

<h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;"><small>(All Comments submitted on this regulation will appear on IRRC's website)</small></p>	<p><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p>
<p><b>(1) Agency:</b> Department of Environmental Protection</p>	<p>IRRC Number:</p>
<p><b>(2) Agency Number: 7</b> <b>Identification Number: 586</b></p>	
<p><b>(3) PA Code Cite: 25 Pa. Code § 77.564</b></p>	
<p><b>(4) Short Title: Blast Site Clarification for Noncoal Mining Operations</b></p>	
<p><b>(5) Agency Contacts (List Telephone Number and Email Address):</b>                  Primary Contact: Laura Griffin, 717-772-3277, laurgriffi@pa.gov                  Secondary Contact: High Garst, 717-783-8727, argarst@pa.gov</p>	
<p><b>(6) Type of Rulemaking (check applicable box):</b></p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input type="checkbox"/> Final Regulation</p> <p><input checked="" type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p><b>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</b></p> <p>This final-omitted regulation will correct an inconsistency in the use of two defined terms in the Department’s noncoal mining regulations by changing one use of the term “blast area” to “blast site.” This amendment ensures the language used is consistent with the definition of both terms in the Department’s regulations on the storage, handling and use of explosives. This amendment alleviates confusion regarding setbacks for worker and public safety during blasting activity.</p>	
<p><b>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</b></p> <p>This final-omitted regulation is authorized under section 11(a) and (e)(1) of the Noncoal Surface Mining Conservation and Reclamation Act (Act) (52 P.S. § 3311(a) and (e)(1)). Section 11(a) of the Act grants the Board the authority to adopt regulations necessary to carry out the provisions and purposes of the Act and for the health and safety of those persons employed at surface mining operations. Section 11(e)(1) of the Act requires the use of explosives for surface mining to be conducted in accordance with regulations promulgated by the Board. Additionally, section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20) authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.</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.**

The regulation is not mandated by any federal or state law or court order, or federal regulation.

**(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.**

In December 2023, the Department’s Bureau of Mining Programs identified an inconsistent use of the term “blast area” in one instance in § 77.564(g)(7) (relating to surface blasting requirements). Section 77.564(g)(7) was promulgated in 1990 and used the term “blast area” throughout the provision. See 20 Pa.B. 1643 (March 17, 1990). Subsequently, the terms “blast area” and “blast site” were defined in Chapter 211 (relating to storage, handling and use of explosives) in 2001. See 31 Pa.B. 3751 (July 14, 2001). As a result, one instance of “blast area” as it is used in § 77.564(g)(7) is inconsistent with those definitions in Chapter 211. As further explained below, in the context of the sentence, the correct term to use is “blast site.”

“Blast site” is defined in § 211.101 (relating to definitions) as the specific location where explosive charges are loaded into the blast holes. “Blast area” is defined in § 211.101 as the larger area around the blast site that must be cleared and secured to prevent injury to persons and damage to property. In other words, the “blast area” consists of a buffer zone around the “blast site” to ensure both mine worker and public safety. When explosives are being loaded into drill holes ahead of a “shot” (blast), the blast site plus a buffer zone of 50 feet around the blast site is cleared of all persons and equipment except those necessary to prepare for the blast, as required by § 211.154(b) (relating to preparing the blast). However, the existing language in § 77.564(g)(7) requires “work within a radius of 50 feet of the blast area” to cease, which means the operator must include an extra 50-foot radius in addition to the buffer zone around the blast site.

Under § 77.561(c) (relating to general requirements), blasting operations shall be conducted in compliance with Chapter 211. Likewise, under § 211.103(c) (relating to enforcement), operators are required to comply with Chapter 77 as it relates to the use of explosives.

If mine operators are required to comply with an interpretation of § 77.564(g)(7) that applies the definition of “blast area” in § 211.101, it will require them to halt activity across an excessive portion of the mine site whenever explosives are being prepared at the blast site. This interpretation results in a larger disruption of activities at a noncoal mine than necessary to protect mine worker and public safety, which was not intended and is not consistent with the same safety requirements in Chapter 211. There is a substantial public interest served by ensuring that the safety standards for blasting in 25 Pa. Code Chapters 77 and 211 are consistent.

**(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.**

This minor correction is not more stringent than Federal standards.

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

This regulation will not affect Pennsylvania's ability to compete with other states.

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

No, the regulation will not affect other regulations of 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 draft regulation was discussed at the Aggregate Advisory Board meeting of August 28, 2024.

**(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 amendment will affect approximately 300 noncoal mining operators that conduct blasting at approximately 350 sites. These activities are performed onsite primarily by blasting contractors (30-40) who service mine sites across the Commonwealth. Most blasting contractors and mining operations are small businesses. Noncoal mining operators will benefit from this regulation because they will be required to cease work within a smaller area when explosives are being loaded into drill holes.

**(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.**

The amendment will affect approximately 300 noncoal mining operators that conduct blasting (approximately 350 sites) and their blasting contractors (30-40 in Pennsylvania).

**(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.**

This regulation will not have any financial or economic impacts. The regulation is intended to ensure general safety of the workers and the public. This amendment clarifies a legal inconsistency without minimizing the effective safe boundary for blasting operations. Failure to revise the current regulatory language means that to comply, the operator must shut down a larger than necessary area surrounding each blast site without a reasonable justification. Strict compliance with existing language would make preparing explosives on an active site more difficult, complicated, and time consuming without an obvious benefit.

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

No costs or adverse effects would result from promulgation of this final-omitted rulemaking. The correction of one use of “blast area” to “blast site” ensures the general safety of mine workers and the public by rectifying an inconsistent use of terminology regarding the effective safe boundary for blasting operations. This public safety benefit does not incur costs or adverse effects.

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

There are no identifiable costs or savings for the regulated community.

**(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 identifiable costs or savings for 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.**

There are no identifiable costs or savings for state government.

**(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.**

No legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork are required for implementation of the regulation.

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

No forms are required to implement this 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.***

No forms are required to implement this regulation.

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

	<b>Current FY 2024-25</b>	<b>FY +1 2025-26</b>	<b>FY +2 2026-27</b>	<b>FY +3 2027-28</b>	<b>FY +4 2028-29</b>	<b>FY +5 2029-30</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Local Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>State Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Savings</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>COSTS:</b>						
<b>Regulated Community</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Local Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>State Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Costs</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Local Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>State Government</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Revenue Losses</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

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

<b>Program</b>	<b>FY -3 2021-22</b>	<b>FY -2 2022-23</b>	<b>FY -1 2023-24</b>	<b>Current FY 2024-25</b>
Noncoal Regulatory Program	\$4,164,000	\$2,417,000	\$837,000	\$3,998,000

**(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.**
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.**
- (c) A statement of probable effect on impacted small businesses.**
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.**

There are no identifiable impacts on small businesses.

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

No special provisions were developed because this final-omitted rulemaking corrects an error in terminology.

**(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.**

No alternative regulatory proposals were considered because there are no applicable alternatives.

**(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 identifiable impacts on small businesses.

**(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.**

Data is not the basis for this regulation.

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

- A. The length of the public comment period: Not applicable
- B. The date or dates on which any public meetings or hearings will be held: Not applicable

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| C. The expected date of delivery of the final-omitted regulation:                             | <u>Quarter 1, 2025</u>                               |
| D. The expected effective date of the final-omitted regulation:                               | <u>Upon publication in the Pennsylvania Bulletin</u> |
| E. The expected date by which compliance with the final-omitted regulation will be required:  | <u>Upon publication in the Pennsylvania Bulletin</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>Not applicable</u>                                |

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

The effectiveness of the regulation will be gauged through ongoing interaction with the industry.