation or existing practices.

Local governments are exempt from application or registration fees and SLLA charges.

(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 proposed revisions to existing regulations should not result in additional costs for state government since the amendments do not create any new or additional costs associated with legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork above what is already required in existing regulation or existing practices.

The proposed waivers and inclusion of options for offsetting unavoidable aquatic resource impacts are expected to provide an overall time savings during the permit application process and would allow the Department to focus resources on projects that may pose a significant threat to public health, welfare, safety and the environment.

State governments are exempt from application or registration fees and SLLA charges. State and local governments will also benefit from the proposed new waivers, such as certain construction and maintenance activities associated with trails and wetland educational facilities.

(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 proposed revisions to existing regulations do not create any new legal, accounting or consulting procedures, or additional reporting, recordkeeping or other paperwork above what is already required in the existing regulation or existing practices.

(22a) Are forms required for implementation of the regulation?

New forms will not be necessary to the implement this rulemaking. The Department would modify existing application forms and instructions to reflect the proposed revisions. The forms identified for modification include: Chapter 105 Fee Calculation Worksheet, Application for Transfer of Permit and Submerged Lands License Agreement, Environmental Assessment form and instructions, registration forms and instructions for General Permits 1 through 11 and 15, the Chapter 105 Water Obstruction and Encroachment Joint Permit Application form and instructions and the Chapter 106 Floodplain Management Site Restoration Permit form and instructions.

The existing forms would be modified to incorporate the proposed amendments as follows: update cross-references to the applicable regulatory citations; amend the forms and instructions where necessary to incorporate language of the proposed Chapter 105 revisions; amend, reorganize and consolidate

application information requirements under § 105.13(e) and the compensation requirements under § 105.20a; incorporate new proposed waivers under § 105.12(a); add new sections to the forms for waiver eligibility criteria under § 105.12, add a new section specific to aquatic resource restoration project requirements under § 105.15, add a new section pertaining to the discharge of dredged and fill material under § 105.401. These minor modifications are intended to be incorporated consistent with the proposed revisions.

Consistent with § 105.15(d), the Department would also be required to complete and publish environmental assessments for the six proposed new waivers under § 105.12(a)(17)—(22).

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The existing Chapter 105 application forms and instructions can be accessed on the Department’s website at [www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=4088](http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=4088).

(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
<b>SAVINGS:</b>	\$0	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0	56,250	56,250	56,250	56,250	56,250
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	0	56,250	56,250	56,250	56,250	56,250
<b>COSTS:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	0	0	0	0	0	0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	56,250	56,250	56,250	56,250	56,250
<b>Total Revenue Losses</b>	0	56,250	56,250	56,250	56,250	56,250

Although there may be fiscal savings and costs associated with implementation and compliance, such savings and costs are difficult to predict with any reasonable degree of precision for several reasons, including: (1) application fees for some Chapter 105 permits/authorization types vary with the size and scope of each project; and (2) the level of activity of the regulated community varies markedly depending on factors such as changing economic conditions, availability of funding, and contract negotiations. Further, no permit application fees are currently required for state or local governments, and no permit application fee changes are proposed in this rulemaking.

Two of the proposed waivers will eliminate costs associated with low-risk, minimal environmental impact or environmentally beneficial projects, such as trails and educational boardwalks, which will allow more non-profit groups, such as trail associations and environmental groups, to complete projects that would otherwise cost \$1,750 plus disturbance fees based on impact acreage (per tenth acre: \$4,000 temporary; \$8,000 permanent) for projects not qualifying for general permits, or \$350 per crossing for general permits. Another proposed waiver for temporary emergency placement of intakes used to withdraw water for fire protection will eliminate fee costs for farmers and volunteer fire companies that would otherwise cost \$1,750 plus disturbance fees based on impact acreage (per tenth acre: \$4,000 temporary; \$8,000 permanent) for projects not qualifying for general permits, or \$200 per structure for general permits.

The proposed change to allow projects that cross county boundaries to be submitted under one permit application or registration will result in additional cost savings for the regulated community. The Department estimates that it receives roughly 25 multi-county projects per year on average based on experience in recent years. Most of these applications are for linear projects from non-governmental entities, such as utilities, and typically span two counties. About 15 of those projects were individual permit applications. The applicant for an individual permit would save on not having to pay an additional \$1,750 administrative filing fee per county. The Department occasionally receives applications for long linear utility projects that cross several counties, and in those cases the applicant would save on the cost of the administrative filing fee based on the number of counties spanned by the project. The Department estimates four projects per year would fall into this category crossing four counties on average, which would roughly translate to a savings of \$5,250 per application.

The proposed amendment of SLLA annual charges for 26 groin structures in and along the shoreline of Lake Erie would result in a reduction of the annual charge of \$750 to an annual charge of \$250. This reduction could result in an annual savings to the regulated community from \$19,500 to \$6,500 or a total of \$13,000 annually.

The proposed amendments to § 105.35(c) would add exemptions to SLLA annual charges for environmentally beneficial projects and would result in annual cost savings for the regulated community for qualifying projects. The Department estimates that less than 10% of projects require an SLLA and that roughly 7% incur charges. It is infeasible to estimate cost savings of this proposed regulatory change, as charges are based on the facility area needed to be occupied for which long term operation and maintenance activities may be necessary. Stream restoration projects on average span 3,000 linear feet, which would have incurred an annual fee of \$9,000. The Department estimates that one project of this type may occur in a 5-year period.

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

<b>Program</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>	<b>FY 2019-2020 (Current/Projected)</b>
Environmental Program Management (161-10382)	\$26,885,000	\$29,413,000	\$30, 932,000	\$28,420,000
Environmental Protection Operations (160-10381)	\$86,462,000	\$89,215,000	\$93,190,000	\$84,523,000

(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.

It is difficult to determine the number of small businesses that may seek to conduct a project in the future that would require a Chapter 105 permit to construct, operate and maintain a dam, water obstruction or encroachment, or that may seek to conduct activities that would otherwise be subject to the Chapter 105 regulatory requirements. The potential exists for small businesses in the agriculture, forestry, commercial and residential construction, transportation, utilities, mineral resources sectors; professional scientific, and technical services; and non-profit or similar organizations to be subject to the proposed rulemaking.

(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.

The Board expects there to be reduced costs based on proposed waivers, exclusion of annual charges for some submerged lands license agreements, and inclusion of options for offsetting unavoidable aquatic resource impacts.

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

Other than identified previously, no financial, economic or social impact from the proposed regulation is expected.

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

None. No adverse impact on small businesses are expected with this rulemaking.

(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.

Proposed amendments include revised and new requirements to provide clarification of existing waivers, and to develop new permit waivers for certain low-risk activities. New permit waivers have been added for construction and maintenance of stream bank fencing associated with crop production; the construction, operation or removal of temporary environmental testing, monitoring or investigative activities; construction, operation and maintenance of single span water obstructions or encroachments related to passive, non-motorized recreational activities; temporary water obstructions or encroachments for emergency water withdrawal for agricultural and fire protection; and temporary wetland mats and pads for erosion and sediment control practices. Waiving permit requirements for these activities may be beneficial to small businesses, farmers, not-for-profit organizations, and other groups or individuals planning to conduct these activities.

The proposed new exemptions in § 105.35(c) from annual SLLA charges for a project or activity constructed and operated for the significant benefit of the environment, including exemptions for: restoration of aquatic resources; agricultural conservation practices; environmental reclamation or remediation; environmental treatment or clean-up; and other similar activities performed under a Department-authorized Chapter 105 permit or registration, would be beneficial to small businesses, farmers, and environmental or conservation groups seeking to conduct these types of projects or activities.

(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.

The proposed revisions clarify existing requirements and make the existing regulations easier to understand for the regulated community. The proposed revisions do not place any additional burden on the regulated community, so no alternative regulatory provisions were considered.

(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;

This proposed rulemaking will not adversely affect small businesses, as neither the existing or proposed Chapter 105 regulations distinguish differing levels of permitting requirements, fees or charges based on the size of a business.

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

This proposed rulemaking will not affect small businesses in this manner.

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

This proposed rulemaking will not affect small businesses in this manner.

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

This proposed rulemaking will not affect small businesses in this manner.

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

This proposed rulemaking will not exempt small businesses from any part of the requirements, as neither the existing Chapter 105 regulations nor proposed amendments to this chapter distinguish differing levels of permitting requirements, fees or charges based on the size of a business.

(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 proposed changes to this regulation are not based on data.

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

- |   |                                |
|---|--------------------------------|
| A. The length of the public comment period:   | 60 days                        |
| B. The date or dates on which any public meetings or hearings will be held:                   | None scheduled                 |
| C. The expected date of delivery of the final-form regulation:                                | Quarter 2, 2021                |
| D. The expected effective date of the final-form regulation:                                  | Quarter 3, 2021                |
| E. The expected date by which compliance with the final-form regulation will be required:     | Final Pa. Bulletin publication |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | Final Pa. Bulletin publication |

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

The Department will continue to closely monitor these regulations for their effectiveness and recommend updates as necessary.