

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></p>	
<p>(1) Agency: Department of Environmental Protection</p>			
<p>(2) Agency Number: 7 Identification Number: 545</p>		<p>IRRC Number: 3245</p>	
<p>(3) PA Code Cite: 25 Pa. Code Chapters 87, 88, 89, and 90</p>			
<p>(4) Short Title: Water Supply Replacement for Coal Surface Mining</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Laura Griffin, 717.783.8727, laurgriffi@pa.gov Secondary Contact: Jessica Shirley, 717.783.8727, jessshirley@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This final-form rulemaking addresses inconsistencies between the Commonwealth's surface coal mining program and Federal requirements relating to water supply replacement so that the Commonwealth may maintain primary regulatory authority over coal mining operations. This rulemaking also aligns the language regarding water supply replacement for anthracite and bituminous surface mining with underground coal mining to the extent allowed by statute and ensures that the regulations are otherwise consistent with State law and Department practice. These measures will provide clarity to mine owners and operators regarding compliance standards for water supply replacement and protect the rights of water supply owners and users.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This final-form 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 (PA SMCRA) (52 P.S. §§ 1396.4(a) and 1396.4b); Section 3.2 of the Coal Refuse Disposal Control Act (52 P.S. § 30.53b); Section 7(b) of the Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.7(b)); and Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20).</p>			

(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.

Required Consistency of the Commonwealth's Mining Program with Federal Law

In order for the Commonwealth to maintain primary regulatory authority over coal mining activities in Pennsylvania, the Commonwealth must maintain a Federally-approved State program in accordance with the requirements of The Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328) (Federal SMCRA), and with “rules and regulations consistent with regulations issued by the Secretary.” See 30 U.S.C.A. § 1253(a)(1) and (7).

By letter dated December 18, 1998, the Department submitted a proposed amendment to its coal mining regulatory program to the Office of Surface Mining Reclamation and Enforcement (OSM) for its review and approval. In May 2005, OSM approved most of the amendment specific to the replacement of water supplies affected by surface coal mining activities but did not approve certain provisions. This final-form rulemaking reconciles the outstanding unapproved portions of the program amendment, makes water supply replacement obligations consistent with Federal law, and incorporates concepts currently described in technical guidance documents in order to make those concepts enforceable as regulation.

The disapproved portions of the program amendment related to water supply replacement include both statutory and regulatory sections as follows:

Section 4.2(f)(4) of PA SMCRA, 52 P.S. § 1396.4b, was not approved, because it allowed for final bond release when there is an outstanding water supply replacement order. See 30 CFR 938.12(c)(1). Sections 87.119(i) and 88.107(i) were not approved for the same reason. See 30 CFR 938.12(c)(7).

Sections 87.1, 88.1, defining “de minimis cost increase”, and sections 87.119(a)(1)(v), 88.107(a)(1)(v) (requiring that a restored or replaced water supply shall not result in more than a “de minimis cost increase” to operate and maintain) were not approved because the Federal regulations require that no additional costs be passed along to the water supply owner. See 30 CFR 938.12(c)(4)-(5).

Sections 87.119(a) and 88.107(a) were not approved to the extent that they did not include a requirement to provide a temporary replacement water supply. See 30 CFR 938.12(c)(5). Further, they allowed for the replacement supply to be of a lesser quantity and quality than the premining water supply. See 30 CFR 938.12(c)(5). The Federal definition of “replacement water supply” at 30 CFR 701.5 includes a reference to temporary replacement water supplies.

Sections 87.119(a)(3) and 88.107(a)(3) were not approved because they allowed for persons with an ownership interest in the water supply to waive the requirements to restore or replace the water supply. The basis for the disapproval was the definition of “replacement water supply” at 30 CFR 701.5, which provides for a waiver only in the limited circumstance where the water supply is not needed for the land use as it exists at the time of the loss and that there is a demonstration that a “suitable alternative water source is available and could be feasibly developed.” See 30 CFR 938.12(c)(5).

Sections 87.119(g) and 88.107(g) provides for operators to recover costs in the event that an operator successfully appeals a Department order to restore or replace a water supply, were not approved by OSM. OSM did not approve these regulations because section 4.2(f)(5) of PA SMCRA, which provided the statutory authority for these regulations, was repealed in 2000 and replaced with 27 Pa.C.S. § 7708

(related to costs for mining proceedings). Therefore, no remaining statutory authority existed to support the regulations. See 30 CFR 938.12(c)(6) and 70 FR at 25484.

Required Consistency of the Commonwealth's Mining Program with State Law

This final-form rulemaking also ensures consistency with State law. The following provisions address regulatory gaps or lack of clarity issues under PA SMCRA:

Amendments to Sections 87.1 and 88.1 revise the definition of “water supply” to explain that soil moisture is not a water supply. The term “water supply” connotes a specific water resource (e.g., a well or spring). Soil moisture, on the other hand, is more appropriately regulated under separate Department provisions requiring that mining activities are conducted to minimize disturbance to the prevailing hydrologic balance. See 25 Pa. Code §§ 87.101(a) and 88.291(a). These provisions also add a definition of “water supply owner” that includes landowners and water supply companies to reflect terminology used in Section 4.2(f) of PA SMCRA. See 52 P.S. 1396.4b(f).

Amendments to Sections 87.47 and 88.27 clarify the regulations by using the defined term “water supply”; requiring that the permit application must include calculations regarding the cost of potential replacement; and stating that the Department will give advance notice to water supply owners and water supply users whose water supplies are identified as potentially affected.

Sections 87.119a(a) and 88.107a(a) clarify the requirements related to sampling, laboratory analysis and notice to water supply owners and water supply users.

Sections 87.119a(b) and 88.107a(b) clarify that obligations to restore or replace an affected supply are applicable for any effect to a water supply, even if the effect is minimal, and that operators or mine owners must restore water supplies to meet reasonably foreseeable uses of the existing supply, not only existing uses of the supply.

Sections 87.119a(f) and 88.107a(f) – clarifying the concepts of “adequate quality” and “adequate quantity” of the replacement supply to more closely mirror the statutory language under Section 4.2(f)(1) of PA SMCRA. This includes clarifying that an operator must, under certain circumstances, replace an affected supply with a supply that is of better quality than Pennsylvania Safe Drinking Water Act standards (35 P.S. §§ 750.1 – 750.20).

Sections 87.119a(g) and 88.107a(g) clarify the procedure for determining operation and maintenance (“O&M”) costs of a replacement supply, and that operators or mine owners must cover O&M costs in perpetuity because the obligation attaches to the land, not to the current water supply owner. *See, e.g., Carlson Mining v. DER*, 1992 EHB 1401, 1412-16 (Oct. 29, 1992).

Sections 87.119a(h) and 88.107a(h) clarify O&M requirements in situations when the current water supply owner and/or water supply user releases the obligation pursuant to a settlement agreement with the operator or mine owner that complies with the regulations and clarifies that an operator may cover O&M responsibilities for multiple water supplies under one bond.

Sections 87.119a(j) and 88.107a(j) clarify the statutory presumption of liability in PA SMCRA and the available defenses to the presumption. This presumption does not exist in Federal law.

Sections 87.119a(l) and 88.107a(l) adds an additional provision that nothing in these regulations would prevent a mine owner or operator from pursuing other legal remedies should they incur costs in restoring

or replacing a supply and later determine that some other party was responsible for the pollution or diminution of the water supply.

The duration of time for which an operator is required to pay Operation and Maintenance (O&M) costs for water supply replacements is an issue that has been challenged before the EHB in the past. *See, e.g., Carlson Mining v. DER*, 1992 EHB 1401; *Buffy and Landis v. DER*, 1990 EHB 1665; and *Lang et al. v. DEP*, 2003 EHB 145. The EHB has explained that operators' obligation to pay costs is *permanent*. A replacement supply which costs more to operate and maintain than the previous supply does not meet the requirements in PA SMCRA for adequate quantity and quality. The obligation has been described by the EHB, in both *Buffy* and *Carlson*, as "*ad infinitum*" unless the current owner executes a valid settlement that releases the operator from obligation for continued payment as provided in the amended subsections (g)(4) and (h)(1).

(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 final-form rulemaking is needed to resolve inconsistencies between existing Department regulations and Federal requirements, which will allow the Commonwealth to maintain primary regulatory authority over coal mining activities. The final-form rulemaking will also codify mine operator responsibility that exists under State law and as articulated in Department policy documents. Surface coal mine operators and mine owners were previously using technical guidance documents (*Water Supply Replacement and Compliance* (# 562-4000-101), *Increased Operation and Maintenance Costs of Replacement Water Supplies (on All Coal and Surface Noncoal Sites)* (# 562-4000-102), and *Water Supply Replacement and Permitting* (#563-2112-605)) for information on water supply replacement procedures and how to calculate any additional O&M costs. This regulation would provide for codification of those procedures.

There are two groups that will benefit from this final-form regulation. The operators and mine owners of approximately 400 surface coal mining businesses will benefit from the documentation of the water supply replacement requirements in the regulatory format, eliminating any ambiguity as to their responsibilities. Additionally, water supply owners and water supply users in the counties that have coal surface mining activities will benefit from the regulation as it will ensure a fair replacement of affected water supplies to support existing and reasonably foreseeable uses of that supply.

(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 Federal standards do not include the following provisions that exist in this final-form rulemaking:

1. Rebuttable Presumption. Section 4.2(f)(2) of PA SMCRA presumes that a surface coal mine operator or mine owner is responsible for affecting a water supply by diminution or degradation if the supply is within 1,000 feet of affected mining area. This provision currently exists in the regulations, but the final rulemaking further clarifies the requirement, especially regarding how an operator or mine owner may rebut the presumption and what other requirements would apply in those situations.

2. Reimbursement of costs for the water supply owner. If the water supply owner or water supply user replaced the supply prior to establishing that the mine operator was at fault or prior to the operator

providing a suitable replacement, the final-form rulemaking allows for a reimbursement of reasonable costs to the water supply owner. The rulemaking will provide the operator with a means to dispute any costs beyond what would be required for a standard replacement. Federal law does not have an equivalent requirement for reimbursement, but OSM agreed in previous communication with the Department that this reimbursement was an adequate means for the operator to achieve the purpose of Federal SMCRA to accept responsibility for a replacement of a water supply.

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

As a result of the Federal requirements, all coal mining states have similar minimum requirements for water supply replacement. The replacement and O&M cost provisions applied across the states means that Pennsylvania's regulations are comparable to other coal mining states, and there are no significant differences in costs to be met by operators who may affect water supplies in Pennsylvania compared to other states. Other potential differences in the regulations of other states (such as a presumption of liability) are the result of variability in each state's implementing legislation, which may reflect different ways of achieving the minimum Federal 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 final-form rulemaking will not affect existing or proposed regulations of other State agencies as it is specific only to water supplies affected by surface coal mining activities, which are not regulated by any other 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 history of this final-form rulemaking is rooted in a program amendment to OSM from 1998. At that time, the Department proposed to revise several of the coal mining regulations. During that process, there were many opportunities for public comments on water supply issues through the OSM notices, the Department program changes, and discussions with trade and advisory groups.

Prior to OSM's conditional approval of certain water supply provisions in 2005, the Department held six open-house public meetings in May and June of 2004 intended to gather comments and suggestions regarding existing regulations and policies governing the replacement of private water supplies lost, diminished or degraded by mining activities. These meetings were held at Department facilities across the State after invitation letters were sent to all parties of interest, including individual property owners who were known to have experienced past water supply problems. Also, news media alerts were issued to promote these meetings. The issues raised at these meetings included items regarding responsibility for water supply impacts, reimbursement for replaced supplies, the rights of water supply owners to information supplied by the mining operators, correct characterization of the existing supply and reasonably foreseeable uses of the supply, and various other suggestions for improving the program to

benefit those who have lost their water supply as a result of mining activities. The Department evaluated these suggestions in conjunction with the 2005 conditional approval from OSM, and ultimately included several concepts resulting from these meetings in this rulemaking.

The Department also collaborated with the Mining and Reclamation Advisory Board (MRAB), which is composed of representation from anthracite surface mine operators, the Pennsylvania Coal Alliance, the Pennsylvania Anthracite Council, the County Conservation Districts, the Citizens Advisory Council, the Pennsylvania House of Representatives, and the Pennsylvania Senate to develop the proposed rulemaking. Policy changes to the surface mining program regarding water supply replacement were discussed at the MRAB's Regulatory, Legislative and Technical (RLT) committee meeting of January 2005 in response to concerns from the Pennsylvania Coal Association (PCA). The committee made various recommendations regarding O&M costs calculations and payments, and replacement of a water supply to a quality and quantity necessary for current and reasonably foreseeable uses.

Concepts for this rulemaking were discussed with the MRAB beginning on October 19, 2017, during a meeting of the full board. On January 11, 2018, an outline of the proposed changes was presented in a meeting of the RLT committee. Comments were provided by the Committee. On April 19, 2018, draft language and responses to previous comments were presented to the Committee. The Committee supplied verbal and written comments on this draft, some of which were incorporated into the proposed rulemaking. The RLT Committee recommended proceeding with the proposed rulemaking at the April 19, 2018, meeting and advised the MRAB of their recommendation also on this date. The MRAB was presented with the draft language on July 19, 2018, and requested a revised draft reflecting minor changes to the proposed language for clarity. In further consultation with the RLT Committee on October 11, 2018, additional revisions were incorporated. The MRAB voted to concur with the Department's recommendation that the proposed rulemaking move forward in the regulatory process on October 25, 2018. Subsequently, additional clarifications and modifications were made to further conform with certain provisions to State and Federal law.

Two comments were received during the public comment period, which was open from November 2, 2019, to December 2, 2019: David Sumner on behalf of IRRC, and Melissa W. Marshall, Esq. on behalf of the Mountain Watershed Association. Two minor changes were made to the final rulemaking in response to these comments. The RLT committee reviewed the proposed minor changes from the proposed to the final-form rulemaking and, on March 16, 2020, recommended the MRAB adopt the changes and proceed with the final-form rulemaking. At its April 2, 2020, meeting, the MRAB voted to concur with the Department's recommendation that the final-form rulemaking move forward in the regulatory process.

(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?

All surface coal mining operations, which include approximately 400 operators that are mostly small businesses, are required to comply with water supply replacement regulations.

They will be affected by the regulation if they conduct mining activities that will potentially affect or do affect nearby public or private water supplies. Underground operators already comply with provisions under 25 Pa. Code Chapter 89. However, surface mine operators are following many policies and procedures outlined in several Department technical guidance documents that explain Federal

requirements and other developments in State law generated by the Pennsylvania Environmental Hearing Board and Pennsylvania courts. This final-form rulemaking codifies these developments into the Department's regulations. Therefore, operators are already familiar with most of the concepts presented.

The final-form rulemaking includes one new requirement to provide temporary water in certain circumstances. The District Mining Offices report about 20 complaints related to water supply replacement issues are received each year. As was practiced prior to this rulemaking, the operator identifies potential supplies that could be affected by its mining activities as part of the permit application process. In many cases, the operator or mine owner replaces these supplies before the owner is adversely affected and/or replaces the supply in a manner that does not require Department intervention. The Department anticipates that operators and mine owners will continue to take these preventative measures, which will reduce the likelihood that the requirements for these regulations, including cost for temporary water supplies, will be invoked.

(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.

All surface coal mining operations are required to comply with the water supply replacement regulations. This includes the operations run by approximately 400 businesses in Pennsylvania, most of which are considered small businesses under Pennsylvania law.

(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 revisions incorporated in this final-form rulemaking will resolve inconsistencies between the Commonwealth's Surface Coal Mining Program and Federal requirements relating to water supply replacement so that the Commonwealth may maintain primary regulatory authority over coal mining activities in this Commonwealth. The rulemaking also codifies mine operator and mine owner responsibility that exists under State law and as articulated in Department policy documents.

The consolidation of requirements into the surface mining chapters of the regulations promotes greater public understanding of these rights and responsibilities. Both water supply owners and surface coal mine operators will benefit by having these requirements in the mining regulations published in the Pennsylvania Code instead of in Department policy documents as it will provide additional clarity to mine operators regarding compliance standards for water supply replacement and protect the rights of water supply owners and users who may have their water supplies affected by surface coal mining activities. In particular, the final-form rulemaking now clarifies that if a water supply is presumed to be affected by mining, the owner of that supply is entitled to a temporary water supply, saving them a potential cost of possibly \$1,000 to \$2,000 until the supply is restored.

The Department surveyed the District Mining Offices for information regarding water supply replacement as was discussed in the response to Question #15. The responses showed that claims for water supply replacement in association with surface mines are low in number per year and are usually easily resolved between the water supply owner and mine operator. This final-form rulemaking outlines a process to ensure that water losses are anticipated in advance to the reasonable extent possible so that the

water user is spared excessive inconvenience and interruption to the supply and that operation and maintenance cost agreements can be determined fairly and concluded expediently.

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

The final-form rulemaking is likely to have no impact on existing costs for the Department, the industry or for water supply owners or water supply users as most of the requirements included in this rulemaking already existed because of Federal requirements or developments in State law and were already explained through Department policy. While it will likely have no impact on existing costs, the final-form rulemaking will provide a benefit for mine operators by codifying the mine operator responsibility that exists under State law and as articulated in Department policy documents, ultimately providing clarity to mine operators regarding compliance standards for water supply replacement. It will also benefit and protect the rights of water supply owners and users who may have their water supplies affected by surface coal mining activities and will ensure a fair replacement of such affected water supplies to support existing and reasonably foreseeable uses of that supply.

The only cost that may arise as a result of the final-form rulemaking could be the result of the new requirement for operators to provide temporary water supplies. However, to the extent that an operator or mine owner would incur a cost, they would already incur those costs regardless of whether this requirement was included in Chapters 87 and 88, because it is how the Department currently interprets and enforces Section 4.2(f) of PA SMCRA. The Department currently requires the provision of temporary water supplies under the same circumstances described in the rulemaking by relying on the Department's enforcement authority to issue orders to operators under the appropriate circumstances. Furthermore, the Department anticipates this will be rare in light of the low frequency of water supply complaints and because operators will continue to take certain measures in advance of mining to replace water supplies they anticipate will be impacted.

(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 final-form rulemaking is likely to have no impact on existing costs to the regulated community. Because the requirements included in this rulemaking were already implemented via existing law, none of the new or revised requirements will likely increase or decrease costs to the operator.

(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.

There are no compliance costs or savings associated with this final-form rulemaking that would impact local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

No implementation costs or savings are anticipated from this final rulemaking for state government, as most of the regulatory changes reflect existing law and Department policy predicated largely on Federal standards.

(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.

No additional statements or copies are applicable.

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

One new form and three existing forms will be required for implementation of the regulation.

(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.**

A new form - Water Supply Settlement Agreement and Release – will be published in conjunction with this final rulemaking. This form existed for water supplies related to underground mining, and it was modified to suit the surface mining provisions. A draft of this form is attached.

There are three existing forms for the calculation of operation and maintenance costs and consent to a lesser supply that relate to the implementation of this regulation:

- Cost Comparisons and Bond Calculation for Existing and Replacement Supplies:
<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3014>
- Consent to Lesser Water Supply Agreement:
<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3004>
- Abandonment of Water Supply Agreement 5600-FM-BMP0111:
<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=2963> (Note: This form was revised slightly to remove the “de minimus” language. The revision is attached.)

The Department also anticipates minor revisions to the application for surface coal mining activities in response to this rulemaking regarding water supply information.

- Bituminous Surface Mine Permit Application **5600-PM-BMP0311**:
<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3757>
- Anthracite Surface Mine Permit Application **5600-PM-BMP0343**:
<http://www.depgreenport.state.pa.us/elibrary/GetFolder?FolderID=3711>

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

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

Program	FY -3 2016	FY -2 2017	FY -1 2018	Current FY 2019
Coal Mining Program	\$24,011,704 (Final)	\$25,078,176 (Final)	\$23,431,000 (Not Final – As of Jan. 31, 2019)	\$26,197,470 (Budget for FY 2019)
	Note: this is based on the Title V grant expenditures on a Federal FY basis.	Note: this is based on the Title V grant expenditures on a Federal FY basis.	Note: this is based on the Title V grant expenditures on a Federal FY basis.	Projected based on Title V grant request

(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.

There are approximately 400 surface coal mining operators that are mostly small businesses that will be required to comply with water supply replacement regulations.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

There are no projected reporting, recordkeeping or other administrative costs anticipated for compliance with the final-form rulemaking.

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

This final-form rulemaking will not have an adverse impact on small businesses, because this rulemaking predominantly largely codifies existing law. To the extent that the rulemaking includes a new requirement for operators to provide a temporary supply to water supply owners or water supply users whose water supply has been impacted by the mining operations, operators would already incur those costs regardless of whether this requirement was included in Chapters 87 and 88, because it is how the Department currently interprets and enforces Section 4.2(f) of PA SMCRA. The Department currently requires the provision of temporary water supplies under the same circumstances described in the rulemaking by relying on the Department's enforcement authority to issue orders to operators under the appropriate circumstances.

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

Less costly alternatives would place the cost of temporary replacement in whole or in part on the water supply owner or water supply user, which would not be consistent with the provision of PA SMCRA that places a presumption of liability on the operator or mine owner, nor the requirement that the operator restore or replace a supply impacted by mining activities.

- (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.

This final-form rulemaking is not anticipated to affect any particular groups. However, the regulations do take into consideration the reasonably foreseeable uses of the land to provide a replacement water supply that will be suitable for future uses that the land can reasonably support. This would be important, for example, where a water supply that previously served livestock or an agricultural use could resume use of a replacement supply in the future to the capacity that the land was intended to support.

- (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.

There are no feasible alternative regulatory provisions. No non-regulatory options were available as these changes are required to maintain the program under the Federal standards and developments in State law. For these amendments, the Department crafted the least burdensome option for various specific items while assuring they were still in compliance with the existing statutes and case law.

(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 performance 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.

There are no feasible alternatives to the final-form rulemaking. These changes are required to maintain the program under the Federal standards and developments in State law. The Federal standards and state law apply to all coal mine operators regardless of size. For these amendments, the Department crafted the least burdensome option for all operators related to various specific items while assuring they were still in compliance with the existing statutes and case law.

(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 basis for this regulation was to comply with Federal and State law. No data was used.

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

- | | |
|---|-----------------------|
| A. The length of the public comment period: | <u>N/A</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 1 2021</u> |
| D. The expected effective date of the final-form regulation: | <u>Quarter 2 2021</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Quarter 2 2021</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(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 to the Board as necessary.