

Regulatory Analysis Form

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(1) Agency
 Department of Environmental Protection
 Bureau of Deep Mine Safety

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 2001 NOV 27 PM 12:02
 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: Barbara Sexton, 783-1303

(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 other excavations. The provisions to be deleted are outdated regulations addressing the use of explosives at noncoal mines.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). The proposed regulations to be added address safety in underground noncoal mines (including the use of explosives), and mined-out underground noncoal mines used to house other businesses. As explained below, these proposed regulations 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.

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The proposed regulations do not recodify the L&I regulations addressing safety in active noncoal underground mines. The L&I regulations are out of date, poorly written and redundant. Instead, this proposal incorporates 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. The proposed regulations go beyond the MSHA regulations in three aspects. First, as with the Pennsylvania Anthracite and Bituminous Coal Mine acts, the proposed regulations require the mine foreman to demonstrate competency by obtaining a certificate of qualification. Second, the proposed 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, the proposed regulations will retain the requirement that the person responsible for the blasting activity be licensed by the Department.

The proposed regulations recodify the L&I regulations addressing safety in mined-out noncoal underground mines used to house an ongoing business. All the L&I regulations and the proposed 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 another business pose unique and significant safety risks to persons at these operations and facilities. These proposed regulations are designed to ensure the safety of persons at these operations and facilities. See also response to question 8.

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(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.)

There are approximately 350 persons working in active underground noncoal mines and approximately 700 persons working in other businesses located in mined-out underground noncoal mines.

There are 30 underground noncoal mines (both active and mined-out which house a business) in Pennsylvania. This proposed rulemaking will reduce their cost of operation by either eliminating unnecessary requirements or clarifying regulatory requirements. Currently, these operations must comply with the provisions of 34 Pa. Code Chapter 33 Subchapter B as well as the MSHA regulations. The proposed regulations incorporate by reference the MSHA regulations. Thus the operators will not be subject to two sets of substantive and reporting requirements.

(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 proposed regulations. The proposed 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 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.

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(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.

It is anticipated that the regulated community's cost of compliance will be reduced or unchanged. As explained above, the proposed regulations modify, clarify and recodify existing regulations. The proposed regulations do not increase the compliance requirements found in the current regulations. For underground noncoal mine operations there will be a reduction in compliance requirements because the proposed regulations incorporate by reference the MSHA compliance regulations rather than establish an independent set of compliance requirements.

(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 proposed regulations will have no affect 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.

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

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

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

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

Program	FY-3	FY-2	FY-1	Current FY
BDMS	122,367	128,807	135,586	142,722

(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 proposed regulations 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 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.

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(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 proposed 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 that the mine foreman is competent to carry out this obligation. Under the current program, many of the persons working as mine foremen have taken the Department's voluntary mine foreman examination. The proposed 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 proposed 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. Finally, the proposed regulations retain the requirement that the person responsible for the blasting activity possess a license issued by DEP. This requirement has been retained because the use and handling of explosives is an ultra-hazardous activity.

(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.

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

Cristina J. Caputo
(DEPUTY ATTORNEY GENERAL)

NOV 16 2001

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-357

DATE OF ADOPTION:

BY: *David E. Hess*

TITLE: DAVID E. HESS, Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: *B. Keith Ray*

10/18/01

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.

NOTICE OF
PROPOSED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

25 Pa. Code, Chapter 207

Noncoal Underground Mines and Other Excavations

**Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 207)
(Noncoal Mines)**

Preamble

The Environmental Quality Board (Board) proposes to amend 25 *Pa. Code*, Chapter 207 (relating to noncoal mines). The amendments will delete the current regulations addressing the use of explosives at noncoal mines and add regulations addressing safety at underground noncoal mines and mined-out underground noncoal mines housing other businesses. This proposal was adopted by the Board at its meeting of October 16, 2001.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

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. Information regarding submitting comments on this proposal appears in Section I of this preamble. 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 proposal is available electronically through the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The proposed 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"), and Reorganization Plan No. 2 of 1975, 71 P.S. § 751-22. 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. This rulemaking is also authorized by Sections 1917-A and 1920-A (b) of the Administrative Code of 1929 (71 P.S. §§ 510-17 and 20(b)), which authorize the Board to adopt regulations to prevent the occurrence of a nuisance and to

formulate, adopt and promulgate such regulations as are necessary for the Department to perform its work.

D. Background and Purpose

The purpose of this proposed rulemaking is to revise Chapter 207 by deleting and reserving the existing regulations and by adding regulations addressing safety at noncoal underground mines. 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). The proposed regulations to be added address safety in underground noncoal mines (including the use of explosives) and in mined-out underground noncoal mines used to house other businesses. As explained below, these proposed regulations will modernize, clarify and recodify regulations within the Department's authority to enforce.

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. 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.

The proposed 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. As an alternative, the Board proposes to incorporate by reference the U.S. Department of Labor, Mine Safety and Health Administration's (MSHA) regulations addressing safety in metal and nonmetal underground mines. Currently, noncoal underground mines in Pennsylvania must comply with both the MSHA and the Department's regulations. 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 included in this proposed rulemaking.

First, a person working as a mine foreman will be responsible for ensuring that the day-to-day operation of the mine is performed in a manner which 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. Similar requirements are applicable to foremen for underground coal mines.

Second, the proposed regulations will continue the current 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 proposed regulations will retain the requirement that the person responsible for the blasting activity be licensed by the Department.

The proposed regulations will recodify the L&I regulations addressing safety in mined-out noncoal underground mines used to house an ongoing business. Most of the changes from the L&I regulations are for clarity and simplicity, not for the purpose of changing substantive standards.

The proposed amendments do not separately address safety while constructing storage caverns. In the Department's experience, safety for persons either constructing or working in storage caverns is better addressed by the proposed regulations addressing noncoal underground mines and mined-out noncoal underground mines used to house other businesses.

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. This group is in favor of incorporating by reference the MSHA regulations rather than promulgating a separate, potentially conflicting, set of requirements.

E. Summary of Regulatory Requirements

1. Subchapter A — General

Subchapter A sets forth the Chapter's general requirements. Section 207.101 (relating to scope) defines the applicability of the chapter to all underground noncoal mines and mined-out underground noncoal mines used to house other businesses. Section 207.102 (relating to definitions) defines terms applicable to

more than one subchapter. These terms are “developed facility,” “mined-out,” “noncoal underground mine,” and “person.” A developed facility is any portion of a mined-out noncoal underground mine being or to be used as part of a business. This proposed definition combines the original L&I definitions for “developed facility” and “undeveloped facility.” This change has been made for simplicity and clarity. “Mined-out” is still defined as those portions of an underground noncoal mine where mining is completed for any reason. A noncoal underground mine is defined broadly to include both the underground workings and the related surface support facilities. This definition is based on the MSHA definition for an underground mine. The MSHA definition was used to ensure that the regulations applicable to noncoal underground mines will have the same scope as the MSHA regulations for metal and nonmetal mines. Finally, “person” is defined broadly to include natural persons and legal entities.

Section 207.103 (relating to responsible parties) makes the entity that owns or operates the facility responsible for ensuring that the facility is in compliance with these regulations. This is a change from the L&I regulations, *see, e.g. 34 Pa. Code § 33.162(b)* (relating to scope) which also makes the employee responsible for complying with the implementing regulations.

Finally DEP's administrative enforcement authority is spelled out in § 207.104 (relating to enforcement). The Department has the authority to issue orders to ensure compliance with § 25-2(f) of the GSL, the authorizing legislation, as well as these implementing regulations. In addition, the Department can revoke any certificates of qualification or approvals issued under these implementing regulations. This regulation is authorized by and clarifies the Department's inherent authority to issue compliance orders to enforce § 2(f) of the GSL. *See, Com., Dept. of Environmental Resources v. Butler County Mushroom Farm*, 454 A.2d 1, 499 Pa. 509 (1982).

2. Subchapter B — Noncoal Underground Mines

This subchapter applies to all noncoal underground mines in Pennsylvania. Section 207.202 (relating to definitions) defines MSHA as the U.S. Department of Labor, Mine Safety and Health Administration. Also, the L&I definition for “magazine” is retained. A magazine is a structure used for storing explosives.

Section 207.211(a) (relating to safety requirements) incorporates by reference the MSHA safety and health standards found at 30 CFR Part 57 (relating to Safety and Health Standards – underground metal and nonmetal mines). Any future changes to the MSHA regulations will be immediately incorporated by reference. Subsection (b) incorporates by reference any mine-specific alternative safety or health standards accepted by MSHA. Subsection (c) requires the owner or operator of a noncoal underground mine to submit to the Department a copy of all materials submitted to MSHA. The Department will utilize the applicable MSHA policies and

guidance materials to ensure that the Department's interpretation of these incorporated MSHA regulations is consistent with MSHA's interpretation.

Section 207.211(d) requires that surface explosives magazines at noncoal underground mines must be licensed in accordance with the requirements of Chapter 211 (relating to storage, and handling and use of explosives). This cross-reference to the Department's blasting regulations is not a new requirement. The Department's blasting regulations have always required the licensing of surface explosives magazines, including surface magazines at coal and noncoal underground mines. In the Department's experience, the risks associated with storing explosives are significant enough to warrant retaining this minimal licensing requirement. The license will ensure that the explosives magazine is sited, constructed and maintained in accordance with the applicable regulations. This licensing requirement will not impose on noncoal mine operators' substantive requirements different from those established by the MSHA regulations. The MSHA regulations cross-reference the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Fire Arms regulations for storing explosives. The Board has amended Chapter 211 to incorporate by reference the same federal regulations. See Final Rulemaking, 31 *Pa. Bulletin* 3751 (July 14, 2001).

Section 207.212 (relating to employment of foreman) retains the L&I requirement that the mine operator shall employ a mine foreman who will be responsible for ensuring the safety of all underground workers and for ensuring that the mining operation complies with the Commonwealth's mine safety laws and regulations. The proposed regulations will now require the mine foreman to possess a certificate of qualification from the Department. Sections 207.213-207.215 describe the duties of the foreman, the certificate of qualification application requirements and the standards for issuing certificates of qualification. To obtain the certificate of qualification, the applicant must demonstrate, via a written examination, the ability to ensure the safety of the underground employees. Under 207.216 (relating to examining committee), this examination will be prepared and scored by a committee consisting of a mine foreman and a Department representative.

Requiring noncoal underground mines to employ a foreman who is responsible for the underground employees' safety, compliance with the mining laws and who must possess a certificate of qualification from the Department is consistent with requirements applicable to coal underground mine foremen. See, Section 201 of the Pennsylvania Anthracite Coal Mine Act, 52 P.S. § 70-201 and § 206 of the Pennsylvania Bituminous Coal Mine Act, 52 P.S. § 701-206.

Requiring the mine foreman to possess a certificate of qualification codifies current practice. All noncoal underground mines employ a mine foreman who has the day-to-day responsibility for the underground mine's operation. A critical part of this responsibility is ensuring compliance with applicable state and federal laws

and regulations. As a service to the mining industry, the Department has maintained a voluntary program for certifying the competency of persons to be mine foremen. All noncoal underground mines employ as mine foremen persons possessing a Department certificate of qualification.

Finally, the proposed regulations in Section 207.217 retain the requirement that the storage, handling and use of explosives be supervised by a person licensed as a blaster by the Department. The use of explosives is an ultra-hazardous activity. Given the potential risk of injury to persons and damage to property, it is essential that the Department continues to ensure the competency of persons who are responsible for explosives.

3. Subchapter C — Mined-out areas.

This subchapter specifies the standards for protecting the health and safety of persons working in mined-out noncoal underground mines used to house other businesses. The following summary identifies those few instances where there is a substantive change from the L&I regulations.

Section 207.302 retains the L&I definitions for “outside air” and “pure air.” Outside air is air from above ground. Pure air is air containing at least 19.5% oxygen, no more than .5% carbon dioxide and no harmful levels of other gases or particulates.

Pursuant to § 207.303 (relating to approvals) persons are only allowed to work in portions of developed facilities approved by the Department. Also, the developed facility must be constructed and maintained in accordance with the requirements of this Subchapter.

Sections 207.311 – 207.319 are performance specifications. Section 207.311 (relating to roof areas) requires that normal roof control measures be employed in a developed facility. Section 207.312 (relating to lighting) requires the developed facility to be equipped with permanent and emergency lighting systems. In determining the adequacy of emergency and permanent lighting systems, the Department will utilize the analogous MSHA standards for lighting systems in underground metal and nonmetal mines. Section 207.313 (relating to entrances and exits) requires each area of the developed facility to be connected to the surface by two passageways. Section 207.314 (relating to ventilation) requires the developed facility to be ventilated with an adequate quantity of outside air. At a minimum, an adequate amount of pure air is 20 cubic feet per person per second. If necessary, mechanical ventilation methods (*i.e.* fans) shall be used. These mechanical means of ventilation must be approved by the Department. Section 207.315 (relating to closing underground sections) requires that noncombustible material shall be used to permanently seal off or enclose any portion of a developed facility.

Section 207.316 (relating to inspections) specifies the owner's/operator's obligation to inspect a developed facility. Ceilings, roof supports, walls, entrances and doorways shall be inspected monthly. Emergency and personal lighting systems shall be inspected biweekly. The ventilation system shall be inspected weekly. All discovered defects shall be corrected. Section 207.317 (relating to record of inspection) requires a log recording the results of the inspection and any subsequent corrective actions. Any orders issued by the Department to correct a condition shall be added to the log.

Section 207.318 (relating to storage of flammable liquids) prohibits storing more than 5 gallons of flammable liquid in a developed facility, unless otherwise approved by the Department. The flammable liquid is to be stored in a safety container. It is the Board's opinion that safety containers approved by MSHA for storing flammable liquids in underground metal and nonmetal mines are acceptable under this regulation. Unlike the L&I regulations, the Department is expressly authorized to allow flammable liquids to be stored in something other than a safety container. This change was made to address those storage caverns used to store vehicles. In this instance, gasoline is left in the vehicles' tanks.

Section 207.319 (relating to check-in/check-out system) requires the owner/operator of a developed facility to maintain a check-in/check-out system for tracking who is in the developed facility. The L&I regulations did not require a check-in/check-out system. Nonetheless, this is not a new requirement. This proposed regulation merely codifies what the Department established through case-by-case adjudication in 1980. *See, Butler County Mushroom Farms, Id.* In *Butler County Mushroom Farms*, the Supreme Court upheld the Department's authority under Section 2(f) of the GSL to require mushroom farms, which are located in mined-out noncoal underground mines, to establish a check-in/check-out system.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed 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 be confronted with having to implement two different sets of standards.

Compliance Costs

The compliance costs for the underground noncoal mine operators should be reduced. Replacing the L&I regulations with the MSHA regulations eliminates duplicative reporting requirements. Under the proposed regulations, the operator only has to submit to the Department a copy of the materials required by MSHA. There will be no change in the compliance costs faced by mined-out underground mines housing other businesses. The proposed regulations do not affect either substantive or reporting requirements.

Compliance Assistance

The Department is not planning to initiate a new compliance assistance program to assist with the implementation of these proposed regulations. These proposed 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 owner/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, there is no change in the existing minimal paperwork requirements.

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 rulemaking on November 27, 2001 to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition

to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor, and the General Assembly before final publication of the regulation.

I. Public Comments

Written Comments — Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by February 6, 2002 (within 60 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by February 6, 2002 (within 60 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments — Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by February 6, 2002. A subject heading of the proposal and a return name and address must be included in each transmission.

BY:

David E. Hess
Chairman
Environmental Quality Board

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(Editor's Note: As part of this proposal, the EQB is proposing to delete the existing text of Chapter 207, which appears at *Pennsylvania Code* pages 207-1 through 207-11, serial numbers (234645-234655). The following text is new and is printed in regular type to enhance readability.)

**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

Section 207.101. Scope.

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

Section 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 nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such 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 such area.

Person - Any 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" shall not exclude the members of an association and the directors, officers or agents of a corporation.

Section 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 the requirements of this chapter. A subcontractor who conducts all or part of the operation shall be jointly and severably responsible with the owner or operator.

Section 207.104. Enforcement.

(a) The Department has the authority to issue orders as are necessary to ensure compliance with the requirements of section 2(f) of the General Safety Law, Act of May 18, 1937, P.L. 654, *as amended*, 43 P.S. §25-2(f), and this chapter. This authority includes:

(1) Orders revoking, or suspending a certificate of qualification to be a foreman.

(2) Orders ceasing or suspending the operation of a noncoal underground mine or developed facility.

(3) Orders 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 an 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

Section 207.201. Applicability.

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

Section 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

Section 207.211. Safety requirements.

(a) The provisions of the Code of Federal Regulations (CFR) at 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 pursuant to 30 U.S.C.A. Section 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 any other material requested by MSHA pursuant to 30 CFR Part 57 shall be submitted to the Department.

(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 *25 Pa. Code* Chapter 211 (relating to storage, handling and use of explosives).

Section 207.212. Employment of foreman.

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

Section 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.

Section 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 two years of practical experience as a noncoal underground miner or have one year of practical experience as a noncoal underground miner and either possess a Bachelor of Science Degree in mining engineering, be a certified official pursuant to the Pennsylvania Anthracite or

Bituminous Coal Mine Acts, Act of November 10, 1965, P.L. 721, No. 346 or Act of July 17, 1961, P.L. 659, *as amended*, 52 P.S. §§70.101 - 70.1405 or 701-101 - 701-706 or possess an acceptable certificate of qualification issued by another state.

Section 207.215. Standards for issuing certificates of qualification.

(a) The Department shall 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 of Pennsylvania.

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

Section 207.216. Examining committee.

(a) The Department shall 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.

Section 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 pursuant to 25 Pa. Code Chapter 210 (relating to use of explosives).

Subchapter C. Mined-Out Areas

General Provisions

Section 207.301. Applicability.

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

Section 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.

Section 207.303. Approvals.

No person shall 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 and is constructed and operated in accordance with the requirements of this subchapter.

Specifications

Section 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.

Section 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.

(b) *Emergency.* The owner or operator of a developed facility shall ensure that no person is 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.

Section 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.

Section 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). 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 before the mechanical ventilation system is operated.

(b) *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.

Section 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.

Section 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.

Section 207.317. Record of inspection.

The owner or operator of the developed facility shall ensure that 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 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.

Section 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 by the Department.

(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 by the Department.

Section 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.



Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
November 27, 2001

The Secretary

Phone: 717-787-2814
E-Mail: DavidHess@state.pa.us

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

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

Dear Bob:

Enclosed is a copy of a proposed regulation for review and comment by the Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on December 8, 2001, with a 60-day public comment period. This proposal was approved by the Environmental Quality Board (EQB) on October 16, 2001.

This proposal recodifies Chapter 207 to clarify and modernize requirements addressing safety in underground noncoal mines and in mined-out underground noncoal mines that are now used to house other businesses. Requirements that pertain to the use of explosives at noncoal surface mines are deleted because they are covered under Chapters 77 and 211.

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. To date DEP has been relying on the L&I regulations in 34 *Pennsylvania Code* Chapter 33 to implement the program. These regulations are outdated, however, in light of more recent federal regulations. Therefore, DEP is proposing to incorporate by reference the applicable safety regulations established by the U. S. Department of Labor, Mine Safety and Health Administration (MSHA). The proposal also addresses three issues not covered by the MSHA regulations, but are believed to be necessary to ensure safety at underground noncoal mines: requiring mine foremen to obtain a certificate of qualification from DEP, which is merely a codification of current practice; continuing the current requirement that all surface explosive storage magazines be licensed in accordance with Chapter 211 due to the significant risks associated with storing explosives; and retaining the requirement that the individual responsible for the blasting activity be licensed by DEP.

Mr. Robert E. Nyce

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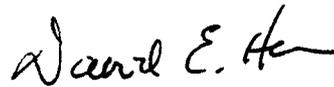
November 27, 2001

DEP collaborated with L&I staff in developing this proposal. In addition, a draft of this proposal was shared with the underground industrial mineral mining roundtable, an informal group of representatives from the industry. The group favors incorporation of the MSHA regulations to avoid the potential for conflicting separate requirements.

The Department will provide the Commission with any assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Act provides that the Commission may, within ten days after the expiration of the Committee review period, notify the agency of any objections to the proposed regulation. The Department will consider any comments or suggestions received by the Commission, together with Committee and other public comments prior to final adoption.

For additional information, please contact Sharon Trostle, Regulatory Coordinator, at 787-4526.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Hess". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

David E. Hess
Secretary

Enclosures

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

I.D. NUMBER: 7-357
SUBJECT: Noncoal Underground Mines & Other Excavations
AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- X Proposed Regulation
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
NOV 27 11 00 AM '01
REGULATORY REVIEW ACT

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
11-27	<i>C. Zim</i>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
11/27/01	<i>B. ...</i>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
11/27/01	<i>E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL
11/27/01	<i>C. Lee-Brown</i>	LEGISLATIVE REFERENCE BUREAU

November 20, 2001