RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 86, 87, 88, 89 AND 90]

Incidental Coal Extraction, Bonding, Enforcement, Sediment Control and Remining Financial Guarantees

The Environmental Quality Board (Board) amends Chapters 86, 87, 88, 89 and 90 to read as set forth in Annex A. The final-form rulemaking incorporates amendments necessary to bring the Commonwealth's regulatory program into conformance with Federal standards for state coal mining regulatory programs. In addition, the final-form rulemaking amends some requirements for the Remining Financial Guarantee Program. The final-form rulemaking affects requirements relating to incidental coal extraction, bonding, enforcement, sediment control and remining financial guarantees.

This order was adopted by the Board at its meeting of November 16, 2010.

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact William Allen, Chief, Division of Monitoring and Compliance, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard S. Morrison, 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) 654-5988 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection (Department) web site at http://www.depweb.state.pa.us.

C. *Statutory Authority*

This final-form rulemaking is adopted under the authority of section 5 of The Clean Streams Law (35 P. S. § 691.5), sections 4(a) and 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.4(a) and 1396.4b), section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Background and Purpose*

This final-form rulemaking is intended to satisfy requirements for maintaining a state primacy program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C.A. §§ 1201—1328). The amendments in this final-form rulemaking pertain to Federally required program changes in 30 CFR 938.16(rr), (tt), (vv), (ww), (xx), (zz), (aaa), (ccc), (iii), (jjj), (nnn), (ppp) and (ttt) (relating to required regulatory program amendments). These requirements were imposed by the Federal Office of Surface Mining Reclamation and Enforcement (OSM) on April 8, 1993 (subsections (aaa), (ccc), (iii) and (jjj)), December 29, 1993 (subsections (rr), (tt), (vv), (ww), (xx) and (zz)), July 20, 1994 (subsection (nnn)) and November 7, 1997 (subsections (ppp) and (ttt)).

Resolving these required amendments is necessary for the Commonwealth to maintain primacy in regulating coal mining. Failure to resolve these program deficiencies could result in the OSM asserting their jurisdiction over all or part of the mining regulatory program. There is also a risk that the Federal funding for the Abandoned Mine Land Reclamation Program could be reduced or eliminated if these deficiencies persist.

These requirements relate to notification of the decision by the Department to approve the continuation of an exemption from the permitting requirements for coal that is mined incidental to noncoal mining, violation review for permit approval, permitting exploration on land designated as unsuitable for mining, self-bonding and the stability of large impoundments. The Federal regulations noting these program deficiencies provided deadlines for the Commonwealth to correct them. These deadlines are long overdue.

The amendments in this final-form rulemaking represent the outcome of discussions between the Department and the OSM relative to the fulfillment of requirements in the Federal rules. The amendments in this final-form rulemaking have been informally approved by the OSM. These changes will be formally submitted to the OSM as an amendment to the Pennsylvania coal mining program and the Department will request that the OSM determine that the outstanding deficiencies previously noted have been satisfied.

In addition, this final-form rulemaking addresses issues that have surfaced in administering the Remining Financial Guarantee Program. These issues are related to operational requirements and the conversion to a conventional bonding system (CBS) undertaken beginning in August 2001.

When the current remining financial guarantee regulations were finalized in 1996, the Department used an alternate bonding system (ABS). The Department initiated the transition from an ABS to a CBS in 2001 and completed the implementation of the program in 2002. Under the ABS, bond amounts were based on per-acre rates and bond funds were supplemented by a per-acre reclamation fee and other funds to assure that the Commonwealth had enough bond money to complete the reclamation in the case of forfeiture.

Under the CBS, the reclamation cost is calculated using bond rate guidelines for the specific reclamation tasks. Bond rate guidelines are updated routinely to keep up with changes in reclamation costs. The CBS is also referred to as full-cost bonding because the bond amount is determined based on the total projected reclamation cost. Bond amounts are no longer calculated on a per-acre basis. The regulations governing the Remining Financial Guarantee Program are being amended to better align with the transition to full-cost bonding for all mining operations.

Finally, the final-form rulemaking includes several minor editorial changes needed to correct spelling, spacing and punctuation errors.

The final-form rulemaking was reviewed by the Mining and Reclamation Advisory Board (MRAB) at their September 7, 2010, meeting. The MRAB unanimously recommended that the final-form rulemaking proceed.

E. *Summary of Changes to the Proposed Rulemaking*

§ 86.1. Definitions

The definition of "owned or controlled and owns or controls" is being corrected to include the reference to the term defined in the Federal regulations, which is "own, owner, or ownership" rather than "owned or controlled and owns or controls" as proposed.

§ 86.133. General requirements

Subsection (d) is being revised to clarify that the permit application for exploration on areas designated as unsuitable for mining and the documentation of the decision to approve or deny the application are available for review by the public. This change is the result of analysis that concluded that the proposed rulemaking did not address the requirement in 30 CFR 772.12(e) (relating to permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations) that these materials be available to the public.

§ 88.321. Disposal of noncoal wastes

This section is being revised to more closely reflect the Federal regulation. This is accomplished by changing the phrase "on or near" to "in."

§ 90.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance

Subsection (c)(2) has been revised to include the phrase "runoff from" as it relates to a storm event.

§ 90.133. Disposal of noncoal wastes

This section is being revised to more closely reflect the Federal regulation. This is accomplished by changing the phrase "on or near" to "in."

Remining financial guarantees

§ 86.282. Participation requirements

Subsection (a)(2) is being revised to clarify that the reclamation liability is for a proposed mining area rather than the permitted area. This change was made in response to comments.

Subsection (a)(4) is being added to clarify that an operator who has participated in the Remining Financial Guarantee Program and has met its obligations is eligible for subsequent remining financial guarantees.

F. *Summary of Comments and Responses on the Proposed Rulemaking*

§ 86.1. Definitions

Comment: Section 701.5 of 30 CFR (relating to definitions) contains a definition for "own, owner, or ownership" and not a definition for "owned or controlled and owns or controls."

Response: The wording of clause (E) in the definition of "owned or controlled and owns or controls" has been changed to match the defined term "own, owner, or ownership" in the Federal regulations.

§ 86.37. Criteria for permit approval or denial

Comment: The definition of "violation" is unclear as 30 CFR 701.5 includes two definitions of "violation."

Response: The Federal regulations contain a definition for the term "violation," which is being referenced in this final-form rulemaking, and the additional defined term "violation, failure or refusal." The term "violation, failure or refusal" is a separate term in the Federal regulations. Therefore, a change is not needed.

§ 86.129. Coal exploration on areas designated as unsuitable for surface mining operations

Comment: The permit term for this permit should be consistent with other 5-year permits issued by the Department.

Response: This permit is for exploration only and is limited to no more than 250 tons of coal extraction; therefore, the 2-year permit term is appropriate.

§ 86.133. General requirements

Comment: The proposed amendments to this section prevent the Department from waiving the unsuitable for mining permit requirement.

Response: Section 772.12 of 30 CFR requires a permit for exploration on areas designated as unsuitable for mining, therefore waiving the permit requirement is not an option.

§ 86.159. Self-bonding

Comment: Subsection (a)(2) contains overly broad language relating to "all applicable Federal and State laws."

Response: This language is taken verbatim from the Federal regulations. Therefore, a change has not been made because the State regulation is intended to mirror the Federal regulation.

§§ 86.165 and 86.281 to 86.284—Remining financial guarantees

Comment: The language in § 86.282(a) (relating to participation requirements) does not clarify that an operator who demonstrates that it meets the requirements to participate in the Remining Financial Guarantee Program for the first time will be automatically eligible for future remining financial guarantees for future permits from the Department.

Response: The regulation has been amended by adding subsection (a)(4) to address this.

Comment: The Department proposed to remove the letter of credit option for the operator to demonstrate financial responsibility under § 86.282(a)(2). The Department should not undermine a bank's (or other lending institution's) ability to evaluate an operator's financial stability and issue a letter of credit based on that informed and highly regulated decision.

Response: These regulations do not apply to banking operations and cannot impact how a bank operates or makes lending determinations.

Comment: The option to post a letter of credit should not be eliminated. The Department and the Board should provide some evidence from the program's experience to provide justification for this change or retain the existing language in the final-form rulemaking.

Response: A letter of credit can still be used as a bond. This regulation only eliminates the use of a letter of credit as the financial responsibility demonstration for a remining financial guarantee. While there have only been four guarantees for which the Commonwealth was required to spend money for the reclamation, three of these four were supported by letters of credit.

Comment: The following proposed amendment to § 86.282(a)(2) is vague and open to interpretation. The Department does not define "permitted remining site." It is not clear what area would be included in a "permitted remining site."

Response: The regulation has been amended to change the word "permitted" to "proposed." This will clarify that the posting of the surety bond is an option for the initial bonding transaction on a permit application when a remining financial guarantee is requested and approved.

Comment: Regarding proposed § 86.283(f) (relating to procedures), the Department should clarify the proposed subpart to limit the circumstances to when a discharge is related to the remining activities.

Response: The intent of the regulation is to require a replacement of a remining financial guarantee at any time liability for a pollutional discharge is incurred for that permit, not only when it is related to the remining activities. This will protect the remining financial guarantee program from the liability associated with long-term treatment.

§ 87.119. Hydrologic balance: water rights and replacement

Comment: A surface mine operator or mine owner who incurs costs necessary to successfully appeal a Department order for a water supply replacement should be afforded the same cost recovery rights as the Department. The preamble to the proposed rulemaking stated that "[t]his correction is necessary due to a revision to the SMCRA." The commentator stated that "section 525(e) of the SMCRA" allows for the recovery of costs and expenses, including attorney fees, by either party. The Department should not, by way of the proposed regulation, unilaterally eliminate a surface mine operator's or mine owner's cost recovery rights.

Response: The commenter has confused the Federal SMCRA with the Surface Mining Conservation and Reclamation Act, which was referred to in the preamble to the proposed rulemaking. In December 2000, the operator cost recovery language was repealed from the Surface Mining Conservation and Reclamation Act. The regulation revision reflects the amendment of Surface Mining Conservation and Reclamation Act by the repeal of section 4.2(f)(5).

§§ 88.321 and 90.133. Disposal of noncoal wastes

Comment: According to 30 CFR 938.16(ttt), "Pennsylvania shall submit a proposed amendment to sections 88.321 and 90.133, or otherwise amend its program, to require that no noncoal waste be deposited in a coal refuse pile or impounding structure," rather than "on or near" a refuse pile or impounding structure.

Response: The regulations have been revised to change the phrase "on or near" to the word "in."

§ 90.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance

Comment: The proposed amendments to subsection (c)(2) omit the term "runoff."

Response: The language in this subsection has been revised to include the term "runoff."

Remining financial guarantees generally

Comment: The Remining Financial Guarantee Program has resulted in reclamation of abandoned mine lands. It is of great importance that the Commonwealth continues to facilitate reclamation of abandoned mine lands whenever possible. The commentator requested that the Board inform the commentator when it moves to adopt the final-form rulemaking.

Response: The Department agrees that the Remining Financial Guarantee Program has been effective at encouraging reclamation of abandoned mine lands. The amendments are focused on protecting the Remining Financial Guarantee Program so that it can continue doing so. The Department will keep in contact with the commentator as the rulemaking process progresses.

G. *Benefits, Costs and Compliance*

The final-form rulemaking will enable the Commonwealth to fulfill its primacy obligations and retain primary enforcement responsibility over coal mining operations. The final-form rulemaking will also allow for more effective management of the Remining Financial Guarantee Program.

Compliance Costs

It is not anticipated that the final-form rulemaking will impose any total additional compliance costs on the regulated community.

Compliance Assistance Plan

The Department will provide written notification to all coal mine operators to inform them of the final-form rulemaking. The Department may also hold roundtable meetings with mine operators and consultants to explain program changes and answer questions.

The Department will update its fact sheets explaining the regulations. The Department will meet with affected landowners and assist them in understanding the amended regulations.

Paperwork Requirements

The final-form rulemaking will require the Department to update its fact sheets explaining the law and regulations.

H. *Pollution Prevention*

The final-form rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in 25 Pa. Code (relating to environmental protection).

I. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 2373 (May 1, 2010), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 April 27, 2011, 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 April 28, 2011, and approved the final-form rulemaking.

K. *Findings*

The Board finds that:

(1) Public notice of 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 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 were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 2373.

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

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 86, 87, 88, 89 and 90, are amended by amending §§ 86.1, 86.5, 86.36, 86.37, 86.62, 86.103, 86.129, 86.133, 86.159, 86.165, 86.195, 86.211, 86.281, 86.282, 86.283, 86.284, 87.112, 87.119, 88.321, 89.111, 90.112 and 90.133 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson of the Board shall submit this order and Annex A to 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 immediately.

MICHAEL L. KRANCER,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 2502 (May 14, 2011).)

Fiscal Note: Fiscal Note 7-458 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

Subchapter A. GENERAL PROVISIONS

§ 86.1. Definitions.

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

ABS Legacy Sites—Mine sites, permitted under the Primacy Alternate Bonding System, that have a postmining pollutional discharge where the operator has defaulted on its obligation to adequately treat the discharge and, either the bond posted for the site is insufficient to cover the cost of treating the discharge, or a trust to cover the costs of treating the discharge was not fully funded and is insufficient to cover the cost of treating the discharge.

Acts—Include the following:

(i) The Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a).

(ii) The Air Pollution Control Act (35 P. S. §§ 4001—4015).

(iii) The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

(iv) The Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66).

(v) Article XIX-A of The Administrative Code of 1929 (71 P. S. §§ 510-1—510-108).

(vi) The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).

(vii) The Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

(viii) The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

(ix) The Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326).

* * * * *

Owned or controlled and *owns or controls*—One or a combination of the relationships specified in subparagraphs (i)—(iv):

(i) Being a permittee of a coal mining activity.

(ii) Based on instruments of ownership or voting securities, owning of record in excess of 50% of an entity.

(iii) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining activity is conducted:

(A) Being an officer or director of an entity.

(B) Being the operator or contractor of a coal mining activity.

(C) Having the ability to commit the financial or real property assets or working resources of an entity.

(D) Being a general partner in a partnership.

(E) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record a percentage of the entity as established in the definition of "own, owner, or ownership" in 30 CFR 701.5 (relating to definitions).

(F) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a coal mining activity.

(iv) Having another relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator or other entity conducts coal mining activities.

* * * * *

§ 86.5. Extraction of coal incidental to noncoal surface mining.

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(m) If the Department has reason to believe that a specific mining area was not exempt under this section at the end of the previous reporting period, is not exempt or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department will notify the operator that the exemption may be revoked and the reasons therefore. The exemption will be revoked unless the operator demonstrates to the Department within 30 days that the mining area in question should continue to be exempt. The operator and interested

parties will be immediately notified of the revocation or of the decision not to revoke the exemption.

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Subchapter B. PERMITS

REVIEW, PUBLIC PARTICIPATION AND APPROVAL, DISAPPROVAL OF PERMIT APPLICATIONS AND PERMIT TERMS AND CONDITIONS

§ 86.36. Review of permit applications.

(a) The Department will review the complete application, written comments, written objections and records of a public hearing or informal conference held under §§ 86.32 and 86.34 (relating to opportunity for submission of written comments or objections on the permit application; and informal conferences).

(b) If the Department decides to approve the application, it will require that the applicant file the bond in accordance with Subchapter F (relating to bonding and insurance requirements) before the permit is issued.

(c) The Department will verify from the schedule submitted under § 86.63 (relating to compliance information) or other information available to the Department that coal mining activities owned or controlled by the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1 (relating to definitions) are not currently in violation of the acts or the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.A. §§ 1201—1328), or that the violation is in the process of being corrected to the satisfaction of the regulatory authority, department or agency which has jurisdiction over the violation of the acts or the Surface Mining Control and Reclamation Act of 1977 and a law, rule or regulation of a department or agency of the United States or of a state in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a coal mining activity.

§ 86.37. Criteria for permit approval or denial.

(a) A permit or revised permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following apply:

* * * * *

(8) The applicant has submitted proof that a violation related to the mining of coal by the applicant, a person owned or controlled by the applicant or a person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1 (relating to definitions) or by a related party of the acts, a rule, regulation, permit or license of the Department has been corrected or is in the process of being corrected to the satisfaction of the Department, whether or not the violation relates to an adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. For the purpose of this section, the term "violation" includes the types of violations listed in the definition of "violation" in 30 CFR 701.5 (relating to definitions). A permit issued under this paragraph on the basis that a violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a stay of execution of the abatement procedure or a court of competent jurisdiction has issued a supersedeas providing that relief, will be issued conditionally.

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MINIMUM REQUIREMENTS FOR LEGAL FINANCIAL COMPLIANCE AND RELATED INFORMATION

§ 86.62. Identification of interests.

(a) *Application information.* An application shall contain the following information, except that the submission of a social security number is voluntary:

(1) The name, address, telephone number and, as applicable, social security number and employer identification number of the following:

(i) The permit applicant.

(ii) The resident agent of the applicant who will accept service of process.

(iii) The person who will pay the abandoned mine land reclamation fee.

(2) The names and addresses of the owners of record of the following:

(i) Surface and subsurface areas contiguous to any part of the proposed permit area.

(ii) Every legal or equitable owner of record of the coal to be mined and areas to be affected by surface operations and facilities, including legal and equitable owners of the surface area within the proposed permit area.

(iii) The holders of record of a leasehold interest in the coal to be mined and areas to be affected by surface operations and facilities.

(iv) A purchaser of record under a real estate contract of the coal to be mined and the areas to be affected by surface operations and facilities.

(3) The name of the proposed mine and the Mine Safety and Health Administration (MSHA) Identification Number, with the date of issuance, for the mine and all mine-associated structures that require MSHA approval.

(4) A listing of lands contiguous to the proposed permit area for which it is anticipated that individual permits for mining will be sought as a result of interest in lands, options or pending bids on interest held or made by the applicant.

(b) *Statement.* An application shall contain a statement of whether the applicant is a corporation, partnership, single proprietorship, association or other business entity. For all entities, the application shall contain the following information, as applicable, for each person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in § 86.1 (relating to definitions) except that the submission of a social security number is voluntary:

(1) The name, address, social security number and employer identification number of every:

(i) Officer.

(ii) Partner.

(iii) Associate.

(iv) Shareholder of at least 10% of the voting stock.

(v) Director.

(vi) Other person performing a function similar to director of the applicant.

(vii) Contractor and subcontractor.

(viii) Person having the ability to commit the financial or real property assets or working resources of an entity.

(ix) Person owning or controlling the coal to be mined under the proposed permit under a lease, sublease or other contract, and having the right to receive the coal after mining or having authority to determine the manner in which the proposed coal mining activity is to be conducted.

(x) Person who has another relationship with the permit applicant which gives the person authority directly or indirectly to determine the manner in which the proposed coal mining activity is to be conducted.

(xi) Person who owns or controls the persons specified in subparagraphs (i)—(x), either directly or indirectly through intermediary entities.

(2) For each person listed in paragraph (1), list the following:

(i) The title of the person's position.

(ii) The date the position or stock ownership was assumed, and when submitted under § 86.212(c) (relating to Federal minimum enforcement action), the date of departure from the position.

(iii) The percentage of ownership.

(iv) The location in the organizational structure.

(v) The relationship to the applicant.

(c) *Related entity information.* Include the following:

(1) List the names of entities who, under the definition of "owned or controlled" or "owns or controls" in § 86.1, own or control the applicant or who are owned or controlled by the applicant and provide the following information for each entity:

(i) Identifying numbers, including employer identification number, Federal or State permit numbers, permittee name and address and the MSHA numbers with date of issuance for each permit.

(ii) The application number or other identifier of and the regulatory authority for other issued or pending mining operation permit applications filed by the entity in any State in the United States.

(iii) The name, address, social security number and employer identification number of every officer, partner, associate, principal shareholder, director or other person performing a function similar to director of the entity, including the title of the person's position and the date the position was assumed.

(2) For each person listed in subsection (b)(1), who is, or has been, associated with another entity as an owner or controller, under the definition of "owned or controlled" or "owns or controls" in § 86.1, within the 5-year period preceding the date of application, provide the following information:

(i) The name of each entity they are, or were, associated with.

(ii) Identifying numbers, including employer identification number, Federal or State permit number and the MSHA number with date of issuance for each permit.

(iii) The application number or other identifier of and the regulatory authority for other issued or pending mining operation permit applications filed by the entity with which the person is affiliated in any state in the United States.

(d) After an applicant is notified that the application is approved, but before the permit is issued, the applicant shall either update, correct or submit a statement that no change has occurred in the information previously submitted under this section.

Subchapter D. AREAS UNSUITABLE FOR MINING

GENERAL PROVISIONS

§ 86.103. Procedures.

* * * * *

(f) If the Department determines that the proposed surface mining operations are not prohibited under § 86.102, it may nevertheless, pursuant to appropriate petitions, designate the lands as unsuitable for all or certain types of surface mining operations under §§ 86.121—86.129.

(g) An application that includes an assertion of valid existing rights must meet the requirements and follow the procedures established in 30 CFR 761.16 (relating to submission and processing of requests for valid existing rights determinations).

CRITERIA AND PROCEDURES FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE MINING

§ 86.129. Coal exploration on areas designated as unsuitable for surface mining operations.

(a) Designation of an area as unsuitable for all or certain types of surface mining operations under this chapter does not prohibit coal exploration operations in the area.

(b) Coal exploration may be conducted on an area designated as unsuitable for surface mining operations in accordance with this chapter if the following apply:

(1) The person conducting coal exploration obtains an exploration permit from the Department under this section which meets the following conditions:

(i) The permit application demonstrates that the requirements of this section and § 86.134 (relating to coal exploration performance and design standards) will be met.

(ii) Public notice of the application and opportunity to comment is provided in accordance with §§ 86.31 and 86.32 (relating to public notices of filing of permit applications; and opportunity for submission of written comments or objections on the permit application).

(2) The permit application must contain the following information:

(i) The name, address and telephone number of the applicant.

(ii) The name, address and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities.

(iii) A narrative describing the proposed exploration area.

(iv) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(v) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(vi) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.

(vii) A description of the following:

(A) Cultural or historical resources listed on the National Register of Historic Places.

(B) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places.

(C) Known archeological resources located within the proposed exploration area.

(D) Other information which the regulatory authority may require regarding known or unknown historic or archeological resources.

(viii) A description of any endangered or threatened species listed under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531—1544) identified within the proposed exploration area.

(ix) A description of the measures to be used to comply with the applicable requirements of § 86.134 (relating to coal exploration performance and design standards).

(x) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(xi) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map must specifically show the following:

(A) Existing roads, occupied dwellings, topographic and drainage features, bodies of surface water and pipelines.

(B) Proposed locations of trenches, roads and other access routes and structures to be constructed.

(C) The location of proposed land excavations.

(D) The location of exploration holes or other drill holes or underground openings.

(E) The location of excavated earth or waste-material disposal areas.

(F) The location of critical habitats of any endangered or threatened species listed under the Endangered Species Act of 1973.

(xii) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(xiii) For any lands listed in § 86.102 (relating to areas where mining is prohibited or limited), a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of § 86.102, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of § 86.102.

(3) The exploration is consistent with the designation.

(4) The exploration will be conducted to preserve and protect the applicable values and uses of the area under Subchapter E (relating to coal exploration).

(5) The permit term may not exceed 2 years and the permit may not be renewed or transferred.

(6) The amount of coal removed shall be limited to the quantity needed for testing and analysis and may not exceed 250 tons.

(7) The application shall be subject to the criteria for permit approval or denial in § 86.37 (relating to criteria for permit approval or denial) and 30 CFR 772.12(d) (relating to permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations) and the requirements for final permit action in § 86.39 (relating to final permit action).

Subchapter E. COAL EXPLORATION

§ 86.133. General requirements.

(a) A person who intends to conduct coal exploration shall, prior to conducting the exploration, file with the Department one copy of a written notice of intention to explore for each exploration area at least 10 days prior to the exploration on forms provided by the Department.

(b) The notice shall include:

(1) The name, address and telephone number of the person seeking to explore.

(2) The name, address and telephone number of the representative who will be present at and responsible for conducting the exploration activities.

(3) A map, at a scale of 1:24,000, of the exploration area showing the extent of the exploration, location of drill holes and exploration trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of water and pipelines.

(4) A statement of the period of intended exploration.

(5) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

(c) A person who conducts coal exploration which substantially disturbs the natural land surface shall comply with § 86.134 (relating to coal exploration performance and design standards).

(d) The Department will, except as otherwise provided in § 86.137(b) (relating to public availability of information), place the notices and the exploration permit documents, as required under subsection (f) for exploration on areas designated as unsuitable for mining, on public file and make them available for public inspection and copying during regular office hours at the established fee. For the purpose of this section, the exploration permit documents include the application and documents relating to the decision to approve or deny the application.

(e) A person who intends to conduct coal exploration in which coal will be removed shall, prior to conducting the exploration, obtain a permit under this chapter. Prior to removal of coal, the Department may waive the requirements for the permit to enable the testing and analysis of coal properties, if 250 tons (226 metric tons) or less are removed. The removal of more than 250 tons (226 metric tons) of coal during coal exploration requires a permit under this chapter.

(f) Coal exploration on lands where a petition to declare an area unsuitable for mining has been received by the Department or on lands designated unsuitable for mining shall be conducted only after a permit has been obtained from the Department. This permit requirement may not be waived. The Department may prescribe conditions and requirements necessary to preserve the values sought to be protected in the petition before approving coal exploration in these areas. The exploration activities shall be conducted in accordance with § 86.129 (relating to coal exploration) to insure that the exploration activity does not interfere with a value for which the area has been designated unsuitable for mining.

(g) A person who conducts coal exploration by means of boreholes or coreholes shall case, line, seal or otherwise manage the hole to prevent degradation of the quality of groundwater and surface water, minimize disturbance to the prevailing hydrologic balance and ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area, and meet the requirements of §§ 89.54 and 89.83 (relating to preventing discharges from underground mines; and closing of underground mine openings).

Subchapter F. BONDING AND INSURANCE REQUIREMENTS

FORM, TERMS AND CONDITIONS OF BONDS AND INSURANCE

§ 86.159. Self-bonding.

* * * * *

(l) The self-bond shall be executed by:

(1) The applicant, except as provided in paragraphs (2) and (3).

(2) If the applicant is a subsidiary corporation, the applicant's parent corporation shall be a party to the self-bond which shall establish the applicant and its parent corporation as co-indemnitors under the self-bond. Corporations applying for a self-bond, and parent and nonparent corporations guaranteeing an applicant's self-bond, shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations. A copy of the authorization shall be submitted to the Department along with an affidavit certifying that the agreement is valid under all applicable Federal and State laws. In addition, the corporate guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the guarantee agreement. The parent corporation may cancel its obligations under the self-bond upon 120 days written notice to the Department, but the cancellation will not be effective until the self-bond is replaced with an alternate form of bonding authorized by this subchapter and approved by the Department.

(3) If the applicant is a partnership, joint venture or syndicate, each person with a beneficial interest in the same shall be a party to the self-bond and shall be established as a co-indemnitor under the self-bond.

* * * * *

§ 86.165. Failure to maintain proper bond.

(a) If a permittee fails to promptly post additional bond required under § 86.152 (relating to adjustments), or fails to make timely deposits of bond according to the schedule submitted under § 86.161 (relating to phased deposits of collateral), or fails to make payments under § 86.162a (relating to Anthracite Deep Mine Operators Emergency Bond Fund) or fails to maintain subsidence insurance provided in § 86.162 (relating to subsidence insurance in lieu of bond), or fails to make annual payments for financial guarantees as required under § 86.283(a) (relating to procedures), the Department will issue a notice of violation to the permittee, and if the permittee fails to correct the violation within 15 days of the notice, the Department will issue a cessation order for the permittee's permit areas and thereafter take actions that may be appropriate.

(b) The permittee shall maintain bonds in an amount and with sufficient guarantee as required by this chapter. If a surety company who had provided surety bonds, or a bank who had provided letters of credit or certificates of deposit for a permittee, enters into bankruptcy or liquidation, or has its license suspended or revoked or for another reason indicates an inability or unwillingness to provide an adequate financial guarantee of the obligations under the bond or instrument, the Department will issue a notice of violation to the permittee requiring that affected permits be rebonded according to the requirements of this subchapter and, if the permittee fails to correct the violation within 90 days of the notice, the Department will issue a cessation order for the permittee's permit areas and thereafter take appropriate action.

Subchapter G. CIVIL PENALTIES FOR COAL MINING ACTIVITIES

GENERAL PROVISIONS

§ 86.195. Penalties against corporate officers.

(a) The Department may assess a civil penalty against a corporate officer who participates in a violation or whose misconduct or intentional neglect causes or allows a violation.

(b) Whenever the Department issues an order to an operator for failing to abate violations contained in a previous order, it will send by certified mail to each corporate officer listed in the surface mining operator's license application under § 86.353 (relating to identification of ownership), or to each corporate officer listed in a coal mining activities application under § 86.62 (relating to identification of interests), a copy of the failure to abate order and a notice of the officer's liability under this section. If the violations are not abated within 30 days of issuance of the failure to abate order, the Department may assess a civil penalty against each officer receiving the notice provided by this subsection.

(c) When the Department and the permittee or corporate officer have agreed in writing on a plan for the abatement of or compliance with the failure to abate order, the corporate officer may postpone payment until receiving a decision under § 86.203 (relating to final assessment and payment of penalty), or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

Subchapter H. ENFORCEMENT AND INSPECTION

GENERAL PROVISIONS

§ 86.211. Enforcement—general.

(a) Violations, once identified by a State Inspector or other appropriate State official, shall be cited and shall be corrected in a reasonable time, prescribed by the Department, not to exceed 90 calendar days, except upon a showing by the operator that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances described in subsection (b). An extended abatement date under this section will not be granted when the operator's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the operator in completing the remedial action requested, nor will an extension be granted for financial or economic reasons.

(b) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are limited to the following:

(1) If the Department has required the operator of an existing operation to apply to the Department for a permit renewal or other necessary approval of designs or plans, and if the operator has submitted necessary materials to the Department in an expeditious manner, but the Department is unable, through no fault of the operator to issue the permit or approval 90 days from the date of submission of required documentation.

(2) If climatic conditions preclude abatement within 90 days, or if, due to climatic conditions, abatement within 90 days clearly does one or more of the following:

(i) Causes more environmental harm than it would prevent.

(ii) Requires action that would violate Federal or State mine health or safety laws.

(3) If there is a valid judicial order precluding abatement within 90 days as to which the permittee has

diligently pursued rights of appeal and as to which the permittee has no other effective legal remedy.

(4) If the permittee cannot abate within 90 days due to a labor strike, except for a violation that is causing or has the potential to cause off permit impacts such as environmental harm to air, water or land resources or danger to the public health or safety.

(c) When an abatement in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(d) If one or more of the conditions in subsection (b) exist, the operator may request the Department to grant an abatement period exceeding 90 days. The abatement period granted will not exceed the shortest possible time necessary to abate the violation. The operator has the burden of establishing by clear and convincing proof that he is entitled to an extension under this section. In determining whether or not to grant an abatement period exceeding 90 days, the Department may consider relevant written information from the operator or other sources.

Subchapter J. REMINING AND RECLAMATION INCENTIVES

BONDING INCENTIVES

§ 86.281. Financial guarantees to insure reclamation—general.

(a) In the Remining Financial Assurance Fund there is a special account providing financial guarantees for qualified operators who conduct remining. Funds in this special account may be used to financially assure bonding obligations under § 86.143 (relating to requirement to file a bond) of a qualified operator engaged in remining.

(b) The financial guarantee applies to a permit with remining areas approved by the Department. Operators who wish to participate in this program shall demonstrate, for each permit, their eligibility under §§ 86.253 and 86.282 (relating to operator and project qualification; and participation requirements).

(c) For each approved permit of an eligible operator for a remining area, the Department will designate a specified amount of the financial guarantees special account in the Remining Financial Assurance Fund to financially assure reclamation obligations on the permit with an approved remining area. The specific amount designated will be the estimated cost for the Department to reclaim the remining area.

(d) The Department may not issue financial guarantees on a permit in excess of 10% of the then current amount in the special account in the Remining Financial Assurance Fund. The Department will not issue financial guarantees to a mine operator if the aggregate amount of financial guarantees on permits issued to the operator will exceed 30% of the then current amount in the special account in the Remining Financial Assurance Fund. The Department will not issue additional financial guarantees when the aggregate amount of outstanding financial guarantees exceeds that amount resulting from dividing the current amount in the special account in the Remining Financial Assurance Fund by the historical rate of bond forfeiture under § 86.181 (relating to bond forfeiture—general) with a margin of safety determined by the Department.

(e) Upon declaration of forfeiture, the specified amount of the financial guarantee from the financial guarantee special account will be used with other bonds forfeited on the permit by the Department to complete reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190. If the actual cost of reclamation by the Department exceeds the specified amount of the financial guarantee, additional funds from the Remining Financial Assurance Fund may be used to complete reclamation.

§ 86.282. Participation requirements.

(a) Upon completion of the technical review of a permit application and receipt of a request for bond, an operator may apply to participate in the financial guarantees program for a remining area if the requirements of § 86.253 (relating to operator and project qualification) are met. To participate in this program, an operator shall demonstrate to the Department's satisfaction one of the following:

(1) The operator would be able to post a collateral bond otherwise required by this chapter and demonstrate appropriate experience in coal mining and reclamation.

(i) The operator shall demonstrate ability to post a collateral bond by meeting the following conditions for the operator's most recently completed fiscal year and the 2 preceding fiscal years:

(A) A ratio of current assets to current liabilities of 1.5 or greater.

(B) A ratio of total liabilities to tangible net worth of 3 or less.

(ii) The operator shall submit a notarized statement signed by the operator and an independent certified public accountant (CPA), an officer of a financial institution with which the operator conducts business or other person or entity responsible for the accounts of the operator. The statement shall list the operator's ratio of current assets to current liabilities and the operator's ratio of total liabilities to tangible net worth for the most recently completed fiscal year and the 2 preceding fiscal years.

(iii) The operator shall demonstrate appropriate experience in coal mining and reclamation by showing that he has had a coal mining license under section 3.1 of the act (52 P. S. § 1396.3a) for 5 years or the person designated by the operator to manage the operation has a minimum of 5 years of experience in coal mining and reclamation.

(2) The operator would be able to obtain a surety bond otherwise required under this chapter. The operator will demonstrate this by submitting a letter of acceptance from a surety company licensed to do business in this Commonwealth and which writes bonds for reclamation of mine sites located in this Commonwealth or by submitting a surety bond for an equal portion of the remaining reclamation liability for the proposed remining site. The acceptance letter shall indicate the complete name and address of the surety company and state that the surety company would write the bond.

(3) The operator would be eligible to self-bond under § 86.159 (relating to self-bonding).

(4) The operator has previously participated in the remining financial guarantee program and met its reclamation obligations and made timely payments.

(b) Notwithstanding subsection (a), an operator will not be approved to participate in the financial guarantees program when the financial guarantees exceed the limits established in § 86.281(d) (relating to financial guarantees to insure reclamation—general).

(c) If an operator, CPA or other person submits false information in the financial test or falsifies other information required by this section, the operator shall be ineligible to participate in the financial guarantees program. In addition, the operator, the CPA or other person

are subject to 18 Pa.C.S. §§ 4903 and 4904 (relating to false swearing; and unsworn falsification to authorities).

§ 86.283. Procedures.

(a) An operator's participation in the financial guarantees program is subject to the following:

(1) Annual payments will be 1% of the total amount of the remining financial guarantee.

(2) The first payment is due upon receipt of notice of the Department's approval of the operator's application to participate in the program. Payments shall be made annually thereafter concurrent with the license renewal or in accordance with a schedule determined by the Department.

(3) Payments are not refundable and will be deposited into the financial guarantees special account in the Remining Financial Assurance Fund to be used in case of operator forfeiture. When the special account becomes actuarially sound, excess payments may be used under section 18(a.1) and (a.2) of the act (52 P. S. § 1396.18(a.1) and (a.2)).

(4) The operator may not substitute financial guarantees for existing collateral or surety bonds.

(b) The operator is responsible for making the annual payment as calculated by the Department, until the amount of the bond is reduced or released in accordance with §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond).

(c) An operator approved to participate in the financial guarantees program is not required to pay the per acre reclamation fee required by § 86.17(e) (relating to permit and reclamation fees) for the remining area.

(d) The Department will issue a letter to the operator specifying the amount of money in the financial guarantees special account in the Remining Financial Assurance Fund allocated as financial assurance for the operator's reclamation obligations on the remining area. A copy of the letter will be kept in the operator's permit application file.

(e) The obligation covered by the financial guarantees program bond will be reduced or released prior to any other bond submitted by the operator to cover the reclamation obligations of that permit.

(f) If a discharge not meeting the effluent criteria in § 87.102, § 88.92, § 88.187, § 88.292, § 89.52 or § 90.102 develops on a permit on which a financial guarantee is being used, the operator shall within 90 days of receipt of written notice by the Department replace the financial guarantee with other types of financial assurance mechanisms authorized for the purpose of covering the costs of treating the discharge. If an acceptable bond has not been received and approved by the Department within the specified time limit, the Department will issue a cessation order for mining activities except for reclamation and other activities required to maintain the permit area.

§ 86.284. Forfeiture.

(a) Upon forfeiture under § 86.181 (relating to general), the Department will declare forfeit the specified amount of the financial guarantee for the permit in the financial guarantees special account in the Remining Financial Assurance Fund in addition to other bonds posted by the operator to cover the reclamation obligation on the permit.

(b) The Department's declaration of forfeiture under this section does not excuse the operator from meeting the requirements of this chapter or other requirements under the act.

(c) Upon declaration of forfeiture, the Department will use the bond money posted by the operator and the specified amount of the financial guarantee to complete the reclamation of the mine site in accordance with the procedures and criteria in §§ 86.187—86.190.

(d) The financial guarantees program will be discontinued immediately and notice published in the *Pennsylvania Bulletin*, if 25% or greater of the total outstanding financial guarantees are declared forfeit. If the financial guarantees program is discontinued, no additional financial guarantees may be approved. Outstanding financial guarantees will remain in effect until released under §§ 86.170—86.175.

(e) The financial guarantees program may be suspended upon notice in the *Pennsylvania Bulletin* when the number of participating permits declared forfeit is equal to that number of permits calculated by multiplying the historical rate of forfeiture plus a margin of safety times the number of permits participating in the program. No additional financial guarantees will be approved until the total amount of financial guarantees declared forfeit has been replaced through the accumulation of annual payments or by other means.

CHAPTER 87. SURFACE MINING OF COAL

Subchapter E. SURFACE COAL MINES: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 87.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.

* * * * *

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of embankment to the crest of the emergency spillway or has a storage volume of 20 acre-feet or more, is located where failure could cause loss of life or serious property damage or otherwise poses a hazard to miners or the public, it must:

(1) Be stable under all probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5 or other higher static safety factor required by the Department and a seismic safety factor of at least 1.2.

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§ 87.119. Hydrologic balance: water rights and replacement.

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(g) *Operator cost recovery.* A surface mine operator or mine owner who appeals a Department order, provides a successful defense during the appeal to the presumptions of liability and is not otherwise held responsible for the pollution or diminution is entitled to recovery of reasonable costs incurred, including, but not limited to, the costs of temporary water supply, design, construction, and restoration or replacement costs from the Department.

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CHAPTER 88. ANTHRACITE COAL

Subchapter D. ANTHRACITE REFUSE DISPOSAL: MINIMUM ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 88.321. Disposal of noncoal wastes.

Noncoal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage and other hazardous wastes shall be disposed of or stored temporarily in accordance with the Solid Waste Management

Act (35 P. S. §§ 6018.101—6018.1003) and the regulations promulgated thereunder. Storage shall be in a manner that fires are prevented and the area remains stable and suitable for reclamation and revegetation. Noncoal waste materials including, but not limited to, wood, cloth, waste paper, oil, grease and garbage may not be deposited in a coal refuse disposal pile or impounding structure.

CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES

Subchapter D. STRUCTURAL REQUIREMENTS FOR IMPOUNDMENTS

PERFORMANCE STANDARDS

§ 89.111. Large impoundments.

(a) Large impoundments are those where:

(1) The structures are located on a water course, and one of the following applies:

(i) The contributory drainage area exceeds 100 acres.

(ii) The greatest depth of water at maximum storage elevation exceeds 15 feet.

(iii) The impounding capacity at maximum storage elevation exceeds 50 acre-feet.

(2) The structures are not located on a watercourse and have no contributory drainage, but the greatest depth of water at maximum storage elevation exceeds 15 feet and the impounding capacity at maximum storage elevation exceeds 50 acre feet.

(b) Large impoundments shall be designed, constructed and maintained in accordance with the Dam Safety and Encroachment Act (32 P. S. §§ 693.1—693.27) and Chapter 105 (relating to dam safety and waterway management).

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre feet or more, is located where failure could cause loss of life or serious property damage or otherwise poses a hazard to miners or the public, it must:

(1) Be stable under all probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5, or higher if required by the Department and a seismic safety factor of at least 1.2.

(2) Have an appropriate combination of principal and emergency spillway to discharge safely the runoff from a 100-year, 24-hour precipitation event, or larger if required by the Department.

(3) Have a foundation investigation, as well as any necessary laboratory testing of foundation material to determine the design requirements for foundation stability.

CHAPTER 90. COAL REFUSE DISPOSAL

Subchapter D. PERFORMANCE STANDARD FOR COAL REFUSE DISPOSAL

§ 90.112. Hydrologic balance: dams, ponds, embankments and impoundments—design, construction and maintenance.

* * * * *

(c) If the embankment is more than 20 feet in height as measured from the upstream toe of embankment to the crest of the emergency spillway, or has a storage volume of 20 acre feet or more, is located where failure could cause loss of life or serious property damage or otherwise poses a hazard to miners or the public, it must:

(1) Be stable under probable conditions of operation and be designed and constructed to achieve a static safety factor of 1.5 or a higher static safety factor required by the Department.

(2) Have an appropriate combination of principal and emergency spillways to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the probable maximum runoff from precipitation of a 6-hour precipitation event.

(3) Have a foundation investigation, as well as necessary laboratory testing of foundation material to determine the design requirements for foundation stability.

* * * * *

§ 90.133. Disposal of noncoal wastes.

Noncoal wastes, including, but not limited to, grease, lubricants, paints, flammable liquids, garbage and other hazardous wastes, shall be disposed of or stored temporarily in accordance with the Solid Waste Management Act and the regulations promulgated thereunder. Storage must be of a type that fires are prevented and that the area remains stable and suitable for reclamation and revegetation. Noncoal waste materials including, but not limited to, wood, cloth, waste paper, oil, grease and garbage may not be deposited in a coal refuse disposal pile or impounding structure.

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Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 63]

Responsibilities of Employers

The Department of Labor and Industry (Department), Office of Unemployment Compensation Tax Services (UCTS), amends Chapter 63 (relating to responsibilities of employers).

A. *Statutory Authority*

These regulations are promulgated under section 201(a) of the Unemployment Compensation Law (law) (43 P. S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

B. *Background and Description of Proposed Rulemaking*

The purpose of this final-form rulemaking, which covers 50 sections of the Department's regulations, is to update the regulations to conform to current law and practice.

This final-form rulemaking rescinds 12 sections of Chapter 63 and partially deletes additional sections. The Department is deleting provisions that are obsolete, inconsistent with the law or superseded by a subsequent statutory enactment. In some cases, the Department is deleting a provision and combining its contents with other regulatory provisions to consolidate regulations with similar subject matter. In cases when a regulation is superfluous because it merely repeats an existing statutory provision, the regulation is rescinded or amended to refer to the law.

References to obsolete subdivisions of the Department are deleted or replaced with references to the current agency or the Department generally. References to specific forms, some of which are outdated, are deleted whenever possible.

In addition to the foregoing types of changes that occur throughout the final-form rulemaking, there are particular changes as described as follows.

The law requires the Department to transfer the experience record and reserve account balance of a predecessor to its successor-in-interest if they share common ownership, control or management. The Department had interpreted this provision of the law to apply if there was common ownership at the time of the business transfer and without regard to the duration of that common ownership. See *Armco Inc. v. Department of Labor and Industry*, 713 A.2d 1208 (Pa. Cmwlth. 1998). Section 63.1a (relating to determining common ownership, control or management) modifies the Department's interpretation of the law. It provides that the Department will not transfer a predecessor's employment experience to its successor-in-interest if the entities' common ownership, control or management commenced immediately before the business transfer.

Section 63.2 (relating to part transfers of organization, trade or business), regarding part transfers of an employer's experience record and reserve account balance, applies only to transfers that occurred before July 1, 2005. Subsequent transfers will be governed by the regulations that deal with transfers generally and the 2005 amendments to the law.

Section 63.3 (relating to required forms and time limits for applications) is amended to clarify that an application for transfer of an employer's experience record and reserve account balance is necessary in cases when a transfer is desired and to specify when the Department will consider an untimely application for transfer to be filed nunc pro tunc.

Section 63.4 (relating to disapproval of applications for delinquency) is amended to delete a subsection that allowed a redundant 30-day period to pay the predecessor's delinquency to obtain a transfer of the predecessor's experience record and reserve account balance to the successor.

Section 63.15 (relating to determination under combined experience provisions) has been extensively amended to consolidate the provisions that determine the earliest calendar year for which a combination of the predecessor's experience and successor's experience apply to the contribution rate of the successor. Under certain circumstances, the combined experience applies to the successor's rate for the year in which the transfer of business or workforce to the successor occurred. These provisions apply to a transfer of the predecessor's experience record and reserve account balance that is requested by the successor.

Section 63.21 (relating to notification of rate and prerequisites for applications for review and redetermination) is amended to provide that an employer is not notified of its contribution rate until the Department issues a contribution rate notice to the employer. As amended, this section also provides that an employer may not assert a reason for objecting to the Department's rate determination that it has not included in its appeal.

In § 63.22 (relating to supporting data), the supporting data to be furnished with a rate appeal is expanded to address types of delinquency rates that exist as a result of recent amendments to the law.

In § 63.23 (relating to unacceptable reasons), unacceptable reasons for filing a rate appeal are expanded to include a challenge to the reserve account balance based on an alleged error that is more than 4 years old. New provisions addressing the consequences of a payment plan default are added. A rate that is revised upwards due to a default may be appealed, but the only issue that may be raised is whether there was a default justifying the increase.

Adopted § 63.25 (relating to filing methods) enumerates acceptable methods for filing documents with the UCTS. Also, it specifies the dates on which documents submitted to the Department by these methods will be deemed to be filed.

Adopted § 63.26 (relating to appeal to the Secretary) provides procedures for appeals of UCTS decisions to the Secretary. It concerns rate appeals, petitions for reassessment and applications for refund or credit.

Sections 63.31—63.36, concerning relief from charges, are amended and § 63.36a (relating to duration of relief from benefit charges and notice of changed circumstances) is adopted. New definitions and a list of circumstances under which an employer will be granted relief are provided. The method to be used, and time limit, for filing requests for relief are amended. Section 63.36a addresses termination of relief from benefit charges.

Section 63.51 (relating to initial and renewed registration) is amended to include the circumstances under which an employer shall file a renewed registration document with the Department.

Section 63.52 (relating to quarterly reports from employers) requires that employers file quarterly reports electronically.

Adopted § 63.59 (relating to PEO quarterly reports) specifies the method of filing and the filing date of Professional Employer Organization reports. It will replace a statement of policy issued on this subject.

Under adopted § 63.60 (relating to mass layoff report), if an employer lays off 50 or more individuals within a 7-day period; the employer is required to provide information to assist the Department to process the workers' benefit claims.

Section 63.63 (relating to agreement to compromise), regarding agreements to compromise tax liability, is amended to specify when an application to compromise is effective.

Section 63.64 (relating to records to be kept by employer), regarding records that an employer shall retain for unemployment compensation (UC) purposes, is amended to include workers whom the business believes are not "employees" and workers covered by a professional employer arrangement. In addition, more types of records are required.

Adopted § 63.66 (relating to power of attorney) provides that a business may empower an agent to represent it before the Department.

Section 63.91 (relating to elections) specifies the minimum and maximum periods of an election of reimbursable status.

Section 63.93 (relating to filing of surety bond) specifies the term of a surety bond and clarifies that the bond applies to benefits that are based on wages paid during the period of reimbursable status, including benefits paid after that status has ended.

Under § 63.94 (relating to filing of security deposit), a nonprofit organization that provides money or securities as collateral in connection with an election of reimburs-

able status shall provide new collateral if it renews its reimbursable status when the current election expires. This section also specifies the reimbursement obligations that are secured by collateral in the form of money or securities.

Adopted § 63.96a (relating to conversion to contributory status) establishes procedures for situations when an employer elects reimbursable status but fails to provide collateral or a surety bond ceases to be effective during the period of an election. It also provides that unpaid reimbursement obligations are a basis for a delinquency contribution rate if the employer converts to contributory status. Also, this section clarifies that a reimbursable employer that becomes a contributory employer remains liable for benefits that are based on wages paid during reimbursable status.

If a reimbursable employer provides securities as collateral, the Department may sell the securities to satisfy any amount owed by the employer. Section 63.97 (relating to return or sale of money or securities) clarifies that any interest or increase in value accruing on the security may also be applied to the employer's debt.

Section 63.99 (relating to assignment of rate of contribution) contains updated provisions specifying how the Department will determine an employer's contribution rate if the employer previously had been a reimbursable employer.

Subchapter D (relating to payment by electronic transfer) specifies the circumstances in which an employer shall pay liabilities by electronic transfer. An employer that is not required to pay by electronic transfer and a claimant who is repaying an overpayment of benefits may use electronic transfer voluntarily.

C. *Comments*

The notice of proposed rulemaking was published at 40 Pa.B. 5179 (September 11, 2010). The Department received comments from the Independent Regulatory Review Commission (IRRC). The Senate Labor and Industry Committee and the House Labor Relations Committee did not comment.

§ 63.25. Filing methods

Comment: Subsections (b)—(f) specify certain methods to file documents with the UCTS. Subsection (g) would allow the Department to prescribe additional methods to file documents and, if an additional method is prescribed, require the Department to designate the date on which a document is filed using that method. Subsection (g) also would allow the Department to suspend use of one or more filing methods under certain circumstances. IRRC commented that changing filing methods and determining when a document is filed must be done through the rulemaking process and recommended that the Department delete subsection (g).

Response: In accordance with IRRC's comments, the Department deleted subsection (g) from the final-form rulemaking.

§ 63.31. Applicability and definitions

Comment: Sections 63.31—63.37 concern relief from benefit charges. Section 63.31(c) (relating to applicability and definitions) defines the term "material change." Because this term does not otherwise appear in the relief-from-charges regulations, as amended, IRRC commented that the Department should delete the definition or explain why it is needed.

Response: Under section 302(a)(2) of the law (43 P. S. § 782(a)(2)), if a claimant has a part-time job in addition to other employment and is separated from the other employment, the part-time employer may be relieved of charges for the claimant's benefits "while such part-time work continues without *material change* . . ." (emphasis added). The definition of "material change" is relevant to this relief-from-charges provision. However, when describing section 302(a)(2) of the law in § 63.32(b) (relating to reasons for relief from benefit charges), the Department inadvertently omitted the phrase "without material change." The Department has included that phrase in final-form § 63.32(b) to clarify the relevance of the definition of "material change."

Comment: "Material change" is defined in § 63.31(c) as "[a] substantial reduction in wages or in the number of hours or days ordinarily worked by the claimant employed in part-time work." IRRC commented that the meaning of the phrase "substantial reduction" in this definition is unclear and suggested that the Department replace the phrase "substantial change" with a quantifiable provision.

Response: Whether a reduction in a claimant's wages is substantial has been addressed by Commonwealth Court in numerous cases concerning eligibility for benefits. The Court has held that a substantial reduction in compensation constitutes a necessitous and compelling cause to terminate employment for purposes of section 402(b) of the law (43 P. S. § 802(b)). *A-Positive Electric v. UCBR*, 654 A.2d 299 (Pa. Cmwlth. 1995); *Steinberg Vision Associates v. UCBR*, 624 A.2d 237 (Pa. Cmwlth. 1993). The Court also has stated that "there is no talismanic percentage figure that separates a substantial reduction from one that is not. Each case must be measured by its own circumstances." *Ship Inn Inc. v. UCBR*, 412 A.2d 913, 915 (Pa. Cmwlth. 1980). The Court applies a similar analysis for purposes of the labor dispute provision in section 402(d) of the law in cases where there is not a collective bargaining agreement between the employer and the employees. If the employees engage in a work stoppage in response to a substantial change in the terms and conditions of employment, the employees are eligible under section 402(d) of the law. *Chavez v. UCBR*, 738 A.2d 77 (Pa. Cmwlth. 1999). Again, "[t]here is no talismanic percentage to determine when an employer's unilateral changes in the terms and conditions of employment are substantial; rather each case must be examined under its own attendant circumstances." *Chavez v. UCBR*, 738 A.2d 77, 82. To be consistent with case law indicating that "substantial" is not determined by reference to a fixed standard, but instead is determined by the facts and circumstances at hand, the Department believes that the definition should remain as it is currently worded.

§ 63.63. Agreement to compromise

Comment: Subsection (a) as proposed provided that "[a]n employer's application for compromise of contributions, interest or penalties under the provisions of section 309.1 of the law (43 P. S. § 789.1) shall be made in the manner that the Department prescribes, and containing all information that the Department requires." IRRC questioned how a person reading this provision would know how to comply and suggested that the Department amend this provision to provide clear direction on how to file the document and how the applicant will know what information to provide.

Response: To implement IRRC's suggestions, the Department revised the subsection in this final-form rulemaking to read as follows: "An employer's application for compromise of contributions, interest or penalties under the provisions of section 309.1 of the law (43 P. S. § 789.1) shall be filed in the manner prescribed in § 63.25 (relating to filing methods). The employer shall

provide all information requested by the Department to determine whether the application will be granted." This revised language provides clear direction to an applicant on how to file the application; that is, the applicant is directed to use the filing methods in § 63.25. This new language also ensures that an employer will know what information to provide, because the employer is only required to supply information that the Department requests. The Department has an application form that elicits the information generally needed to evaluate a compromise request. If information beyond what is supplied on the form is needed, or if the employer does not use the application form, the Department would identify and request additional information that is needed.

D. *Affected Persons*

This final-form rulemaking potentially affects all of the approximately 280,000 employers covered by the law.

E. *Fiscal Impact*

Commonwealth and the regulated community

This final-form rulemaking will allow the Department, under certain circumstances, to use the UC employer experience of both the predecessor and the successor-in-interest to calculate the successor's contribution rate for the year in which the transfer of business or workforce occurred. Although the amount of UC tax savings for successor employers and the corresponding decrease in tax revenues for the UC Fund cannot be estimated, the Department expects the number of affected employers to be small and the overall monetary impact to be minimal. The Department is unable to estimate the cost to nonprofit, reimbursable employers of the provision requiring them to increase the value of their security as payrolls increase.

Political subdivisions

This final-form rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the law.

General public

This final-form rulemaking does not affect the general public.

F. *Paperwork Requirement*

If an employer ceases to provide employment and subsequently resumes providing employment, § 63.51 requires the employer, under certain circumstances, to renew its UC registration. While § 63.64 requires employers to keep employment records on all workers and to preserve additional types of records, it does not require employers to create records or information that they would not have created otherwise and does not impose additional reporting requirements.

G. *Sunset Date*

The regulations will be monitored through practice and application. Therefore, a sunset date is not designated.

H. *Effective Date*

With the exception of §§ 63.52(e) and 63.110—63.114, this final-form rulemaking will be effective June 18, 2011. The amendments to §§ 63.11—63.17 apply to transfers of organization, trade, business or workforce under section 301(d)(1)(A) of the law (43 P. S. § 781(d)(1)(A)) that occur on or after June 18, 2011. Section 63.59 applies to reports filed on or after June 18, 2011. The amendments to § 63.64(a) apply to employment occurring on or after June 18, 2011. The amendments to § 63.94 apply to elections to make payments in lieu of contributions that take effect on or after June 18, 2011. Because § 63.2 has been superseded by the act of June 15, 2005 (P. L. 8, No. 5) with regard to transfers of organization, trade, business or workforce that occur on or after July 1, 2005, § 63.2 is amended to restrict its applicability to transfers that occurred before that date.

At this time, the Department is not yet able to implement §§ 63.52(e) and 63.111—63.115. Sections 63.52(e) and 63.111—63.115 will take effect on the date designated by the Department in a notice published in the *Pennsylvania Bulletin* and will apply to calendar quarters and billing periods that begin on or after the effective date.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 26, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 5179, to IRRC and the Chairpersons of the Senate Labor and Industry Committee and the House Labor Relations Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 April 27, 2011, 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 April 28, 2011, and approved the final-form rulemaking.

J. *Findings*

The Department finds that:

(1) Public notice of 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 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) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 5179.

(4) This final-form rulemaking is necessary and suitable for the administration of the law.

K. *Order*

The Department, acting under the authority of the law, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapter 63, are amended by adding §§ 63.1a, 63.26, 63.36a, 63.59, 63.60, 63.66, 63.96a and §§ 63.111—63.115, by amending §§ 63.2—63.4, 63.15, 63.17, 63.21, 63.22—63.24, 63.31, 63.33, 63.36, 63.41, 63.42, 63.51, 63.64, 63.91, 63.93—63.95, 63.97 and 63.99 and by deleting §§ 63.11—63.14, 63.16, 63.34, 63.35, 63.43, 63.58, 63.61, 63.62 and 63.75 to read as set forth at 40 Pa.B. 5179; and by adding § 63.25 and by amending §§ 63.32, 63.52 and 63.63 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order, 40 Pa.B. 5179 and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order, 40 Pa.B. 5179 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) With the exception of §§ 63.52(e) and 63.110—63.114, this final-form rulemaking will be effective June 18, 2011. The amendments to §§ 63.11—63.17 apply to transfers of organization, trade, business or workforce under section 301(d)(1)(A) of the law (43 P. S. § 781(d)(1)(A)) that occur on or after June 18, 2011. Section 63.59 applies to reports filed on or after June 18, 2011. The amendments to § 63.64(a) apply to employment occurring on or after June 18, 2011. The amendments to § 63.94 apply to elections to make payments in lieu of contributions that take effect on or after June 18, 2011. Because § 63.2 has been superseded by the act of June 15, 2005 (P. L. 8, No. 5) with regard to transfers of organization, trade, business or workforce that occur on or after July 1, 2005, § 63.2 is amended to restrict its applicability to transfers that occurred before that date. At this time, the Department is not yet able to implement §§ 63.52(e) and 63.111—63.115. Sections 63.52(e) and 63.111—63.115 will take effect on the date designated by the Department in a notice published in the *Pennsylvania Bulletin* and will apply to calendar quarters and billing periods that begin on or after the effective date.

JULIA K. HEARTHWAY,
Acting Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 2502 (May 14, 2011).)

Fiscal Note: Fiscal Note 12-93 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 63. RESPONSIBILITIES OF EMPLOYERS

Subchapter A. GENERAL FUNCTIONS

FILINGS AND APPEALS

§ 63.25. Filing methods.

(a) *Applicability.* Except as otherwise provided in the law or this chapter, a document shall be filed with the Office of Unemployment Compensation Tax Services (UCTS) in accordance with subsections (b)—(g).

(b) *United States mail.* The filing date will be determined as follows:

(1) The date of the official United States Postal Service postmark on the envelope containing the document, a United States Postal Service Form 3817 (Certificate of Mailing) or a United States Postal Service certified mail receipt.

(2) If there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt, the date of a postage meter mark on the envelope containing the document.

(3) If the filing date cannot be determined by any of the methods in paragraph (1) or (2), the filing date will be the date recorded by UCTS when it receives the document.

(c) *Common carrier.* A document may be delivered by a common carrier of property that is subject to the authority of the Pennsylvania Public Utility Commission or the United States National Surface Transportation Board. The date of filing is the date the document was delivered to the common carrier, as established by a document or other record prepared by the common carrier in the normal course of business. If the date of delivery to the common carrier cannot be determined by the documents in the record, the date of filing will be the date recorded by UCTS when it receives the document.

(d) *Fax transmission.*

(1) The filing date will be determined as follows:

(i) The date of receipt imprinted by the UCTS fax machine.

(ii) If the UCTS fax machine does not imprint a legible date, the date of transmission imprinted on the faxed document by the sender's fax machine.

(iii) If the faxed document is received without a legible date of transmission, the filing date will be the date recorded by UCTS when it receives the document.

(2) A party filing a document by fax transmission is responsible for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the document may not be properly or timely filed.

(e) *Electronic transmission other than fax transmission.* The filing date is the receipt date recorded by the UCTS electronic transmission system, if the electronic record is in a form capable of being processed by that system. A party filing by electronic transmission shall comply with UCTS instructions concerning format. A party filing by electronic transmission is responsible for using the proper format and for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the document may not be properly or timely filed.

(f) *Personal delivery.* The filing date will be the date the document was personally delivered to UCTS during its normal business hours.

RELIEF FROM BENEFIT CHARGES

§ 63.32. Reasons for relief from benefit charges.

(a) Under section 302(a)(1) of the law (43 P. S. § 782(a)(1)), an employer may be granted relief from benefit charges in the following circumstances:

(1) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(e) of the law (43 P. S. § 802(e)), which provides that an individual is ineligible for benefits if the individual is unemployed due to willful misconduct.

(2) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(b) of the law, which provides that an individual is ineligible for benefits if the individual voluntarily left work without a necessitous and compelling reason.

(3) When the claimant was separated from employment with the employer under conditions that would not be disqualifying under section 402(b) of the law, but do not involve good cause attributable to the claimant's employment.

(4) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 3 of the law (43 P. S. § 752)), which provides that an individual must be unemployed through no fault of his own to be eligible for benefits.

(5) When the claimant was separated from employment with the employer under conditions that would be disqualifying under section 402(e.1) of the law, which provides that an individual is ineligible for benefits if the individual is unemployed due to failure to submit to or pass a drug test.

(6) When the claimant was separated due to a major natural disaster declared by the President of the United States.

(b) Under section 302(a)(2) of the law, an employer may be granted relief from benefit charges when the claimant continues to work part-time for the employer without material change after being separated from other employment.

(c) Under section 302(a)(2.1) of the law, an employer may be granted relief from benefit charges when the claimant was separated due to a cessation of business of 18 months or less caused by a disaster.

REPORTS TO BE FILED

§ 63.52. Quarterly reports from employers.

(a) *Required reports*. An employer shall file the following reports for each calendar quarter, regardless of whether the employer has paid wages during the calendar quarter:

(1) The periodic report to establish the amount of contributions due, known as the Employer's Report for Unemployment Compensation.

(2) The periodic report showing the amount of wages paid to each employe, known as the Employer's Quarterly Report of Wages Paid to Each Employee.

(b) *Termination of reporting*. An employer may stop filing reports required under subsection (a) if it certifies in writing that it no longer provides employment as defined in section 4 of the law (43 P. S. § 753) or the Department determines that the employer no longer provides the employment.

(c) *Contents of reports*. An Employer's Report for Unemployment Compensation must contain the total amount of wages paid during the calendar quarter, the amount of wages paid during the calendar quarter that does not exceed the limitation in section 4(x)(1) of the law, the amount of contributions due, and other information the Department requires. An Employer's Quarterly Report of Wages Paid to Each Employee must contain the following:

(1) The name and Social Security number of each employee to whom wages were paid during the calendar quarter.

(2) The amount of wages paid to each employee.

(3) The number of credit weeks for each employee.

(4) Other information the Department requires.

(d) *Due date*.

(1) An employer shall file reports required under subsection (a) on or before the last day of the month that immediately follows the end of the calendar quarter for which the reports are filed. If the day on which the reports are required to be filed is a Saturday, Sunday or legal holiday, the employer may file them on the first subsequent day that is not a Saturday, Sunday or legal holiday.

(2) The Department may require an employer that has discontinued operation of its organization, trade or business in this Commonwealth to file the reports required under subsection (a) immediately.

(e) *Reporting methods*. Except as otherwise prescribed by the Department under subsection (g), for calendar quarters beginning on or after the effective date of this subsection an employer shall make the reports required under subsection (a) through an electronic filing system that the Department prescribes.

(f) *Filing date*. The filing date of a report made under subsection (e) is the receipt date recorded by the electronic filing system.

(g) *Additional reporting methods*.

(1) The Department may prescribe additional methods for employers to make the reports required under subsection (a). If the Department prescribes an additional method to make a report, it will designate the date on which a report made by that method is filed. The Department may suspend use of one or more of the methods of making reports prescribed in subsection (e) or under this paragraph when it determines, in its discretion, that the method is obsolete, impractical or infrequently used.

(2) The Department may limit a class of employers to one or more methods of making the reports required under subsection (a), or limit a method of making the reports to a class or classes of employers.

(h) *Waiver*. Upon a showing of good cause, the Department may allow an employer to make the reports required under subsection (a), to file the reports, or both, by a method other than as provided in subsections (e), (f) and (g).

MISCELLANEOUS PROVISIONS

§ 63.63. Agreement to compromise.

(a) An employer's application for compromise of contributions, interest or penalties under section 309.1 of the law (43 P. S. § 789.1) shall be filed in the manner prescribed in § 63.25 (relating to filing methods). The employer shall provide all information requested by the Department to determine whether the application will be granted.

(b) An application for compromise is effective only if both of the following occur:

(1) The Department notifies the employer that the application is approved.

(2) The employer pays the contributions, reimbursement, interest, penalties and legal costs that it owes, other than those amounts the Department has agreed to forgo in the compromise, within the time and in the manner that the Department specifies.

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