

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 77]

Noncoal Mining Fees

The Environmental Quality Board (Board) amends Chapter 77 (relating to noncoal mining). The final-form rulemaking incorporates amendments necessary to provide funding for the implementation of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P. S. §§ 3301—3326).

This order was adopted by the Board at its meeting of April 17, 2012. On July 17, 2012, the Board adopted the final rulemaking, without revisions or further modifications, for resubmission to the Independent Regulatory Review Commission (IRRC) and the Senate and House Environmental Resources and Energy Committees under section 7(b) of the Regulatory Review Act (71 P. S. § 745.7(b)).

A. *Effective Date*

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*, except that the annual administration fee established under § 77.106(b) (relating to fees) will become effective on January 1, 2013, and will be applied to all mining licenses being renewed which have an expiration date occurring on or after January 1, 2013.

B. *Contact Persons*

For further information, contact Thomas Callaghan, Director, Bureau of Mining Programs, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard S. Morrison, Executive Deputy Chief Counsel, Office of Chief Counsel, P. O. Box 2063, Rachel Carson State Office Building, Harrisburg, PA 17105-2063, (717) 787-4449. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) web site at <http://www.depweb.state.pa.us>.

C. *Statutory Authority*

The amendments are proposed under sections 7(a) and 11(a) of the act (52 P. S. §§ 3307(a) and 3311(a)) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Background and Purpose*

The purpose of this final-form rulemaking is to establish fees as authorized by the act. Section 7(a) of the act states "The department is authorized to charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit." The act thus authorizes the Department to collect fees from noncoal mining permit applicants and permittees in an amount sufficient to cover the Department's costs of administering the noncoal mining regulatory program so long as the amount of fees collected does not exceed those costs. The Department calculated its costs of administering the noncoal mining

program and will establish fees through this final-form rulemaking which are sufficient to cover most of its costs.

The final-form rulemaking implements the statutory authorization of the act to collect a reasonable filing fee through two kinds of fees—the permit application fee and the administration fee. The permit application fee is intended to cover the Department's cost to review noncoal mining permit applications. The permit fees have been set according to the type of permit application submitted. The amounts of these fees are based on the number of hours typically required to review a specific type of permit application. A large noncoal surface mining permit where the pumping of groundwater will take place is substantially more complex, and requires significantly more review time, than a small noncoal surface mining permit. Consequently, the amount of the respective permit fees reflects the average review time for each type of permitting action.

The annual administration fee is intended to cover the Department's costs to administer the permit. These include, among other things, the cost of performing inspections of noncoal mining operations, compliance assistance and other compliance related activities, as well as tracking of required reporting and monitoring by permittees. As with the permit fees, the annual administration fees have been set based on workload analyses. A large surface mining permit with blasting activity necessitates substantially more administrative activity by the Department. The annual administration fee reflects the differences between types of operations based on the Department's respective administrative workload.

The assessment of the two kinds of fees is necessary to fairly represent the cost to the Commonwealth for reviewing, and administering, a noncoal mining permit. This final-form rulemaking is necessary in large part due to recent funding cuts. General appropriation funding to support the Department's regulatory/permitting programs was significantly reduced in Fiscal Year 2009-10, so it has become necessary to pay for all of the noncoal mining program staff costs through collection of fees paid by the regulated industry. These staff costs total approximately \$2.5 million per year.

Permit Application Fee

The permit application fee amounts were calculated based on a workload analysis that the Department uses to manage the work force. The workload analysis assigns a certain number of hours for the review time for each type of application.

Permit applications vary in their complexity based on a number of factors. The primary factor relates to hydrologic impacts. Applications that propose to pump groundwater take significantly more time to review. Therefore, the application fee for these permits is higher. Similarly, if blasting is proposed, then the blasting inspector is involved in the review of the blast plan for the application. Therefore, a fee is being proposed for blast plans.

The permit application fees will be applicable to applications submitted after the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Annual Administration Fee

The annual administration of a noncoal mining permit is accomplished through routine inspections to assure that the mining activities are being conducted in compli-

ance with the permit requirements. The Department established inspection frequencies based upon the type of permit and the status of the activity.

There are two types of permits—small and large. Small permits authorize up to 10,000 tons per year in production. Large permits are needed for production that exceeds 10,000 tons per year. The inspection frequency for large permits is four per year. For small permits, the frequency is two per year.

For large permits that authorize blasting, one inspection per year by a Department blasting inspector is needed. This results in a higher annual administration fee amount for the large noncoal permits where blasting is authorized.

The annual administration fee will become effective on January 1, 2013, and will be applied to mining licenses being renewed which have an expiration date occurring on or after January 1, 2013.

There is not an advisory board for the noncoal mining program. The Department conducted outreach with the regulated community through meetings with trade groups (Pennsylvania Aggregate and Concrete Association, Pennsylvania Bluestone Association and the Society of Mining Engineers). Also, the Department held four outreach meetings throughout this Commonwealth. Licensed noncoal mine operators were invited to attend these meetings through a mass mailing that included information about the proposed fees. The Department also used an e-mail distribution list to keep interested parties informed through the process.

E. *Summary of Changes to the Proposed Rulemaking*

§ 77.106. *Fees*

The permit application fee schedule has been revised to clarify the description of the two categories of large noncoal sites. In the proposed rulemaking, these categories were described as “mining below the water table” and “not mining below the water table.” For clarity, the descriptions have been changed to “groundwater pumping authorized” and “no groundwater pumping.” This clarifies that it is the pumping of the groundwater, and assessing the impacts of that pumping, that makes a difference in the complexity of the review. Sites where mining is occurring below the water table but where pumping is not being done (that is, dredge operations) are in the less complex category.

In the fee schedule, the fee category and amount have been deleted for the small surface mining permit transfer since these permits are not transferable. The fee category and amount have also been deleted for general permits (GP). This was done because application fee amounts vary with each GP and are published in the *Pennsylvania Bulletin* when a GP is proposed. Final application fee amounts for GPs are included with the final publication of each permit after the opportunity for comment. These GPs are alternatives to large or small noncoal permits where the applicant voluntarily chooses to apply for coverage under the GP rather than obtaining a small or large noncoal permit. Also, the annual administration fee description for GPs has been revised to delete the reference to the GP for short-term construction. At the time the rulemaking was proposed, this was the only GP available. This revision applies the same administration fee amount to all GPs.

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

Opposition to Imposition of Fees

Several commentators voiced general opposition to the imposition of permit fees on noncoal mining operators stating that the fees would burden small businesses during a difficult economic time and the noncoal mining program should be funded by the Commonwealth through general fund appropriations. Comments stated that the Department’s administration of the mining permitting program is a fundamental function of State government and should be funded by taxpayers. Objections to the amount of the fees in the proposed fee schedule were also raised as well as concerns that the substantial fee increases will decrease competition by reducing the number of noncoal operators in this Commonwealth.

The act clearly authorizes the collection of reasonable fees from operators as the means of funding the Department’s implementation and administration of the act. While the concern of the regulated community is understandable, these fees are required as part of a shift to a self-sustaining program. The fee amounts are reasonable, in part because they have been tailored to the scale of the mining operation, and the amounts compare favorably with fees assessed by neighboring and other states so they are not expected to have any anticompetitive impacts.

Support for Fees

Several commentators voiced general support for the proposed rulemaking to increase the permit application fees and to add annual administration fees to be paid by noncoal mine operators. Support was also noted for assessing fees for the small operators differently, including increasing the proposed fee amounts for the smaller operations because they are not self-supporting.

The Board acknowledges and appreciates the support expressed for the rulemaking. While the individual fee amounts are lower for small noncoal operators, there are more of these operators in this Commonwealth, therefore, they are self-supporting. The fee amounts are based on the workload analysis which accounts for the differences between small and large permits.

Fee Amounts

Comments were made that the proposed permit application fee schedule is unreasonable because the Department takes too much time to complete its permit review and administration work, excessive inspections are conducted, the Department salaries are too high or fees should not be based on salaries for Department personnel in the noncoal mining program. Commentators also objected that the Department’s operations are inefficient and therefore the overall cost of operating the program is too high.

The fee amounts are based upon a well-developed workload analysis. The fee calculations reflect the cost to the Department to review applications to assure that they comply with the regulations and to administer permits to assure compliance. Regulatory compliance prevents pollution, protects the environment and assures that resources are preserved. The Department is continuously looking to improve efficiency. For example, the Department has revised an existing GP to expand its use. Unfortunately, many of the permit applications the Department receives are often not well prepared, and the Department has historically made extensive efforts to assist the permit applicant with correcting an application. Since the regula-

tion requires that the Department review the fee amounts at least every 3 years, and report its analysis to the Board, program efficiencies will be evaluated as part of this effort.

Professional Seals

Comments were made that the Department's review time is too lengthy and cumbersome for work that is submitted under a professional seal and that the Department is unwilling to accept work performed by a licensed professional without further review. The commentator contends that the Department duplicates work by not accepting application materials that have been sealed by a professional.

The information submitted with a permit application requires review. The professional seal ensures that conclusions drawn by the consultant have been prepared in the best professional opinion of that particular consultant. The Department review of the work submitted with a permit application is necessary to assure that it meets the regulatory requirements. In the Department's experience, however, meeting generally accepted engineering or geology standards does not guarantee that the work meets the regulatory requirements. The Department does not duplicate work; it reviews the work of consultants. Revisions to the permit application may be required to meet regulatory requirements, correct an error or clarify a conclusion reached in an application.

Administration Fee by Site Rather than Permit

Commentators suggested that the annual administration fee should be applied to a site and not to each individual permit, that is, the annual administration fee should be tied to a location rather than a permit.

The Department's workload analysis is based on the average amount of time for each category of permits.

"Annual administration fee" is defined in § 77.1 (relating to definitions) as: "A nonrefundable filing fee assessed on an annual basis for the cost to the Department of inspecting a permitted activity or facility to administer the permit." Section 77.106(f) lists eight different types of permits that would be subject to the annual administration fee. A commentator stated that each mining facility could have several permits and asked whether a mining facility could be subject to more than one annual administration fee, or is the fee only applicable to the facility.

The permit fees are set on a per-permit basis. Administratively, inspections are conducted on a permit-specific basis, not on a facility basis. Each permit file is reviewed for the permit requirements. A separate inspection report is needed for each permit. An alternative for a permittee with multiple permits, subject to multiple fees, would be to consolidate its facility under one permit.

Industry Advisory Board

According to a commentator, the industry needs to be heard in a formal setting and it is not reasonable for the industry to be 100% responsible for the management costs of the program given that there is not an advisory board for the noncoal mining program.

To comply with the act, a sustainable funding source is required. Since other funds are not available, the rulemaking is based on 100% program funding from these fees. The Department is committed to providing the highest level of interaction possible with the regulated industry. The Department meets on a quarterly basis with the Pennsylvania Aggregate and Concrete Association and regularly with the Pennsylvania Bluestone Association as issues arise.

These meetings will continue to identify and understand industry concerns and to work to improve program efficiency.

Miscellaneous

A commentator questioned what the large permit fee covers and if the fee covers all processing fees associated in the correction of an application, if an application is returned by the Department.

The large noncoal permit fee (new) includes all of the processing time in the review of an application. This may include multiple correction letters to resolve application deficiencies. Typically, the Department provides assistance to applicants and their consultants throughout the course of the application review (including before the application is submitted). The Department strives to review applications as promptly as possible. For permits that are rejected, the fees remain applicable because the review is still needed to determine that the permit cannot be issued. The Department strives to accommodate permit applicants.

The Pennsylvania Bluestone Association commented that it did not have sufficient interaction with the Department concerning the proposed rulemaking.

The Department conducted outreach with the regulated community on the proposed rulemaking. The outreach included a series of meetings with industry groups (Pennsylvania Aggregate and Concrete Association and Pennsylvania Bluestone Association) and roundtable meetings with industry representatives. The Department meets regularly with the Pennsylvania Bluestone Association as issues arise. These meetings will continue to identify and understand industry concerns and to work to improve program efficiency.

A commenter suggested that there has been no clear evidence given of the budget for the Industrial Minerals administration and permit reviews other than what the Department has generated, and that an external independent audit should be conducted to verify the Department's need for this fee increase and future fee increases.

The Department's costs are based on actual expenditures. The workload analysis used is continually evolving to keep up with changing circumstances. During the outreach to industry, data was shared. The detailed data is available and was provided to individuals who requested it during the outreach process.

G. Summary of Comments and Responses Solicited by the Department

The Department published a notice at 42 Pa.B. 553 (January 28, 2012) announcing it was accepting comments for 30 days relating to the noncoal fee regulations.

Comments were received from 20 commentators during this comment period. These comments were mostly (13 of 20) related to sand and gravel operations in northwest Pennsylvania. The comments primarily focused on the adverse impact the increased fees will have on small businesses that operate sand and gravel pits. Four comments of support for the fees were received.

The Department appreciates that the fees impose a burden on noncoal mine operators, including small businesses that operate sand and gravel pits. The fees are necessary to provide funding to enforce the act.

Other comments related to general noncoal program implementation through permitting and compliance activity. The Department continues to endeavor to improve efficiency and reduce costs.

H. Benefits, Costs and Compliance

This final-form rulemaking will enable the Commonwealth to fulfill its obligations to enforce the act.

Compliance Costs

It is estimated that this final-form rulemaking will impose total additional compliance costs of about \$2.5 million on the regulated community.

Compliance Assistance Plan

The Department will provide written notification to noncoal mine operators to inform them of the final promulgation of these regulatory changes. The Department may also hold roundtable meetings with mine operators and consultants to explain program changes and answer questions.

Paperwork Requirements

This final-form rulemaking requires the Department to update its application forms.

I. Pollution Prevention

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

J. 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.

K. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 18, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 4963 (August 28, 2010), to 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 June 20, 2012, 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 June 21, 2012, and disapproved the Board's final-form rulemaking.

Under section 7(b) of the Regulatory Review Act (71 P. S. § 745.7(b)), on July 26, 2012, the Department submitted a copy of the final-form rulemaking without revisions or further modifications to IRRC and the House and Senate Committees. Under section 7(d) of the Regulatory Review Act on August 31, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 7(c.1) of the Regulatory Review Act, on August 16, 2012, IRRC approved the final-form rulemaking.

L. 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 at 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) These regulations do not enlarge the purpose of the proposal published at 40 Pa.B. 4963.

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

M. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 77, are amended by amending §§ 77.1, 77.51, 77.106 and 77.126 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson of the Board shall submit this order and Annex A to the IRRC and the Senate and House 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 except that the annual administration fee established under § 77.106(b) will become effective on January 1, 2013, and will be applied to all mining licenses being renewed which have an expiration date occurring on or after January 1, 2013.

MICHAEL L. KRANCER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 5710 (September 1, 2012).)

Fiscal Note: Fiscal Note 7-460 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 77. NONCOAL MINING

Subchapter A. GENERAL PROVISIONS

§ 77.1. Definitions.

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

* * * * *

Adjacent area—Land located outside the permit area within 1,000 feet.

Annual administration fee—A nonrefundable filing fee assessed on an annual basis for the cost to the Department of inspecting a permitted activity or facility to administer the permit.

Applicant—A person who seeks to obtain a permit from the Department to conduct noncoal mining activities under this chapter.

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Landowner—The person or municipality in whom legal title to the land is vested.

Large noncoal permit—A mining permit that authorizes the extraction of greater than 10,000 tons per year of noncoal materials

Major permit revision—A revision to a permit that requires public notice.

Mine opening blasting—Blasting conducted for the purpose of constructing a shaft, slope, drift or tunnel mine opening for an underground mine, either operating or under development, from the surface down to the point where the mine opening connects with the mineral strata to be or being extracted.

Minor permit revision—A revision to a permit that does not require public notice.

Mulch—Vegetation residue or other suitable materials that are placed on the soil surface to aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for seed germination and plant growth.

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Permit—A permit issued by the Department to conduct noncoal mining activities.

Permit application fee—A nonrefundable filing fee due at the time of submission of an application. The permit application fee is required for an application to be considered complete.

Permit area—

(i) For noncoal surface mining activities: the area of land and water within the boundaries of the permit which is designated on the permit application maps, as approved by the Department. The term includes an area which is or will be affected by the surface noncoal mining activities during the term of the permit.

(ii) For the surface effects of noncoal underground mining activities: the area which is designated on the permit application maps as approved by the Department. The term includes a surface area which is or will be affected by the underground noncoal mining activities.

Permit status—An indicator of the level of progress of mining activity at a permitted facility. Permit statuses are as follows:

(i) *Not started.* Mine sites where the mining permit has been issued, but mining activities have not begun,

(ii) *Active.* Mine sites that do not qualify for inactive status, not started status or released status,

(iii) *Inactive.* Mine sites where mineral extraction activity has been completed but final bond release has not been completed,

(iv) *Released.* Mine sites where the final bond release has been completed.

Permittee—A person holding, or required to hold by the act and the environmental acts, a permit issued by the Department to conduct noncoal mining activities.

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Slope—Average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (for example, 1v:5h). The term may also be expressed as a percent or in degrees.

Small noncoal permit—A mining permit that authorizes the extraction of up to 10,000 tons of noncoal minerals per year.

Soil horizons—Contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are as follows:

(i) *A horizon*—The uppermost mineral layer, often called the surface soil or topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble salts and soil elements is typically the greatest.

(ii) *B horizon*—The layer that typically is immediately beneath the A horizon and often called the subsoil. The middle layer commonly contains more clay, iron or aluminum than the A or C horizon.

(iii) *C horizon*—The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity and closely resembles the parent material.

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Subchapter B. SURFACE MINING OPERATOR'S LICENSE

§ 77.51. License requirement.

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(e) *Refusal to issue or renew license.* The Department will not issue a noncoal surface mining operator's license or renew or amend a license if it finds, after investigation and an opportunity for informal hearing, that a person, partner, associate, officer, parent corporation or subsidiary corporation has been subject to a bond forfeiture under the act and environmental acts or has failed to comply with an adjudicated proceeding, cessation order, consent order and agreement or decree under the act and environmental acts. The Department will not renew a license for an operator who uses the provisions for payment in lieu of bond unless the operator submits his annual payment with the license renewal application. The Department will not renew a noncoal mining operator's license for an applicant who has not made full payment of the annual administration fee required under § 77.106(f) (relating to fees). A person who opposes the Department's decision on issuance or renewal of a license has the burden of proof.

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**Subchapter C. PERMITS AND PERMIT APPLICATIONS
GENERAL**

§ 77.106. Fees.

(a) A permit application for noncoal mining activities shall be accompanied by a nonrefundable payment for the permit application fee payable to the "Commonwealth of Pennsylvania." The applicable permit application fee

amount is specified in subsection (e). For purposes of this subsection, permit applications include all of the applications listed in subsection (e).

(b) The Department will assess an annual administration fee for each permitted activity and facility. For licensed mine operators, this annual administration fee will be assessed annually, will be collected as part of the mine operator's license renewal application and will include the appropriate annual administration fee for each of the licensee's permitted facilities. If the permittee is not required to maintain a mining license, a notice of the annual administration fee will be sent to the permittee for all of the permittee's permitted facilities and the fee must be paid within 30 days of receipt of the notice. The applicable fee amounts are specified in subsection (f).

(c) Fees collected under this section and all enforcement cost recovery funds will be deposited in the Noncoal Surface Mining Conservation and Reclamation Fund. The fees collected under this section will be used by the department for the purposes specified by the act.

(d) At least every 3 years, the Department will recommend regulatory changes to the fees in this section to the EQB to address any disparity between the program income generated by the fees and program costs. The regulatory amendment will be based upon an evaluation of the program fees income and the Department's costs of administering the program.

(e) The permit application fee schedule is as follows:

	<i>Fee</i>
(1) <i>New permits</i>	
Large Surface Mining Permit— Groundwater Pumping Authorized	\$20,225
Large Surface Mining Permit—No Groundwater Pumping	\$13,500
Small Surface Mining Permit	\$525
Underground Mining Permit	\$20,225
(2) <i>Major amendments</i>	<i>Fee</i>
Large Surface Mining Permit— Groundwater Pumping Authorized	\$3,850
Large Surface Mining Permit—No Groundwater Pumping	\$1,600
Underground Mining Permit	\$2,650
(3) <i>Minor Amendments</i>	<i>Fee</i>
Large Surface Mining Permit	\$700
Small Surface Mining Permit	\$175
(4) <i>Transfers</i>	<i>Fee</i>
Large Surface Mining Permit	\$900
Underground Mining Permit	\$900
(5) <i>Other Actions</i>	<i>Fee</i>
Bonding Increment	\$450
Completion Report Application	\$600
Blast Plan	\$475
Notice of Intent to Explore	\$60
Pre-applications	\$3,375

(f) The annual administration fee schedule will be as follows:

<i>Permit Category—Permit Status</i>	<i>Annual Fee</i>
Large Surface Mining Permit—Active	\$1,450
Large Surface Mining Permit—Active with Blasting	\$1,850
Small Surface Mining Permit—Active	\$200
Small Surface Mining Permit—Active with Blasting	\$300
Underground Mining Permit—Active	\$1,450
General Permit	\$200

<i>Permit Category—Permit Status</i>	<i>Annual Fee</i>
All Permits—Not Started	\$100
All Permits—Inactive	\$100

REVIEW, PUBLIC PARTICIPATION, ITEMS AND CONDITIONS OF PERMIT APPLICATIONS

§ 77.126. Criteria for permit approval or denial.

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(b) No incremental phase approval of the permit will be granted to conduct mining or reclamation operations, or permission to expand mining or reclamation operations within a permit area which has been limited to a portion or phase of the entire area until the applicant:

(1) Has filed with the Department a bond under § 77.193 (relating to requirement to file a bond).

(2) Has met the requirements of subsection (a)(5)—(8).

(c) A permit, permit renewal or revised permit application will not be approved unless the applicant has made full payment of the permit application fee required under § 77.106(e) (relating to fees) and the annual administration fee required under § 77.106(f) for all of the applicant's permitted mining facilities.

[Pa.B. Doc. No. 12-1993. Filed for public inspection October 12, 2012, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Deadline to Submit an Application for Certification

The State Board of Certified Real Estate Appraisers (Board) amends §§ 36.11 and 36.12 (relating to qualifications for certification as residential real estate appraiser; and qualifications for certification as general real estate appraiser) to read as set forth in Annex A.

Background and Purpose

Under section 6 of the Real Estate Appraisers Certification Act (act) (63 P. S. § 457.6), the Board is authorized to issue certificates to real estate appraisers that meet the minimum education and experience requirements established by the Appraiser Qualifications Board under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. No. 101-73). The Board amended §§ 36.11 and 36.12 at 37 Pa.B. 3367 (July 21, 2007) to implement new Federally-mandated education criteria for the initial certification of residential real estate appraisers and general appraisers that would take effect in January 2008. At that time, the Board adopted a segmented approach to implementing the new education criteria so that those applicants who completed the less stringent education requirements prior to January 1, 2008, would have until January 1, 2012, to apply for certification. This provision was necessary to minimize potential disruptions to the career plans of applicants who were already taking steps to become certified. Once a candidate completed the educational requirement, he

would then obtain an appraiser trainee license for the purpose of completing the experience requirements in §§ 36.11(e) and 36.12(e), that is, 2,500 hours of experience for residential appraisers and 3,000 hours of experience for general appraisers. Because there are not a minimum number of hours of experience that must be acquired in any given year, it can take a candidate many years to obtain the required experience after obtaining the required education before applying for an appraiser certificate. Thus, the Board determined that it should allow applicants up to 4 years to complete the necessary steps to become certified and set forth the January 1, 2012, deadline.

For a number of reasons, including budget constraints reducing the frequency of direct mailings to licensees, the elimination of the Board's annual hard copy newsletter in 2007 and changes in staff, the Board did not notify affected persons of the change in the educational requirements (other than the publication of the final-form rulemaking at 37 Pa.B. 3367) or the impending application deadline of January 1, 2012. After the deadline passed in January, the Board began to receive communications from affected individuals that had failed to meet the January 1, 2012, deadline and further requesting a waiver of the relevant provisions of the Board's regulations.

On February 9, 2012, in a public session, the Board considered these communications from interested persons and determined that the deadline for applying for certification, having met the then-existing educational requirements prior to January 1, 2008, should be extended until January 1, 2013. The Board made this determination in recognition of the fact that the Board had expressed its intentions to notify affected parties during the regulatory review process and failed to do so. At the February meeting, the Board authorized the publication of a statement of policy, extending the deadline. It was subsequently determined that a change to the regulation should be promulgated but that publication as proposed rulemaking was unnecessary under the circumstances for the reasons as follows. Therefore, at its meeting on May 10, 2012, the Board voted to proceed with this final-omitted rulemaking.

Omission of Proposed Rulemaking

Under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), the Board is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) if the Board finds that the specified procedures are impracticable, unnecessary or contrary to the public interest.

The Board determined that publication of proposed rulemaking is unnecessary under the circumstances previously stated because applicants are not disadvantaged by an extension of the deadline under which to apply for certification, having met the less stringent educational requirements by January 1, 2008. In addition, the Board will provide actual notice to affected parties of the extension in three ways. The Board will place a notice of this extension on its web site through February 1, 2013. The Board will publish in its electronic newsletter distributed to subscribers a notice of the extension on or before October 1, 2012. The Board will mail a notice by first class mail of the change to each individual who is certified as a licensed appraiser trainee, certified residential real estate appraiser, certified general real estate appraiser or broker appraiser.

Description of Amendments

Sections 36.11 and 36.12 are amended to extend the deadline for applicants who had met the less stringent educational requirements prior to January 1, 2008, to apply for certification as a certified residential real estate appraiser or as a certified general real estate appraiser until January 1, 2013.

Statutory Authority

This final-omitted rulemaking is authorized by section 5(1) and (2) of the act (63 P. S. § 457.5(1) and (2)), which provides the general rulemaking authority of the Board and requires the Board to adopt and revise rules and regulations regarding qualifications of applicants.

Fiscal Impact and Paperwork Requirements

The final-omitted rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The impact on prospective certificateholders in the private sector will be beneficial. In general, the final-omitted rulemaking is expected to tend to reduce paperwork requirements upon the Commonwealth, its political subdivisions and the private sector, including certificateholders.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on August 13, 2012, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on September 19, 2012, the final-omitted rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 20, 2012, and approved the final-omitted rulemaking.

Additional Information

For additional information about the final-omitted rulemaking, submit inquiries to Christopher McNally, Counsel, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200.

Findings

The Board finds that:

(1) Public notice of the Board's intention to amend its regulations under the procedures in sections 201 and 202 of the CDL has been omitted under the authority of section 204 of the CDL because public comment is unnecessary under the circumstances.

(2) The amendment of the Board's regulations in the manner provided in this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by amending §§ 36.11 and 36.12 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order 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 Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DANIEL A. BRADLEY,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 6352 (October 6, 2012).)

Fiscal Note: 16A-7019. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Subchapter A. GENERAL PROVISIONS

QUALIFICATIONS FOR CERTIFICATION OR LICENSURE

§ 36.11. Qualifications for certification as residential real estate appraiser.

* * * * *

(b) *Appraisal classroom hours.* Effective January 1, 2008, an applicant shall submit evidence to the Board of having completed 200 classroom hours in the appraisal curriculum set forth in subsection (c)(2). This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2013, that shows evidence of the applicant's having completed 120 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course approved by the AQB, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

* * * * *

§ 36.12. Qualifications for certification as general real estate appraiser.

* * * * *

(b) *Appraisal classroom hours.* Effective January 1, 2008, an applicant shall submit evidence to the Board of having completed 300 classroom hours in the appraisal curriculum set forth in subsection (c)(2). This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2013, that shows

evidence of the applicant's having completed 180 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course approved by the AQB, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

* * * * *

[Pa.B. Doc. No. 12-1994. Filed for public inspection October 12, 2012, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Federal Amendments to Radioactive Material Regulations

The Commonwealth is a United States Nuclear Regulatory Commission (NRC) Agreement State and has incorporated by reference many NRC regulations. The NRC has amended 10 CFR Parts 30—32, 40 and 70. The final rule, published at 77 FR 43666 (July 25, 2012), is effective on October 23, 2012. These amendments will be incorporated into the Commonwealth's regulations under 25 Pa. Code § 215.1(e) (relating to purpose and scope). The NRC's proposed changes to 10 CFR Parts 30—32, 40 and 70 were published at 77 FR 43544 (July 25, 2012).

The NRC has amended its regulations to make the requirements for distributors of byproduct material clearer, less prescriptive and more risk-informed. The NRC also redefined categories of devices to be used under exemptions, adding explicit provisions regarding the sealed source and device registration process and added flexibility to the licensing of users of sealed sources and devices. This action is primarily intended to make licensing processes more efficient and effective. These changes will affect manufacturers and distributors of sources and devices containing byproduct material and future users of some products currently used under a general or specific license.

For further information contact Joseph M. Melnic, Chief, Division of Radiation Control, P. O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 787-3720; or Curtis Sullivan, 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 Pennsylvania AT&T Relay Service (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

MICHAEL L. KRANCER,
Secretary

[Pa.B. Doc. No. 12-1995. Filed for public inspection October 12, 2012, 9:00 a.m.]