

# Regulatory Analysis Form

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(1) Agency

Department of Environmental Protection  
Bureau of Deep Mine Safety

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INDUSTRIAL REGULATORY  
REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)

7-357

IRRC Number: 2237

(3) Short Title

Noncoal Underground Mines

(4) PA Code Cite

25 Pa. Code Chapter 207

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sharon Trostle 783-1303

Secondary Contact: John Dernbach, 783-8727

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This rulemaking will revise Chapter 207 by deleting and reserving the existing regulations and by adding regulations addressing safety at noncoal underground mines and mined-out noncoal underground mines used to house other businesses. The provisions to be deleted are outdated regulations addressing the use of explosives at noncoal mines. The use of explosives at noncoal surface mines is completely addressed by regulations found in Chapter 77 (relating to noncoal surface mines) and Chapter 211 (relating to the storage, handling and use of explosives).

As explained below, this final rulemaking will modernize, clarify and recodify regulations within the Department's authority to enforce. Since 1975 DEP has regulated noncoal mines, and mined-out noncoal underground mines used for other businesses to ensure the safety of persons at these facilities. The authority and duty to maintain these programs is established by section 2(f) of the General Safety Law (relating to safety at pits, quarries, underground mines other than coal mines, trenches and similar operations). To carry out these programs, DEP has been using the regulations, found at 34 Pa. Code Chapter 33 (relating to Underground noncoal Mines and other excavations), promulgated by the Department of Labor and Industry ("L&I"). L&I was the agency responsible for enforcing section 2(f) prior to 1975.

REGULATION ANALYSIS FORM

This final rulemaking does not recodify the L&I regulations addressing safety in active noncoal underground mines. The L&I regulations are out of date and redundant in light of more recent federal regulations. Instead, these amendments incorporate by reference the regulations promulgated by the U.S. Department of Labor, Mine Safety and Health Administration (MSHA). The MSHA regulations establish a fairly complete set of safety standards that are applicable to all noncoal underground mines in Pennsylvania. Using the MSHA regulations, rather than maintaining a different set of standards, will enhance safety at noncoal underground mines and reduce the operator's regulatory obligations. These regulations go beyond the MSHA regulations in three aspects. First, as with the Pennsylvania Anthracite and Bituminous Coal Mine acts, these regulations require the mine foreman to demonstrate competency by obtaining a certificate of qualification. Second, these regulations continue the current requirement that any surface explosive storage magazine must be licensed in accordance with the requirements of Chapter 211. In the Department's experience the risks associated with storing explosives are significant enough to warrant retaining this minimal licensing requirement. Finally, due to the ultra-hazardous nature of storing, using and handling explosives, these regulations will retain the requirement that the person responsible for the blasting activity be licensed by the Department.

The regulations addressing safety in mined-out noncoal underground mines used to house other businesses are primarily a recodification of the L & I regulations. Most of the changes from the L & I regulations are for clarity and simplicity, not for the purpose of changing substantive standards.

9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 2(f) and 16 of the General Safety Law, Act of May 18, 1937, P.L. 654 ("GSL"), *as amended*, 43 P.S. §25-2(f), and 16. Reorganization Plan No. 2 of 1975, 71 P.S. §751-22. Section 1917-A of the Administrative Code of 1927, 71 P.S. §510-17.

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Underground noncoal mining operations, and mined-out underground noncoal mines used to house other businesses pose unique and significant safety risks to persons at these operations and facilities. These regulations are designed to ensure the safety of persons at these operations and facilities. See also response to question 8.

Regulations Analyzed

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Working in or about underground noncoal mines, and in businesses located in mined-out noncoal mines is a hazardous activity posing a serious risk of harm due to accidents. Regulations establishing basic safety standards are essential to protect the health and safety of persons working in or about these operations and facilities. See also response to question 8.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The benefits, albeit unquantifiable, are those that result from having regulations modernized, clarified and simplified. For persons working at these facilities, the benefit will be fewer accidents and injuries. This will result because the safety standards contained in the regulations will be more effectively implemented. The greatest impact will be on the 350 workers at underground noncoal mines where the proposed regulations will eliminate duplicative and out-of-date requirements. For the regulated community, the benefit will be greater certainty in implementing the regulations. The operators will no longer be confronted with having to implement two different sets of standards.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

It is anticipated that no one will be adversely affected by these regulations. These regulations establish for the first time the requirement that noncoal underground mine foremen possess a certificate of qualification from the Department. This is merely a codification of existing practice. All current underground noncoal mine foremen possess such a certificate of qualification because the operators have required such a certificate and DEP has been willing to test and certify persons wishing to work as underground noncoal mine foremen.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The 30 underground noncoal mines and other businesses conducted in mined-out underground noncoal mines will be required to comply with these regulations.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable required.

The Department discussed the proposed regulations with the underground industrial mineral mining roundtable. This group, which is open to all representatives from the underground industrial mineral mining industry, reviewed in detail the proposed regulations for underground noncoal mines. The Roundtable is in favor of incorporating by reference the MSHA regulations rather than promulgating a separate, potentially conflicting, set of requirements. They also concur with the regulations which address issues not addressed by the MSHA regulations. The changes between the final and proposed regulations are so minor the Department felt it was unnecessary to discuss the final regulations with this roundtable.

(17) 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.

The compliance costs for the noncoal underground mine operators should be reduced. Replacing the L&I regulations with the MSHA regulations eliminates duplicative reporting requirements. Under the regulations, the operator only has to submit to the Department a copy of the materials required by MSHA.

There might be a minimal increase in the compliance costs faced by operators of businesses located in mined-out noncoal underground mines. For the most part, the regulations do not affect substantive or reporting requirements. For the first time, the regulations require an operator to obtain the Department's approval of a developed facility before opening or expanding a business in a mined-out noncoal underground mine. The application requirements for this approval are minimal, including the cost of copying existing drawings or maps of the developed facility and answering a few questions about the nature and location of the business. Also, the regulations, for the first time, specify a process for obtaining the Department's approval for mechanical ventilation, alternate methods of storing flammable liquids in the developed facility. The process and information specified in those regulations is the same process and information the Department would have used prior to this rulemaking.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

These final regulations will have no effect on the budgets of local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures, which may be required.

These regulations will have no affect on the budgets of other state agencies.

**REGULATORY ANALYSIS FORM**

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

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

(20a) Explain how the cost estimates listed above were derived.

Not quantifiable (see responses to questions 17-19).

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 (00-01)	FY-2 (01-02)	FY-1 (02-03)	Current FY (03-04)
Env. Protection Mgmt. (161)	41,471,000	43,354,000	43,782,000	43,679,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

As explained above, the final rulemaking will not impose any additional costs on the regulated community, state or local governments. There will be a benefit, albeit unquantifiable, to the regulated community. The proposed final regulations are significantly clearer and easier to follow. Operators of underground noncoal mines will realize the greatest benefit. Currently these operators must comply with two sets of standards; those established by DEP and those established by the U.S. Mine Health and Safety Administration. The proposed regulations incorporate by reference the MSHA standards. As a result, underground noncoal mine operators will only have to comply with one set of standards. This reduction in unnecessary and potentially conflicting standards will reduce the operator's cost of compliance.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

To the best of DEP's knowledge there are no non-regulatory alternatives. Section 2(f) of the GSL imposes on DEP the duty and responsibility to administer and enforce a safety program for underground noncoal mines and mined-out underground noncoal mines used to house other businesses. Clear, coherent implementing regulations are essential for establishing a fair and effective safety program.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

For underground noncoal mining operations, DEP considered including in the proposed regulations substantive requirements in addition to those imposed by MSHA. This approach was rejected because such additional substantive requirements would at best be duplicative and at worse be a source of confusion as to what is the appropriate safety standard.

(24) 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 regulation.

Yes. The regulations require mine foremen to obtain a certificate of qualification. The mine foreman is the person who directs the day-to-day operation of the mine. Therefore, the mine foreman is responsible for ensuring that the mining operation complies with DEP's safety regulations. The certificate of qualification is the best mechanism for ensuring the mine foreman's competency to carry out this obligation. Under the current program, all the persons working as mine foremen have voluntarily obtained the Department's certificate of qualification. The regulations retain the current requirement that persons responsible for blasting activities (blasters) obtain a certificate of qualification. This is necessary because using explosives is an ultra-hazardous activity requiring special expertise.

The regulations retain the current requirement that surface explosives magazines be licensed. This means the Department will continue to ensure that the explosives magazine is properly designed and sited. Storing explosives is a hazardous activity warranting DEP's oversight. This requirement is also retained in Chapter 211.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

These proposed regulations will not place Pennsylvania at a competitive disadvantage with other states. Except for some licensing requirements, the proposed regulations for underground noncoal mines incorporate by reference the MSHA regulations. These regulations are applicable to all underground noncoal mines in all states. The proposed regulations for mined-out underground non-coal mines used to house other businesses impose requirements that are essentially equivalent to the requirements established by other states' programs.

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

Yes. In promulgating these regulations, the L&I regulations found at *34 Pa. Code* Chapter 33 will become redundant and moot. As a result, L&I is considering a proposed rulemaking to repeal the redundant and unnecessary provisions of *34 Pa. Code* Chapter 33.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No. The Department doesn't believe that public meetings or hearings are necessary, based on the input received from the underground industrial mineral mining roundtable.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

Yes. Operators of underground noncoal mines will no longer be subject to one set of reporting requirements for DEP and one for MSHA. Instead, operators will only have to send to DEP a copy of what they send to MSHA.

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

N/A

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Regulations will go into effect upon publication as final. DEP does not anticipate any compliance problems because the proposed regulations do not establish any new substantive or reporting requirements. All underground noncoal mines are already using mine foremen who possess a certificate of qualification from the Department.

(31) Provide the schedule for continual review of the regulation.

These regulations will be revised in accordance with the sunset review schedule published by the Department.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU**

**(Pursuant to Commonwealth Documents Law)**

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REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

# 2237

Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL \_\_\_\_\_

Check if applicable  
Copy not approved. Objections attached.

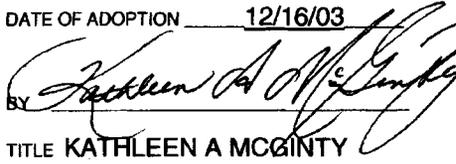
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DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-357

DATE OF ADOPTION 12/16/03

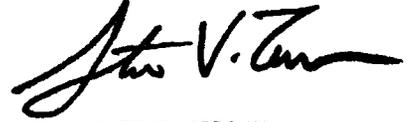
BY 

TITLE KATHLEEN A MCGINTY  
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY



DATE OF APPROVAL \_\_\_\_\_

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(~~Strike inapplicable title~~)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**ORDER ADOPTING REGULATIONS**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**Noncoal Underground Mines**

**25 Pa. Code, Chapter 207**



**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD  
25 Pa. Code Chapter 207  
NONCOAL UNDERGROUND MINES**

**Order**

The Environmental Quality Board (Board) hereby amends Chapter 207 pertaining to Noncoal Underground Mines, as set forth in Annex A. Chapter 207 is amended by deleting the current regulations addressing the use of explosives at noncoal mines and by adding regulations addressing safety at underground noncoal mines and mined-out underground noncoal mines housing other businesses.

These amendments were adopted by order of the Board at its meeting of December 16, 2003.

**A. Effective Date**

These amendments are effective upon publication in the Pennsylvania Bulletin.

**B. Contact Persons**

For further information, contact Paul Hummel, Chief, Anthracite and Industrial Minerals Mine Safety Division, Bureau of Deep Mine Safety, 5 West Laurel Blvd., Pottsville, PA 17901, (570) 621-3139, or Marc A. Roda, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This regulation is available electronically through the DEP Web site (<http://www.dep.state.pa.us>).

**C. Statutory Authority**

The final rulemaking is being made under the authority of Sections 2(f) and 12 of the General Safety Law, Act of May 18, 1937, P.L. 654, *as amended*, 43 P.S. §§ 25-2(f) and 25-12 ("GSL"); Reorganization Plan No. 2 of 1975, 71 P.S. § 751-22; and Sections 1917-A and 1920-A of the Administrative Code of 1929, 71 P.S. §§ 510-17 and 510-20. Section 2(f) of the GSL requires *inter alia* all pits, quarries, and mines other than coal mines to be operated and conducted to provide adequate protection to workers. Sections 1917-A and 1920-A of the Administrative Code of 1929 authorize the Board to adopt regulations to prevent the occurrence of a nuisance and to promulgate such rules and regulations as are necessary for the proper work of the Department.

**D. Background and Summary**

This rulemaking amends Chapter 207 by deleting and reserving the existing regulations and by adding regulations addressing safety at noncoal underground mines. The deleted

provisions are outdated regulations addressing the use of explosives at noncoal mines. The use of explosives at noncoal surface mines is completely addressed by regulations found in Chapter 77 (relating to noncoal surface mines) and Chapter 211 (relating to the storage, handling and use of explosives). The new regulations address safety in underground noncoal mines (including the use of explosives) and in mined-out underground noncoal mines used to house other businesses.

Since 1975 the Department has regulated noncoal mines and mined-out noncoal underground mines used for other businesses to ensure the safety of persons at these facilities. Mined-out limestone underground mines are used to house businesses. Examples of these businesses include mushroom farms, record storage facilities and offices. The authority and duty to maintain these programs is established by Section 2(f) of the General Safety Law (relating to safety at pits, quarries, underground mines other than coalmines, trenches and similar operations). To carry out these programs, DEP has been using the regulations, found at 34 *Pa. Code* Chapter 33 (relating to Mines and Other Excavations), promulgated by the Department of Labor and Industry (L&I). L&I was the agency responsible for enforcing Section 2(f) prior to 1975.

The amendments do not recodify the L&I regulations addressing safety in active noncoal underground mines. The L&I regulations are out of date and redundant in light of more recent federal regulations. The amendment incorporates by reference the U.S. Department of Labor, Mine Safety and Health Administration's (MSHA) regulations addressing safety in metal and nonmetal underground mines. By using the MSHA regulations, rather than maintaining two sets of standards, safety at noncoal underground mines will be enhanced, and there will be a reduction in the operator's regulatory obligations. The MSHA regulations provide a fairly complete regulatory scheme. However, as explained below, there are three issues not addressed by the MSHA regulations, which are addressed by these amendments.

First, a person working as a mine foreman is responsible for ensuring that the day-to-day operation of the mine is performed in a manner that protects worker safety and complies with these regulations. Also, the foreman must demonstrate the competency to meet this obligation by obtaining a certificate of qualification from the Department. Making the foreman responsible for safety and compliance with the regulations recodifies requirements in the L & I regulations. Requiring the mine foreman to obtain a certificate of qualification merely codifies current practice; all noncoal underground mines use foremen who have voluntarily obtained a certificate of qualification from the Department. Similar requirements are applicable to foremen for underground coal mines.

Second, the amendments retain the requirement that any surface explosive storage magazine must be licensed in accordance with the requirements of Chapter 211. The risks associated with storing explosives are significant enough to warrant retaining this minimal licensing requirement.

Finally, due to the ultra-hazardous nature of storing, using and handling explosives, the amendments retain the requirement that the person responsible for the blasting activity be licensed by the Department.

The amendments addressing safety in mined-out noncoal underground mines used to

house other businesses are primarily a recodification of the L&I regulations. Most of the changes from the L&I regulations are for clarity and simplicity, not for the purpose of changing substantive standards.

This rulemaking will affect 13 underground noncoal mining operations employing approximately 350 persons, and 17 mined-out underground noncoal mines housing other businesses that employ approximately 700 persons.

The Department discussed this proposal with the underground industrial mineral mining roundtable. This group, which is open to all representatives from the underground industrial mineral mining industry, reviewed in detail the proposed regulations for underground noncoal mines. The roundtable is in favor of incorporating by reference the MSHA regulations rather than promulgating a separate, potentially conflicting set of requirements.

The roundtable raised one concern. They wanted to know whether DEP inspectors will be monitoring the noncoal underground mines for compliance with the MSHA standards for exposure to air contaminants, 30 CFR §57.5001 (relating to exposure limits for airborne contaminants), and occupational noise standards 30 CFR Part 62 (relating to occupational noise exposure). Due to MSHA's greater expertise in this area, DEP will leave compliance monitoring for these exposure standards to MSHA. DEP's inspectors will continue to monitor the mine for appropriate levels of oxygen, carbon monoxide, carbon dioxide, methane and other noxious or dangerous gasses, as well as adequate quantity of air flow.

**E. Summary of Comments and Responses on the Proposed Rulemaking and Changes Made in the Final Rulemaking**

Chapter 207 was published as proposed rulemaking in the December 8, 2001, *Pennsylvania Bulletin*. There was a 60-day comment period. Only the Independent Regulatory Review Commission ("IRRC") submitted comments. The Department has considered IRRC's comments and has prepared a comment and response document. The comment and response document is available on the Department's web site and from the contact persons listed in Section B of this order.

**§207.211 (relating to safety requirements).**

This section, *inter alia*, requires copies of all materials submitted to MSHA to be submitted to the Department. The IRRC suggested that the final regulation should identify which DEP office the materials are to be sent to. The Department agrees, and the final rulemaking has been revised to identify the Department's Anthracite and Industrial Mineral Safety Division office in Pottsville.

**§207.212 (relating to employment of foreman) and §207.215 (relating to standards for issuing certificates of qualification).**

These sections establish, for the first time, the requirement that noncoal underground foremen must possess a certificate of qualification from the Department and

that persons seeking such a certificate must take and pass an examination. Currently, all noncoal underground mines use foremen who have voluntarily obtained a certificate of qualification from the Department. The IRRC asked if these individuals will have to take the examination. This rulemaking does not negate existing certificates of qualification to be a noncoal underground mine foreman. Therefore, persons already possessing such a certificate of qualification do not have to retake the examination.

**§207.214 (relating to certificate of qualification application requirements)**

Under paragraph (2) persons who are certified officials pursuant to the Pennsylvania Anthracite or Bituminous Coal Mine Acts, 52 P.S. 70.101 et. seq. or 701-101 et. seq. have sufficient experience to take the written examination to obtain a certificate of qualification to be a noncoal underground mine foreman. IRRC commented that the term “certified official” is undefined and unclear. The Department’s intention is to allow persons possessing a certificate of qualification to be a mine foreman under the Pennsylvania Anthracite or Bituminous Coal Mine Acts to be eligible to take the written examination to obtain a certificate of qualification to be a noncoal mine foreman. The final rulemaking has been amended to embody this intention.

**§207.302 (relating to definitions)**

As discussed in §207.318 (relating to storage of flammable liquids), a “safety container” can be used to store up to 5 gallons of gasoline in a mined-out underground noncoal mine used to house another type of business. A definition for “safety container” has been added to this section to avoid confusion as to the type of container authorized for storing small quantities of gasoline.

**§207.303 (relating to approvals)**

This section establishes the requirement that the DEP must first approve a developed facility as complying with the applicable regulations before a business can be operated in that developed facility. As noted by IRRC, this section does not specify the process for obtaining DEP’s approval. The final regulations have been amended to specify an approval process.

A person seeking to open a new developed facility is required to submit a request to the Department. This request identifies the nature of the developed facility, its location, the owner and a contact person. The request also includes a map or drawings depicting the facility. DEP’s determination whether to approve the developed facility will be based upon a review of the maps or drawings and, if necessary, an inspection of the developed facility. To facilitate the application process, DEP is available for consultation during the design and construction phases for a new developed facility or expansion of an existing developed facility.

**§207.312 (relating to lighting)**

This section requires the operator to install a permanent lighting system and an emergency lighting system or provide personal lamps. IRRC noted that the proposed regulation does not specify or cross-reference applicable standards for these lighting systems. The existing

developed facilities use permanent and emergency lighting systems that comply with a nationally recognized safety code, such as the National Electric Code established by the United States of America Standards Institute. The final rulemaking has been amended to state that permanent and emergency lighting systems constructed in accordance with a nationally recognized standard will be approvable.

IRRC also asked what is a personal lighting system. The final rulemaking has been revised to state that a miner's cap lamp constructed in accordance with MSHA standards is deemed approved as a personal lighting system. Any alternative personal lighting system must be as safe and reliable as the cap lamp.

**§207.314 (relating to ventilation)**

This section requires the Department's approval of a mechanical ventilation system. The IRRC questioned how the owner obtains Department approval. The final regulation has been revised to require the operator to submit drawings depicting the ventilation system. Based on these drawings and, if necessary, an inspection of the developed facility, the Department will make a determination whether to approve the ventilation system.

**§207.317 (relating to record of inspections).**

This section requires the owner or operator to ensure there is a log containing the findings of inspections by the operator's employees and any resulting repairs or corrective actions. This log shall be signed and dated by a person designated by the operator to be responsible for the day-to-day operation of the developed facility. Orders issued by the Department's representative shall also be made part of the log.

IRRC questioned whether the responsible person signs the entire log or each individual entry. The final rule has been amended to make it clear that the operator is maintaining a daily log. The log will be signed and dated for each day of operation regardless of the number of entries for that day.

IRRC also questioned whether the Department's representative will have the authority to issue orders. The Department's representatives have the authority to issue correction or enforcement orders at developed facilities. The Department's authority to issue orders to developed facilities was upheld in *Com., Dept. of Environmental Resources v. Butler County Mushroom Farm*, 454 A.2d 1, 499 Pa. 509 (1982). How DEP will exercise this authority is more fully explained in §207.104 (relating to enforcement).

Finally, IRRC questioned whether the Department's representative is to sign and date the log for corrections or orders. The regulations require that the order becomes part of the log, not that the Department's representative is to sign or date the log.

**§207.318 (relating to storage of flammable liquids)**

This section limits an operator to storing no more than 5 gallons of flammable liquids in a developed facility. This flammable liquid must be stored in a safety can. Either requirement can

be varied with the Department's approval.

The IRRRC questioned whether the Department's representative will have the authority to make these approvals. All actions of the Department are taken through duly authorized representatives.

The IRRRC questioned what are the procedures for obtaining the Department's approval. The final regulations have been amended to provide an approval process.

If the operator is to use any type of container other than a safety container approved by MSHA for use in an underground metal or non-metal mine, the operator shall submit to DEP either a photograph, drawing or sketch of the container and an explanation as to why this alternative container is safe to store flammable liquids. If the operator wishes to store more than 5 gallons of flammable liquid in a developed facility, the request shall depict the storage device, identify the location where the flammable liquid is to be stored and describe measures for preventing and fighting fires and spills. The regulations provide that the Department will respond in writing to approve or deny the request for approval.

#### **F. Benefits and Costs**

Executive Order 1996-1 requires a cost/benefit analysis of the final regulation.

##### ***Benefits***

The benefits, albeit unquantifiable, are those that result from having regulations modernized, clarified and simplified. For persons working at these facilities, the benefit will be fewer accidents and injuries. This will result because the safety standards contained in the regulations will be more effectively implemented. The greatest impact will be on the 350 workers at underground noncoal mines where the proposed regulations will eliminate duplicative and out-of-date requirements. For the regulated community, the benefit will be greater certainty in implementing the regulations. The operators will no longer have to implement two different sets of standards.

##### ***Compliance Costs***

The compliance costs for the noncoal underground mine operators should be reduced. Replacing the L&I regulations with the MSHA regulations eliminates duplicative reporting requirements. Under the regulations, the operator only has to submit to the Department a copy of the materials required by MSHA.

For the most part, the regulations do not affect substantive or reporting requirements. There might be a minimal increase in the compliance costs faced by operators of businesses located in mined-out noncoal underground mines. For the first time, the regulations do require an operator to obtain the Department's approval of a developed facility before opening or expanding a business in a mined-out noncoal underground mine. The application requirements for this approval are minimal, as they involve the cost of copying existing drawings or maps of the developed facility and answering a few questions about the nature and location of the

business. Also, the regulations, for the first time, specify a process for obtaining the Department's approval for mechanical ventilation and alternate methods of storing flammable liquids in the developed facility. The process and information specified in the final regulations is the same process and information the Department would have used prior to this rulemaking.

### ***Compliance Assistance***

The Department is not planning to initiate a new compliance assistance program to assist with the implementation of these regulations. The regulations are not imposing new requirements; they either incorporate by reference existing federal requirements or recodify existing L&I requirements. The Department will continue its practice of meeting with owners/operators of noncoal underground mines and developed facilities to ensure compliance with these regulations.

### ***Paperwork Requirements***

The paperwork requirements applicable to the noncoal underground mining industry will be reduced. The duplicative paperwork requirements established by the L&I regulations are being eliminated. The operator will only have to maintain the MSHA record or submit to the Department a copy of the materials submitted to MSHA. For mined-out noncoal underground mines housing other businesses, the paperwork requirements are minimal. Operators are still required to maintain a record of inspections of their facilities and all repairs made thereto. As described above, these regulations will also impose a few minimal application requirements for obtaining the Department's approval of a developed facility, mechanical ventilation system or alternate method for storing flammable liquids.

### **G. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

### **H. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Department submitted a copy of the proposed regulation on November 27, 2001, to the Independent Regulatory Review Commission and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Section 5(c) of the Regulatory Review Act requires agencies to submit copies of comments received during the public comment period to IRRC and the Committees as well as other documents when requested. No comments were received from the public or the Committees. In preparing these final-form regulations, the Department has considered the comments from IRRC.

Under Section 5.1(j.2) of the Regulatory Review Act, on \_\_\_\_\_, these final-form regulations were deemed approved by the House and Senate Committees. Under

Section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ and approved the final-form regulations.

**I. Findings of the Board**

The Board finds that:

(1) Public notice of the proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications to the amendments do not enlarge the purpose of the proposed amendments published at 31 Pa. B. 6672 (December 8, 2001).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Order.

**J. Order of the Board**

The Environmental Quality Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, 25 Pa. Code Chapter 207 are amended to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this Order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this Order and Annex A to the Independent Regulatory Review Commission and the Senate and House of Environmental Resources and Energy committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

\_\_\_\_\_  
KATHLEEN A. McGINTY  
Chairperson

## Environmental Quality Board



*(Editor's Note: As part of this proposal, the Board is deleting the existing text of Chapter 207, which currently appears at Pennsylvania Code pages 207-1 through 207-12, serial numbers (234645) to (234656). The following text is new and is printed in regular type to enhance readability.)*

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart D. ENVIRONMENTAL HEALTH AND SAFETY**

**ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY**

**CHAPTER 207. NONCOAL UNDERGROUND MINES**

Subchapter

- A. GENERAL
- B. NONCOAL UNDERGROUND MINES
- C. MINED-OUT AREAS

**Subchapter A. GENERAL**

Sec.

- 207.1. (Reserved).
- 207.2. (Reserved).
- 207.11--207.22. (Reserved).
- 207.31--207.46. (Reserved).
- 207.101. Scope.
- 207.102. Definitions.
- 207.103. Responsible party.
- 207.104. Enforcement.

**§ 207.101. Scope.**

This chapter applies to underground noncoal mines and mined-out underground noncoal mines used to house other businesses in this Commonwealth. The purpose of this chapter is for the protection of life, the promotion of health and safety and the prevention of accidents.

**§ 207.102. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Developed facility*--The portion of a mined-out underground noncoal mine developed or being developed for storage, manufacturing or other activities requiring a person to enter the mined-out area. The term includes all roads and means of entering and leaving the mined-out area of the underground noncoal mine.

*Mined-out* - A portion of the noncoal underground mine where no further mining is planned.

*Noncoal underground mine* -

(i) Lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting metals or minerals other than coal from their natural deposits in non-liquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of the metals or minerals, or the work of preparing metals or minerals other than coal, and includes custom preparation facilities.

(ii) Private ways and roads appurtenant to the areas set forth in subparagraph (i).

*Person*- - A natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State government. When used in any clause prescribing and imposing a

penalty, or imposing a fine or imprisonment, or both, the term "person" does not exclude the members of an association and the directors, officers or agents of a corporation.

**§ 207.103. Responsible party.**

The person who is the owner or operator of a noncoal underground mine or developed facility shall ensure that the noncoal underground mine or developed facility is constructed and operated in accordance with this chapter. A subcontractor who conducts all or part of the operation shall be jointly and severally responsible with the owner or operator.

**§ 207.104. Enforcement.**

(a) The Department has the authority to issue orders necessary to ensure compliance with the requirements of section 2(f) of the act of May 18, 1937 (P. L. 654, No. 174) (43 P. S. § 25-2(f)), known as the General Safety Law, and this chapter. This authority includes orders:

- (1) Revoking, or suspending a certificate of qualification to be a foreman.
- (2) Ceasing or suspending the operation of a noncoal underground mine or developed facility.
- (3) Requiring the abatement of an unsafe condition or practice.

(b) Except for orders abating a condition that is an imminent hazard or ceasing, in whole or in part, the operation of a noncoal underground mine or developed facility due to the existence of an imminent hazard, the Department will not issue an order abating a condition or correcting a violation of this chapter until the owner or operator has had an opportunity to meet with the Department to discuss the matter and the owner or operator has had a reasonable opportunity to abate the condition or correct the violation.

**Subchapter B. NONCOAL UNDERGROUND MINES**

**GENERAL**

Sec.

207.201. Applicability.

207.202. Definitions.

## **PERFORMANCE STANDARDS**

207.211. Safety requirements.

207.212. Employment of foreman.

207.213. Duties of foreman.

207.214. Certificate of qualification application requirements.

207.215. Standards for issuing certificates of qualification.

207.216. Examining committee.

207.217. Blasting activity.

## **GENERAL**

### **§ 207.201. Applicability.**

This subchapter applies to the development, construction and operation of noncoal underground mines in this Commonwealth.

### **§ 207.202. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*MSHA* -- The United States Department of Labor, Mine Safety and Health Administration, its employees and its officers.

*Magazine* -- A structure used for the storage of explosives.

## **PERFORMANCE STANDARDS**

### **§ 207.211. Safety requirements.**

(a) The provisions of 30 CFR Part 57 (relating to Safety and Health Standards--Underground Metal and Nonmetal Mines) are incorporated herein by reference.

(b) Alternative safety and health standards for underground metal and nonmetal mines, established by MSHA under section 101(c) of the Federal Mine Safety and Health Act of 1977

(30 U.S.C.A. § 811(c)) and 30 CFR Part 44 (relating to Rules of Practice for Petitions for Modification of Mandatory Safety Standards), are incorporated herein by reference.

(c) The provisions of 30 CFR Part 57 requiring the submission of a map, plan, notification, report, program description or other materials to MSHA are amended to require the same submission to the Department. A copy of **THE DOCUMENTS REQUIRED BY 30 CFR PART 57 TO BE SUBMITTED TO MSHA AND** any other material requested by MSHA under 30 CFR Part 57 shall **ALSO** be submitted to the Department's **ANTHRACITE AND INDUSTRIAL MINERAL MINE SAFETY DIVISION AT 5 WEST LAUREL BLVD., POTTSVILLE, PA 17901.**

(d) An owner or operator of a noncoal underground mine maintaining a magazine located on the surface shall comply with the magazine licensing requirements of Chapter 211 (relating to storage, handling and use of explosives).

**§ 207.212. Employment of foreman.**

The owner or operator of an underground noncoal mine shall employ a foreman who possesses the Department's certificate of qualification to be a foreman.

**§ 207.213. Duties of foreman.**

The foreman shall have full charge of the inside portions of the noncoal underground mine and the persons employed therein. The foreman's duty shall be to ensure compliance with the requirements of the Commonwealth's mine safety laws and the regulations promulgated thereunder, as well as to secure and promote the health and safety of persons employed in the noncoal underground mine.

**§ 207.214. Certificate of qualification application requirements.**

To be eligible to apply for a certificate of qualification, the individual shall:

- (1) Be at least 21 years of age.

(2) Have at least 2 years of practical experience as a noncoal underground miner or have 1 year of practical experience as a noncoal underground miner and either possess a Bachelor of Science Degree in mining engineering, **POSSESS A CERTIFICATE OF QUALIFICATION** under **SECTION 205 OF** the Pennsylvania Anthracite Coal Mine Act (52 P. S. § 70-205) or **SECTION 206 OF** the Pennsylvania Bituminous Coal Mine Act (52 P. S. §701 **206**) or possess an acceptable certificate of qualification issued by another state.

**§ 207.215. Standards for issuing certificates of qualification.**

(a) The Department will only issue certificates of qualification to be a foreman to applicants who have demonstrated the ability to ensure the safety of persons and the inside portions of a noncoal underground mine under their supervision. Applicants make this demonstration by correctly answering at least 80% of the Department's written examination covering applicable mine safety laws and regulations of the Commonwealth.

(b) The Department may refuse to issue to an applicant a certificate of qualification when the applicant has demonstrated an inability or unwillingness to comply with the mine safety laws and regulations of the Commonwealth or the mine safety laws or regulations administered by MSHA.

**§ 207.216. Examining committee.**

(a) The Department will appoint a committee consisting of a noncoal underground mine foreman and a representative of the Department to prepare the initial draft of the examination to be given to applicants for the mine foreman's certificate of qualification. A bank of questions will be developed by the committee. The Department will assemble the examination from this bank of questions.

(b) This committee shall review and score the results of the examinations given to applicants for the foreman's certificate of qualification. These results will be transmitted to the Department for issuance of the certificate.

**§ 207.217. Blasting activity.**

The storage, handling and use of explosives at a noncoal underground mine shall be under the supervision and control of a person licensed as a blaster under Chapter 210 (relating to use of explosives).

**Subchapter C. MINED-OUT AREAS**

**GENERAL PROVISIONS**

Sec.

207.301. Applicability.

207.302. Definitions.

207.303. Approvals.

**SPECIFICATIONS**

207.311. Roof areas.

207.312. Lighting.

207.313. Entrances and exits.

207.314. Ventilation.

207.315. Closing underground sections.

207.316. Inspections.

207.317. Record of inspection.

207.318. Storage of flammable liquids.

207.319. Check in/check-out system.

**GENERAL PROVISIONS**

**§ 207.301. Applicability.**

This subchapter applies to the use of mined-out underground noncoal mines in this Commonwealth. The activities covered by this subchapter include storage, manufacturing or other activities requiring a person to enter the mined-out area.

**§ 207.302. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Outside Air* - Air moving through the mined-out passageways after entering them through the main or accessory portals by mechanical or natural forces.

*Pure air*-Air containing not less than 19.5% oxygen, not more than 0.5% carbon dioxide and no harmful quantities of other noxious or poisonous gases, dust, soot or particulates.

**SAFETY CONTAINER- A CONTAINER NOT OVER 5 GALLONS CAPACITY, HAVING A SPRING CLOSING LID AND SPOUT COVER.**

**§ 207.303. Approvals.**

(a) A person may not operate a business in a mined-out area unless that mined-out area is part of a developed facility, which has been approved by the Department **IN WRITING** and is constructed and operated in accordance with **THE REQUIREMENTS OF** this subchapter.

(b) **THE OWNER OR OPERATOR OF THE DEVELOPED FACILITY SHALL SUBMIT TO THE DEPARTMENT A WRITTEN REQUEST WHICH:**

- (1) **IDENTIFIES THE OWNER OF THE DEVELOPED FACILITY.**
- (2) **IDENTIFIES THE LOCATION OF THE DEVELOPED FACILITY.**
- (3) **DESCRIBES THE PURPOSE OF THE DEVELOPED FACILITY.**
- (4) **IDENTIFIES A RESPONSIBLE PERSON AT THE DEVELOPED FACILITY.**
- (5) **CONTAINS A MAP OR DRAWINGS DEPICTING THE DEVELOPED.**

**FACILITY, INCLUDING THE FOLLOWING:**

(i) **THE INFORMATION REQUIRED BY §207.314 (B) (RELATING TO VENTILATION) IF THE DEVELOPED FACILITY WILL BE USING MECHANICAL VENTILATION.**

**(ii) THE INFORMATION REQUIRED BY §207.318(B) (RELATING TO STORAGE OF FLAMMABLE LIQUIDS) IF MORE THAN 5 GALLONS OF FLAMMABLE LIQUID IS TO BE STORED IN THE DEVELOPED FACILITY.**

**(c) ONE OR MORE INSPECTIONS OF THE DEVELOPED FACILITY MAY BE PART OF THE DEPARTMENT'S REVIEW OF THE OPERATOR'S REQUEST.**

**(d) THE DEPARTMENT'S APPROVAL MAY INCLUDE SUCH CONDITIONS THAT ARE NECESSARY TO ENSURE COMPLIANCE WITH SECTION 2(f) OF THE GENERAL SAFETY LAW, THE REQUIREMENTS OF THIS SUBCHAPTER AND PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE.**

#### **SPECIFICATIONS**

##### **§ 207.311. Roof areas.**

The owner or operator of a developed facility shall ensure that the developed facility's roof shall be scaled, bolted or otherwise supported.

##### **§ 207.312. Lighting.**

(a) *Permanent.* The owner or operator of a developed facility shall ensure that a permanent lighting system is installed in the developed facility to provide adequate lighting for the activities to be conducted in the developed facility. **AN ADEQUATE PERMANENT LIGHTING SYSTEM IS ONE CONSTRUCTED IN ACCORDANCE WITH A NATIONALLY RECOGNIZED SAFETY CODE SUCH AS THE NATIONAL ELECTRIC CODE ESTABLISHED BY THE UNITED STATES OF AMERICA STANDARDS INSTITUTE.**

(b) *Emergency.* The owner or operator of a developed facility shall ensure that a person is not allowed to work in a developed facility unless either an emergency lighting system meeting the requirements of the Department has been installed in that area or each worker is provided with an approved personal lamp.

**(1) THE EMERGENCY LIGHTING SYSTEM SHALL BE POWERED BY AN EMERGENCY GENERATOR. THE EMERGENCY LIGHTING SYSTEM SHALL ALSO BE CONSTRUCTED IN ACCORDANCE WITH A NATIONALLY RECOGNIZED SAFETY CODE SUCH AS THE NATIONAL ELECTRIC CODE ESTABLISHED BY THE UNITED STATES OF AMERICA STANDARDS INSTITUTE.**

**(2) CAP LAMPS CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH 30 CFR 19.5 (RELATING TO GENERAL REQUIREMENTS FOR APPROVAL) ARE APPROVED AS PERSONAL LAMPS. THE DEPARTMENT MAY APPROVE THE USE OF OTHER TYPES OF PERSONAL LAMPS PROVIDED THE OTHER LAMPS ARE AS SAFE AS A PERSONAL CAP LAMP CONSTRUCTED AND OPERATED IN ACCORDANCE WITH 30 CFR 19.5.**

**§ 207.313. Entrances and Exits.**

The owner or operator of a developed facility shall ensure that two separate passages, connecting each area of the developed facility to the surface, shall be provided for personnel use and shall be maintained in a safe, passable condition at all times.

**§ 207.314. Ventilation.**

(a) *General Requirement.* The owner or operator of a developed facility shall ensure that an adequate supply of pure air is provided and maintained in the developed facility as provided in subsection ~~[(b)]~~ (c). If the Department or the operator determines it is necessary to install mechanical means of ventilation, these mechanical means for providing pure air shall be approved by the Department **IN WRITING** before the mechanical ventilation system is operated.

**(b) VENTILATION SYSTEM REQUIREMENTS. THE OWNER OR OPERATOR OF THE DEVELOPED FACILITY SHALL SUBMIT TO THE DEPARTMENT DRAWINGS**

**DEPICTING THE PROPOSED VENTILATION SYSTEM. ONE OR MORE INSPECTIONS OF THE DEVELOPED FACILITY MAY BE PART OF THE DEPARTMENT'S REVIEW OF THE PROPOSED MECHANICAL VENTILATION SYSTEM. ANY DEPARTMENT APPROVAL MAY INCLUDE SUCH CONDITIONS AS ARE NECESSARY TO ENSURE THE VENTILATION SYSTEM IS PROVIDING PURE AIR TO ALL PORTIONS OF THE DEVELOPED FACILITY.**

**~~(b)~~ (c) *Quantity of Air.*** A minimum of 20 cubic feet of outside air shall be supplied to every occupied or enclosed space in a developed area, per minute, per person present in that area.

**§ 207.315. Closing underground sections.**

If it becomes necessary to permanently close or enclose a section or portion of the developed facility, the owner or operator of the developed facility shall ensure that noncombustible material is used to permanently close or enclose that section or portion of the developed facility.

**§ 207.316. Inspections.**

The owner or operator of a developed facility shall ensure that inspections are made at the following times, and defective conditions that are discovered shall be corrected:

(1) *Monthly.* The ceiling, pier and walls shall be inspected monthly for new cracks. The entrances, shafts, slopes, drifts and roadways leading to them, and the doors or gates shall be inspected monthly to insure they are in safe, usable condition.

(2) *Biweekly.* Emergency lighting systems and approved personal lamps shall be tested biweekly to assure they are in operating condition. Charge, fluid, terminals and visual conditions of batteries shall be checked.

(3) *Weekly.* The ventilating system shall be inspected weekly to ensure that motors and controls are in operating condition.

**§ 207.317. Record of Inspection.**

The owner or operator of the developed facility shall ensure that **DAILY** logs containing the findings of inspections and the repairs and corrective action taken are maintained and kept on file at the developed facility's office. These logs shall be available for inspection by the Department at any time during working hours. ~~[The]~~ **EACH DAY'S** log shall be dated and signed by a person designated by the owner or operator to be responsible for the day-to-day operation of the developed facility. Corrections or orders required by the Department representative shall be in writing and shall become a part of the log.

**§ 207.318. Storage of Flammable Liquids.**

(a) The owner or operator of the developed facility shall ensure that flammable liquids are stored in a safety container unless otherwise approved **IN WRITING** by the Department. **TO REQUEST THE DEPARTMENT'S APPROVAL, THE OWNER OR OPERATOR SHALL SUBMIT TO THE DEPARTMENT A PHOTOGRAPH, DRAWING OR SKETCH OF THE CONTAINER AND AN EXPLANATION AS TO WHY THIS ALTERNATIVE CONTAINER IS SAFE FOR STORING FLAMMABLE LIQUIDS. DEPARTMENT APPROVALS MAY INCLUDE SUCH CONDITIONS AS ARE NECESSARY TO ENSURE THAT THE CONTAINER WILL SAFELY STORE FLAMMABLE LIQUIDS.**

(b) The owner or operator of a developed facility shall ensure that flammable liquids in excess of 5 gallons are not stored in the developed facility unless otherwise approved **IN WRITING** by the Department.

**(c) THE REQUEST FOR STORING MORE THAN 5 GALLONS OF FLAMMABLE LIQUID SHALL INCLUDE OF A DRAWING DEPICTING THE LOCATION, SIZE AND NATURE OF STORAGE. THE REQUEST SHALL ALSO STATE THE REASON**

**IT IS NECESSARY TO STORE MORE THAN 5 GALLONS OF FLAMMABLE LIQUIDS AND DESCRIBE THE MATERIALS WHICH WILL BE USED TO CONSTRUCT THE CONTAINER, AS WELL AS MEASURES TO BE TAKEN TO DETECT, PREVENT OR RESPOND TO A FIRE OR A SPILL.**

**§ 207.319. Check in/check-out system.**

The owner or operator of the developed facility shall ensure that there is a check-in/check-out system, which will inform personnel on the surface of the mine as to who is currently in the developed facility.



## NONCOAL UNDERGROUND MINES

The Environmental Quality Board received comments only from the Independent Regulatory Review Commission concerning the above reference rulemaking.

### COMMENTS AND RESPONSES

#### 1. §207.211 (safety requirements)

Copies of all safety information sent to the U.S. Department of Labor and Industry, Mine Safety and Health Administration (MSHA) must also be sent to DEP.

**Comment:** The regulation should specify which DEP office the information is to be sent to.

**Response:** The Department agrees. The final regulation has been revised to identify the appropriate DEP office.

#### 2. §207.214 (certificate of qualification application requirements)

Subsection (2) references certified officials under the Pennsylvania Anthracite and Bituminous Coal Mine Acts.

**Comment:** This term is not defined in either statute.

**Response:** DEP agrees. The term “certified official” was meant to refer to individuals possessing a certificate of qualification to be a mine foreman issued pursuant to either section 205 of the Pennsylvania Anthracite Coal Mine Act or Section 206 of the Pennsylvania Bituminous Coal Mine Act. The final regulation has been appropriately revised.

#### 3. §207.215 (standards for issuing certificates of qualification)

Applicants must take and pass a qualification examination. This is the first time noncoal underground mine foremen are required to obtain a certificate of qualification.

**Comment:** According to the preamble, all noncoal underground mines use foremen who have voluntarily obtained such a certificate of qualification. Will these individuals have to retest?

**Response:** Nothing in the final regulations negates the certificates of qualification already issued to persons to work as a noncoal underground mine foreman. Therefore, persons currently holding a certificate of qualification to be a noncoal underground mine foreman do not have to retest.

#### **4. §207.303 (approvals)**

This section requires all developed facilities in mined-out noncoal underground mines to be approved by the Department.

**Comment:** Is there a specific provision specifying how this approval is obtained?

**Response:** The final regulations now specify how DEP's approval is to be obtained.

#### **5. §207.312 (lighting)**

This subsection requires the operator to have 1) a permanent lighting system and 2) an emergency lighting system or personal lamp.

**Comment:** What are the applicable standards? The regulations should specify these standards or contain a cross-reference to the appropriate standards.

**Response:** The provisions of subsection (a) merely recodify the existing Pennsylvania Department of Labor and Industry ("L&I") regulation, which has been in place for more than 30 years. All existing developed facilities use lighting systems constructed in accordance with a nationally recognized standard, such as the National Electric Code ("NEC") established by the United States of America Standards Institute. DEP will require any future developed facility to construct its permanent lighting system in accordance with a nationally recognized standard. The final rulemaking states this requirement.

**Comment:** What is an approved personal lamp? What standards will DEP use in approving an emergency lighting system or a personal lamp? These standards should be either cross-referenced or specified in the regulations.

**Response:** Subsection (b) merely restates existing L&I language. In developed facilities used for growing mushrooms, rather than constructing an emergency lighting system, the workers are provided with a cap lamp. This cap lamp is similar to those used by noncoal underground miners and is constructed and maintained in accordance with 30 CFR 19.5. All other developed facilities use emergency lighting systems supported by emergency generators. These emergency lighting systems are constructed in accordance with the NEC or another nationally recognized safety standard. The final regulations reflect DEP's expectation that operators of developed facilities will continue to follow these standards.

#### **6. §207.314 (ventilation)**

Mechanical ventilation systems used to ventilate a developed facility must be approved by DEP.

**Comment:** How does the owner obtain Department approval?

**Response:** The proposed regulation merely restated the existing L&I requirements. Nonetheless, the final regulation specifies the approval process.

**7. §207.317 (record of inspections)**

The owner or operator shall ensure there is a log containing the findings of inspections by the operator's employees and any resulting repairs or corrective actions. This log shall be signed and dated by a person designated by the operator to be responsible for the day-to-day operation of the developed facility. Orders issued by the Department's representative shall also be made part of the log.

**Comment:** Does this responsible person sign each entry or the entire log?

**Response:** This requirement is a recodification of the existing L&I requirement. The practice has been, and will continue to be, that the log is signed and dated for each day of operation regardless of the number of entries made that day. The final regulation has been revised to clarify this requirement.

**Comment:** Does the DEP's representative have the authority to issue correction orders at a developed facility?

**Response:** Yes, the Department's authority to issue orders to developed facilities was upheld in Com., Dept. of Environmental Resources v. Butler County Mushroom Farm, 454 A.2d 1, 499 Pa. 509 (1982). How DEP will exercise this authority is more fully explained in §207.104 (relating to enforcement).

**Comment:** Is the Department representative required to sign and date the log for corrections or orders?

**Response:** The regulations require that the order be made part of the log, not that the Department's representative sign and date the log.

**8. §207.318 (storage of flammable liquids)**

The operator is limited to storing no more than 5 gallons of a flammable liquid underground. Furthermore, the flammable liquid must be stored in a safety can. Either of these restrictions can be varied if authorized by the Department's representative.

**Comment:** Does this representative have the authority to make the approval?

**Response:** Yes, all actions of the Department are taken through duly authorized representatives.

**Comment:** How is the request submitted and is the approval given in writing?

**Response:** The final regulation has been revised to describe the application process and require the approval to be in writing.





Pennsylvania Department of Environmental Protection

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Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

January 13, 2004

Policy Office

717-783-8727

Mr. Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harristown #2  
333 Market Street  
Harrisburg, PA 17120

Dear Mr. Nyce:

RE: Final Rulemaking: Noncoal Underground Mines (#7-357)

Pursuant to Section 5.1(a) of the Regulatory Review Act, enclosed is a copy of a final-form regulation for review by the Commission. The Environmental Quality Board (EQB) approved this final-form rulemaking on December 16, 2003.

This rulemaking recodifies Chapter 207 (relating to noncoal mines) to address safety at noncoal underground mines and mined-out noncoal underground mines now used to house other businesses. Examples of these businesses include mushroom farms, records storage facilities and offices. DEP's enforcement authority for ensuring safety at noncoal underground mines and other excavations is established by the General Safety Law and was transferred to DEP from the Department of Labor and Industry (L&I) in 1975. Since that time DEP has continued to rely on the L&I regulations in 34 *Pennsylvania Code* Chapter 33 to implement the program. The Chapter 33 regulations are outdated, however, in light of more recent federal requirements. Therefore, this rulemaking incorporates by reference the applicable safety regulations established by the U.S. Mine Safety and Health Administration (MSHA) for active noncoal underground mines.

Three issues not addressed by MSHA, but considered to be compelling safety concerns, are also incorporated in the rulemaking: 1) requiring mine foremen to obtain a certificate of qualification from DEP, which merely codifies current practice; 2) continuing the current requirement that all surface explosive storage magazines be licensed under Chapter 211 (relating to storage, handling and use of explosives) due to the significant risks associated with storing explosives; and 3) retaining the requirement that the person responsible for the blasting activity be licensed by DEP.

DEP collaborated with L&I staff when the proposed rulemaking was being developed. In addition, the underground industrial mineral mining roundtable, an informal group of representatives of the industry, was consulted. The roundtable supports the rulemaking and



favors incorporating the MSHA regulations by reference to avoid promulgating a separate set of requirements.

The proposed rulemaking was adopted by the EQB on October 16, 2001, and published in the *Pennsylvania Bulletin* on December 8, 2001, with a 60-day public comment period. While no public comments were received, some minor revisions were made to the proposed rulemaking based on comments submitted by the Commission.

The Department will provide assistance as necessary to facilitate the Commission's review of this final-form regulation under Section 5.1(e) of the Regulatory Review Act. Please contact me if you would like additional information.

Sincerely,



Sharon F. Trostle  
Regulatory Coordinator

Enclosure



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-357

SUBJECT: Noncoal Underground Mines

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

# 2237

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED  
 2004 JAN 13 PM 3:07  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
1-13	<i>Vicki Hoffman</i>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
1-13	<i>Don Costello</i>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
1/13	<i>Stephen J. Hoffman</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

