

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 207]

#### Noncoal Underground Mines

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

The final-form rulemaking was adopted by order of the Board at its meeting of December 16, 2003.

#### A. *Effective Date*

The final-form rulemaking is 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, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website: [www.dep.state.pa.us](http://www.dep.state.pa.us).

#### C. *Statutory Authority*

The final-form rulemaking is being made under the authority of sections 2(f) and 12 of the act of May 18, 1937 (P. L. 654, No. 174) (43 P. S. §§ 25-2(f) and 25-12), known as the General Safety Law (act), 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 act 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 rules and regulations as are necessary for the proper work of the Department.

#### D. *Background and Summary*

This final-form rulemaking amends Chapter 207 by deleting the existing regulations and 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 The deleted provisions are outdated regulations addressing the use of explosives at noncoal mines.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 addressed in Chapters 77 and 211 (relating to noncoal mining; and 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 act regarding safety at pits, quarries, underground mines other than coalmines, trenches and similar operations. To carry out these programs, the Department has been using 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) of the act prior to 1975.

The final-form 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. The final-form rulemaking incorporates by reference the United States 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, there are three issues not addressed by the MSHA regulations that are addressed by the final-form rulemaking.

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 the final-form rulemaking. 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 final-form rulemaking retains the requirement that any surface explosive storage magazine must be licensed in accordance with 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 final-form rulemaking retains the requirement that the person responsible for the blasting activity be licensed by the Department.

The final-form rulemaking addressing safety in mined-out noncoal underground mines used to house other businesses is 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 final-form 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 the proposed rulemaking with the underground industrial mineral mining roundtable (roundtable). The roundtable, which is open to all representatives from the underground industrial mineral mining industry, reviewed in detail the proposed rulemaking 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. It wanted to know whether the Department inspectors will be monitoring the noncoal underground mines for compliance with the MSHA standards for exposure to air contaminants in 30 CFR 57.5001 (relating to exposure limits for airborne contaminants) and occupational noise standards in 30 CFR Part 62 (relating to occupational noise exposure). Due to the MSHA's greater expertise in this area, the Department will leave compliance monitoring for these exposure standards to the MSHA. The Department'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 in the Final-Form Rulemaking*

Chapter 207 was published as proposed rulemaking at 31 Pa.B. 6672 (December 8, 2001). 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 website and from the contact persons in Section B.

*§ 207.211 (relating to safety requirements)*

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

*§§ 207.212 and 207.215 (relating to employment of foreman; and 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 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. IRRC asked if these individuals will have to take the examination. This final-form rulemaking does not negate existing certificates of qualification to be a noncoal underground mine foreman. Therefore, persons already possessing 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 under the Pennsylvania Anthracite Coal Mine Act (52 P. S. §§ 70-101—70-1405) or the Pennsylvania Bituminous Coal Mine Act (52 P. S. §§ 701-101—701-706) 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 Coal Mine Act or the Pennsylvania Bituminous Coal Mine Act to be eligible to take the written examination to obtain a certificate of qualification to be a noncoal mine foreman. The final-form 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 Department 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 the Department's approval. The final-form rulemaking has 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. The Department'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, the Department 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 rulemaking did 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-form 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 was a personal lighting system. The final-form 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. IRRC questioned how the owner obtains Department approval. The final-form rulemaking 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 inspection)*

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-form rulemaking has been amended to make it clear that the operator maintains 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 the Department 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 final-form rulemaking requires that the order becomes part of the log, not that the Department's representative is to sign or date the log.

*§ 207.318*

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.

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

IRRC questioned the procedures for obtaining the Department's approval. The final-form rulemaking has been amended to provide an approval process.

If the operator is to use any type of container other than a safety container approved by the MSHA for use in an underground metal or nonmetal mine, the operator shall submit to the Department 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 final-form rulemaking provides that the Department will respond in writing to approve or deny the request for approval.

*F. Benefits and Costs*

*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 in the final-form rulemaking will be more effectively implemented. The greatest impact will be on the 350 workers at underground noncoal mines where the proposed rulemaking 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 final-form rulemaking, the operator only has to submit to the Department a copy of the materials required by the MSHA.

For the most part, the final-form rulemaking does 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 final-form rulemaking requires 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 final-form rulemaking, for the first time, specifies 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-form rulemaking is the same process and information the Department would have used prior to the final-form rulemaking.

*Compliance Assistance*

The Department is not planning to initiate a new compliance assistance program to assist with the implementation of the final-form rulemaking. The final-form rulemaking is not imposing new requirements. It either incorporates by reference existing Federal requirements or recodifies 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 the final-form rulemaking.

*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 the 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 previously described, the final-form rulemaking 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 final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the

Department to determine whether the final-form rulemaking 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)), on November 27, 2001, the Department submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 6672, to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 25, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 26, 2004, and approved the final-form rulemaking.

#### I. *Findings*

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, 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 final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 31 Pa. B. 6672.

(4) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

#### J. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 207, are amended by deleting §§ 207.1, 207.2, 207.11—207.22 and 207.31—207.46 and adding §§ 207.101—207.104, 207.201, 207.202, 207.211—207.217, 207.301—207.303 and 207.311—207.319 to read as set forth in Annex A.

(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 IRRC and the Senate and House 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 upon publication in the *Pennsylvania Bulletin*.

KATHLEEN A. MCGINTY,  
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 1525 (March 13, 2004).)

**Fiscal Note:** Fiscal Note 7-357 remains valid for final adoption of the subject regulations.

### 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

§ 207.1. (Reserved).

§ 207.2. (Reserved).

§§ 207.11—207.22. (Reserved).

§§ 207.31—207.46. (Reserved).

#### Subchap.

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

#### Subchapter A. GENERAL

#### Sec.

- 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 nonliquid 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 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 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 shall 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 shall 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 blasters' licenses).

**Subchapter C. MINED-OUT AREAS**

**GENERAL PROVISIONS**

Sec.	
207.301.	Applicability.
207.302.	Definitions.
207.303.	Approvals.

**SPECIFICATIONS**

207.311.	Roof areas.
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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 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 are 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 conditions necessary to ensure compliance with 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, 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 (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 conditions necessary to ensure the ventilation system is providing pure air to all portions of the developed facility.

(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 non-combustible 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. 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 conditions 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 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.

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