

# PROPOSED RULEMAKING

## DEPARTMENT OF EDUCATION

[ 22 PA. CODE CHS. 741 AND 741a ]

### Postsecondary Distance Education Reciprocity

The Department of Education (Department) proposes to amend Part XXIII (relating to reciprocity for distance education) by deleting Chapter 741 and adding Chapter 741a (relating to State authorization reciprocity), to read as set forth in Annex A.

#### *Statutory Authority*

This proposed rulemaking is authorized under section 124(b) of the Public School Code of 1949 (24 P.S. § 1-124(b)).

#### *Purpose and Background*

The act of June 1, 2016 (P.L. 252, No. 35) (Act 35) amended the Public School Code of 1949 by adding section 124(a), which requires the Secretary of Education “to enter into and administer membership in a regional compact and an interstate reciprocity agreement for the provision of postsecondary distance education.” Under this directive, the Department has affiliated with the Southern Regional Education Board, one of four regional compacts, for the sole purpose of participating in the State Authorization Reciprocity Agreement (SARA), the interstate reciprocity agreement adopted by the regional compacts to establish National standards for interstate delivery of postsecondary distance education.

Prior to Act 35, institutions of higher education in this Commonwealth seeking to offer distance education to students residing in other states needed to apply for authorization in those states and pay registration fees to each state. To address this issue, the four interstate education compacts worked together to organize SARA as a way to provide for reciprocity among member states and their participating institutions. Section 124(a) provides for Commonwealth affiliation with one of the regional compacts and membership in SARA and establishes the Department as the agency responsible for implementation and administration.

The Department is authorized under section 124(b) to “charge administrative fees to institutions of higher education that choose to participate in the agreement, not to exceed the amount necessary to pay the administrative costs of the agreement.” Under the authority in section 124(b), the Department promulgated a final-omitted rulemaking that set the fees for institutions of higher education seeking to join SARA, which were set in accordance with the Department’s projected cost of implementing and administering participation. Section 124(b) directs that these “final-omitted regulations shall expire June 30, 2018” and “any revisions to the administrative fees charged under this subsection shall be made through regulations promulgated under the Regulatory Review Act.” Accordingly, this proposed rulemaking seeks to delete current Chapter 741, which expired on June 30, 2018, and add proposed Chapter 741a to set the fees for institutions of higher education seeking to join SARA. Additionally, this proposed rulemaking seeks to repromulgate the sections of Chapter 741 concerning definitions, SARA membership, fees nonrefundable and annual renewals, while reducing the administrative fees currently in Chapter 741.

#### *Explanation of Proposed Regulation*

This proposed rulemaking seeks to reserve the current Chapter 741 in its entirety as it expired on June 30, 2018, under section 124(b). Additionally, this proposed rulemaking seeks to repromulgate the sections of Chapter 741 concerning definitions in § 741.1, SARA membership in §§ 741.11—741.13, fees nonrefundable in § 741.22 and Institutional renewal to participate in SARA in § 741.23, while reducing the administrative fees currently in Chapter 741 for institutions of higher education in this Commonwealth seeking to join SARA in § 741.21.

Section 741a.1 (relating to definitions) seeks to repromulgate the current § 741.1. Section 741a.1 establishes definitions for the following terms as used in the proposed rulemaking: Calendar year, Department, Distance education, Portal agency, Postsecondary institution, Regional compact, State Authorization Reciprocity Agreement (SARA) and Tuition.

Section 741a.11 (relating to State membership in a regional compact) seeks to re-promulgate the current § 741.11. Section 741a.11 of the regulation sets forth that this Commonwealth has affiliated with the Southern Regional Education Board for the purposes of membership in SARA as authorized under section 124 and to allow interested postsecondary institutions in this Commonwealth to offer distance education to students in other SARA member states without paying fees to each state. States can only join SARA through membership or affiliation with a regional compact. This Commonwealth was one of only four states that was not a member of a regional compact prior to Act 35.

Section 741a.12 (relating to State membership in SARA) seeks to repromulgate the current § 741.12. Section 741a.12 provides that the Department will be the portal agency for membership in SARA and employ necessary staff for the implementation of SARA. State membership in SARA requires the identification of a single portal agency in each state. This section provides that the costs of staff and SARA membership will be covered by fees paid by postsecondary institutions rather than general fund resources. Postsecondary institutions are the prime beneficiary of membership in SARA and they will see a significant cost-savings through participation, notwithstanding the fees imposed under this regulation.

Section 741a.13 (relating to institutional participation in SARA) seeks to re-promulgate the current § 741.13. Section 741a.13 requires institutions in this Commonwealth seeking to participate in SARA to submit an annual application to the Department comprised of an application generated by the National Counsel for SARA (NC-SARA) with a supplemental application generated by the Department along with the required fees.<sup>1</sup> Institutions whose submitted fee does not match distance education data in the Federal Integrated Postsecondary Education Data System database will be required to provide evidence to support their calculation. This section further provides that applications will not be processed until the fees are received by the Department. Finally, this section establishes that the fees that are paid to the Department do not cover other institutional financial obligations related to SARA participation. Institutions are required to

<sup>1</sup> The applications can be found on the Department’s publicly accessible web site at [https://www.education.pa.gov/Postsecondary-Adult/CollegeCareer/Pages/State-Authorization-Reciprocity-Agreement-\(SARA\).aspx](https://www.education.pa.gov/Postsecondary-Adult/CollegeCareer/Pages/State-Authorization-Reciprocity-Agreement-(SARA).aspx).

pay an annual fee of \$2,000 to \$6,000 directly to the NC-SARA for participation. It is not possible for the Department to pay this fee on behalf of institutions because an electronic payment system is employed for this payment.

Section 741a.21 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA) provides that the fee paid to the Department is calculated based on tuition revenue from distance education in the most recently completed calendar year. Calendar year is used for consistency because different institutions follow different calendars for the academic year and the fiscal year. The fee is calculated based on tuition revenue rather than enrollment so that institutions with the highest tuition rates pay a fair share of the cost of supporting the Commonwealth's membership in SARA. Moreover, using tuition revenue in the calculation distributes the cost equitably between public and private institutions, in that the community colleges and state-system universities have the lowest tuition rates. In addition, some small institutions are very active in distance education and will experience very significant savings from membership. Likewise, some large institutions offer very little by distance education and would experience a minimal benefit. By calculating the fee based on distance education revenue only, the costs of membership will be distributed equitably based on the benefit to the institution.

The fee schedule in § 741a.21 reduces the administrative fees institutions will pay to participate in SARA from the current § 741.21. More institutions have joined SARA than initially anticipated in the first years of implementation, and therefore, revenue has exceeded initial estimates. The maximum fee will be reduced from \$60,000 to \$7,000. No institution will see an increase in fees. The administrative fee will remain the same for 35 institutions that currently participate in SARA. Savings per institution for the other 73 institutions will range from \$3,000 per year to \$53,000 per year with a total savings to the sector of \$679,000.

Section 741a.22 (relating to fees nonrefundable) seeks to repromulgate the current § 741.22. Section 741a.22 establishes that fees will not be refunded if the application is denied or if the institution withdraws the application. This is to protect against the provision of review services without compensation because the Department will incur all costs associated with processing the application within a few days of receipt. Likewise, this section provides that fees will not be refunded upon an institution's suspension or revocation of participation, or if the institution voluntarily withdraws from participation, since the Department's costs will likely have been incurred.

Section 741a.23 (relating to institutional renewal to participate in SARA) seeks to repromulgate § 741.23. Section 741a.23 clarifies that participation in SARA is valid for 1 calendar year, consistent with SARA requirements, and that the application process for the renewal follows the same process as the initial application using an application generated by the NC-SARA and a supplemental application specific to this Commonwealth generated by the Department.

Section 741a.24 (relating to effective date) establishes that the fee schedule will go into effect on January 1, 2023. Services will be provided using current reserves, which will be adequate to cover administrative costs and fees until 2023.

#### *Persons or Entities Affected*

This proposed rulemaking affects the Department, as well as institutions of higher education in this Commonwealth which provide or seek to provide distance education to students in other states.

#### *Fiscal Impact*

Implementation requires the Department to pay an annual fee of \$50,000 to affiliate with the Southern Regional Education Board Compact. In addition, the Department estimates a need for \$227,907 in staffing and administrative costs for implementation of the program with those institutions of higher education in this Commonwealth that are interested in joining SARA. The administrative responsibilities for SARA may not be covered by general fund revenues. In accordance with section 124, this proposed rulemaking seeks to establish fees that pay the administrative costs of the program, without the need for funding from the Department's general funds.

This proposed rulemaking will equate to a fiscal savings to 73 of the 108 institutions of higher education in this Commonwealth that already chose to participate in SARA and provide for lower initial fees for any institution that chooses to join in the future. The proposed fees represent a small fraction of the costs that institutions in this Commonwealth would otherwise bear to obtain state authorization to offer distance education in other states if the Commonwealth did not join SARA.

Local governments do not have any involvement with the SARA program; as such, no fiscal impact is anticipated.

#### *Paperwork Requirements*

This proposed rulemaking will maintain current paperwork responsibilities on the Department and the regulated community because application materials have been developed by the Department and those materials have to be completed and filed annually by interested institutions of higher education. The paperwork requirements imposed by current Chapter 741 will remain the same in proposed Chapter 741a.

#### *Effective Date*

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

#### *Sunset Date*

No sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 9, 2021, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Education Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendation or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5(b)) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly, and the Governor.

*Contact Person*

The Department contact person for this regulation is Lynette Kuhn, Division Chief, Division of Higher and Career Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 783-8228.

NOE ORTEGA,  
*Acting Secretary*

**Fiscal Note:** 6-339. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 22. EDUCATION****PART XXIII. RECIPROCITY FOR DISTANCE EDUCATION****CHAPTER 741. (Reserved).****§ 741.1. (Reserved).** **§§ 741.11—741.13. (Reserved).** **§§ 741.21—741.23. (Reserved).**

*(Editor's Note:* The following chapter is proposed to be added and printed in regular type to enhance readability.)

**CHAPTER 741a. STATE AUTHORIZATION  
RECIPROCITY  
DEFINITIONS**

Sec.

741a.1. Definitions.

**SARA MEMBERSHIP**

741a.11. State membership in a regional compact.

741a.12. State membership in SARA.

741a.13. Institutional participation in SARA.

**FEEES**

741a.21. Fee for postsecondary institutions in this Commonwealth to participate in SARA.

741a.22. Fees nonrefundable.

741a.23. Institutional renewal to participate in SARA.

741a.24. Effective date.

**DEFINITIONS****§ 741a.1. Definitions.**

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

*Calendar year*—January 1—December 31.

*Department*—The Department of Education of this Commonwealth.

*Distance education*—

(i) Instruction offered by any means when the student and faculty member are in separate physical locations so that face-to-face communication is absent and communication is accomplished by one or more technological media. It includes real-time or delayed interaction using voice, video, data or text, or both, including instruction provided online, by correspondence, or by interactive video.

(ii) Instruction provided by means of synchronous video from an institution in this Commonwealth to additional campus sites of the same institution in this Commonwealth is not considered distance education.

(iii) Distance education is instructor-led and is not independent study.

*Portal agency*—The single entity designated to serve as the interstate point of contact for SARA questions, complaints and other communications.

*Postsecondary institution*—An institution legally authorized to award degrees at the associate level or above.

*Regional compact*—A nonprofit organization with member states dedicated to advancing education in a region. The four regional compacts are the Midwestern Higher Education Compact, the New England Board of Higher Education, the Southern Regional Education Board and the Western Interstate Commission for Higher Education.

*SARA*—*State Authorization Reciprocity Agreement*—A voluntary agreement adopted by the regional compacts to establish National standards for interstate delivery of postsecondary education through distance education.

*Tuition*—

(i) Moneys charged by the institution for instruction.

(ii) The term does not include moneys charged as fees, such as technology fees, student services fees or activities fees if those fees are noted on the invoice and in publications as fees that are separated from tuition.

**SARA MEMBERSHIP****§ 741a.11. State Membership in a regional compact.**

The Department, consistent with section 124(b) of the Public School Code of 1949 (24 P.S. § 1-124(b)), has affiliated with the Southern Regional Education Board for the sole purpose of being able to participate in SARA and facilitate interested postsecondary institutions in this Commonwealth offering distance education to students in other SARA member states.

**§ 741a.12. State Membership in SARA.**

(a) The Department will be the SARA portal agency for the Commonwealth and will employ staff as necessary to provide the services required to implement SARA.

(b) The Department's staffing and other costs related to SARA membership and responsibilities will be covered by fees paid by postsecondary institutions in accordance with §§ 741a.21 and 741a.22 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA; and fees nonrefundable).

**§ 741a.13. Institutional Participation in SARA.**

(a) Postsecondary institutions will apply annually to the Department for authorization to participate in SARA in such manner and on such forms as prescribed by the Department. If the fee submitted with the application does not correspond to the distance education enrollment data in the Federal Integrated Postsecondary Education Data System database for the most recent reporting year, the institution will be required to provide evidence to support the calculation of the fee amount.

(b) The required fees as set forth in §§ 741a.21 and 741a.22 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA; and fees nonrefundable) must accompany the application. The Department will not process an application until the fees are received.

(c) The fees established by this chapter cover the administrative costs of the Department and do not cover other fees due to other organizations.

**FEEES****§ 741a.21. Fee for postsecondary institutions in this Commonwealth to participate in SARA.**

Postsecondary institutions in this Commonwealth shall pay a fee to the Department based on tuition revenue from distance education in the most recently completed

calendar year for the initial application fee and for each annual renewal to the Department to participate in SARA.

<i>Distance Tuition Revenue Fee</i>	
\$0—9,999	\$1,000
\$10,000—\$4,999,999	\$2,000
\$5,000,000—\$19,999,999	\$3,000
\$20,000,000—\$39,999,999	\$5,000
\$40,000,000 and over	\$7,000

**§ 741a.22. Fees nonrefundable.**

(a) The fee submitted with an application is not refundable if the registration or participation is denied or if the postsecondary institution withdraws its application.

(b) No portion of the fee will be refunded upon suspension or revocation of participation or optional termination of participation.

**§ 741a.23. Institutional Renewal to Participate in SARA.**

(a) Approval for participation in SARA is valid for 1 calendar year.

(b) An application for renewal of participation is required annually in accordance with § 741a.13 (relating to institutional participation in SARA).

**§ 741a.24. Effective date.**

(a) The fees established in § 741a.21 (relating to fee for postsecondary institutions in this Commonwealth to participate in SARA) will become effective on January 1, 2023.

[Pa.B. Doc. No. 21-421. Filed for public inspection March 19, 2021, 9:00 a.m.]

**ENVIRONMENTAL QUALITY BOARD**

[ 25 PA. CODE CH. 77 ]

**Noncoal Mining Clarifications and Corrections**

The Environmental Quality Board (Board) proposes to amend Chapter 77 (relating to noncoal mining). The proposed amendments provide updates and clarifications for the requirements for mining noncoal minerals in this Commonwealth.

This proposed rulemaking was adopted by the Board at its meeting of November 17, 2020.

**A. Effective Date**

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

**B. Contact Persons**

For further information contact William Allen, Director, Bureau of Mining Programs, P.O. Box 8461, Rachel Carson State Office Building, 5th Floor, 400 Market Street, Harrisburg, PA 17105-8461, (717) 787-5015, or Christopher Minott, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, 9th Floor, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-9372. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the Pennsylvania Hamilton Relay Service by calling (800) 654-5984

(TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection’s (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select “Public Participation,” then “Environmental Quality Board”).

**C. Statutory Authority**

This proposed rulemaking is being made under the authority of section 11(a) of the Noncoal Surface Mining Conservation and Reclamation Act (act) (52 P.S. § 3311(a)), which authorizes the Board to promulgate regulations as it deems necessary to carry out the provisions and purposes of the act; section 5 of The Clean Streams Law (35 P.S. § 691.5); and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to adopt rules and regulations necessary for the performance of the work of the Department.

**D. Background and Purpose**

Chapter 77 was finalized in 1990 to implement the act. Since 1990, the Department’s experience implementing the noncoal mining regulatory program has highlighted several issues that necessitate clarification of the regulations in Chapter 77. Many of the proposed revisions are administrative in nature.

The Department worked with the Aggregate Advisory Board to develop these proposed regulations. The Aggregate Advisory Board is comprised of the Secretary of the Department of Environmental Protection, three aggregate surface mining operators, four members of the public from the Citizens Advisory Council, one member from county conservation districts, one Senate member from the majority party, one Senate member from the minority party, one House member from the majority party and one House member from the minority party. The interaction with the Aggregate Advisory Board began in October 2018 with a discussion of concepts at a Regulatory, Legislative and Technical (RLT) committee meeting. Interaction with the Aggregate Advisory Board continued with several meetings of the RLT committee throughout 2019 and 2020. On May 6, 2020, the Aggregate Advisory Board voted to concur with the Department’s recommendation that this proposed rulemaking proceed in the regulatory process.

**E. Summary of Regulatory Requirements**

**§ 77.1. Definitions**

Several amendments to the definitions are proposed. Two new terms are proposed to be defined. “Insignificant boundary correction” is added to identify the changes to permit boundaries that may require a major permit revision as described in § 77.141 (relating to permit revisions). “Local government” is defined to be used in several sections to describe the entities that must be notified of applications or actions. Clarifications are proposed for the definitions of “Noncoal minerals” and “Noncoal surface mining activities.” The definition of “Noxious plants” would be revised to update the citation of the law relating to noxious plants. The definition of “Related party” would be amended to include a director of a corporation and members and managers of Limited Liability Companies. A correction is proposed in the definition of “Sedimentation pond.”

**§ 77.51. License requirement**

Subsections (c)(1) and (e) are proposed to be revised to include a director of a corporation and members and managers of Limited Liability Companies as parties that need to be identified in an application for a mining

license and as parties who will be considered in evaluating the eligibility for holding a mining license. The revisions are proposed since Limited Liability Companies have become more common in the years since 1990. These changes are also consistent with the proposed change to the definition of "Related party" in § 77.1 (relating to definitions).

Subsection (f)(2)(i) is proposed to be revised to remove the statement about the Department notification 60 days prior to expiration and to require the submission of a mining license renewal application at least 60 days before the current license expires to be consistent with section 5(a) of the act (52 P.S. § 3305(a)).

§ 77.107. *Verification of application*

This section is proposed to be revised to eliminate the requirement for an application to be attested by a notary or district justice. Most notably, this update will facilitate the electronic submission of applications.

§ 77.108. *Permit for small noncoal operations*

Subsection (f) is proposed to be amended to add transfers to the list of applications that are exempt from the requirement for public notification in a newspaper. This will make it clear that permits for small operations may be transferred. Because transfers were previously omitted from the list, it has been unclear whether these permits are transferable as § 77.144 (relating to transfer of permit) requires newspaper public notice. This created confusion because it does not make sense that a new permit for a small operation would be exempt from the newspaper public notice, but the transfer of the same permit would be subject to the newspaper public notice requirement.

Subsection (m) is proposed to be revised to add reference to the regulatory requirement that an applicant must hold a mining license in order for the permit to be issued.

§ 77.109. *Noncoal exploration activities*

Noncoal exploration activities have been subject to confusion, because they may be authorized in various ways depending on the circumstances of the exploration. Exploration is included in the definition of "noncoal surface mining activities" in § 77.1, which suggests that it must be authorized under a permit. However, exploration may be conducted by drilling or by excavation. Exploration may be allowed by drilling upon notice to the Department. Exploration by excavation may be authorized by a permit or through acknowledgment by the Department of a permit waiver.

In these proposed regulations, § 77.113 (relating to permit waiver—noncoal exploration drilling) is proposed to be added to establish the requirements for exploration by drilling while § 77.109 (relating to noncoal exploration activities) has been updated to establish requirements for exploration activities using a combination of drilling and excavation. These updates will distinguish the two forms of exploration activity from one another and provide clarity to the regulated community.

Subsection (a) is proposed to be revised to clarify that a written notice must be provided to the Department for anyone who intends to conduct noncoal exploration in an area outside of an existing noncoal surface mining permit and to make reference to the proposed § 77.113. This section also lists the permit or waiver authorization options for exploration by excavation.

Subsection (b) is proposed to be revised to modify what information must be included in the noncoal exploration

notice to the Department. Specifically, the proposed revisions add a requirement for contact information for a representative from the entity preparing to explore and clarify that it is the amount to be removed for testing that is to be reported in the notice. Also, requirements are proposed to be added to the notice relating to what environmental protection measures are proposed to be implemented to prevent any adverse impacts to the environment from exploration activities and relating to a blast plan if explosives are needed to conduct the exploration.

Existing subsection (c) is moved to proposed § 77.113 since it relates to exploration by drilling. This results in the relettering of subsection (d) as subsection (c).

Existing subsection (e), which relates to noncoal exploration activities where minerals will be removed, is proposed to be deleted and replaced with new language in subsection (d) that sets threshold amounts for a permit waiver. There are two threshold amounts proposed. A permit waiver may be granted for noncoal exploration activities where less than 20 tons of material will be removed without justification of the amount. If the exploration is expected to need more than 20 tons, then a justification can be provided by the applicant. With justification, an upper limit of 1,000 tons is proposed for this permit waiver. The justification is related to the amount of material needed to provide valid test results for various aggregate certifications of the material. These thresholds were identified through discussions with the Aggregate Advisory Board RLT committee. The concept is that 20 tons is a relatively small amount, representing one truckload of material. The 1,000-ton threshold was identified based on the 200-ton minimum requirement of the Department of Transportation specifications for certification in Bulletin 14 with the recognition that more than one size of material may need to be produced from a particular mine.

Proposed subsection (e) describes the considerations to be made by the Department in evaluating a waiver request.

Subsection (h) proposes to delete the reference to the restoration to a slope not exceeding 35 degrees. This proposed revision is based on the fact that this slope requirement is no longer necessary due to the limited amount of material that may be removed without a permit.

Proposed subsection (k) requires compliance with Chapters 210 and 211 (relating to blaster's license; and storage, handling and use of explosives) for those exploration projects that require the use of explosives.

§ 77.113. *Permit waiver—noncoal exploration drilling*

Section 77.113 is proposed to be added to provide separate requirements for exploration conducted through drilling. This section includes the concepts currently in § 77.109(c). Subsection (a) allows for exploration to be conducted 10 days after notice to the Department unless the Department requests more information to assure compliance or if the exploration is planned for areas within the distance limitations established in § 77.504 (relating to distance limitations and areas designated as unsuitable for mining). Subsection (b) establishes a performance standard for sealing the drill holes and allows for drill holes to remain open to serve a purpose, such as to be used as a monitoring well or water well.

§ 77.121. *Public notices of filing of permit applications*

Subsection (a) is proposed to be revised to require each local government (that is, the city, borough, incorporated

town or township) where the operation is located be included in the local newspaper public notice required at the time of filing an application.

Subsection (c) is proposed to be revised to require use of certified mail rather than registered mail for notice of a proposed permit to the property owners within the proposed permit area. Registered mail is not necessary because it is unimportant to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice.

Subsection (d) is proposed to be revised to modify when the Department will publish notice in the *Pennsylvania Bulletin* of the proposed activities based on the Department's acceptance of the application rather than upon receipt. This eliminates unnecessary notices for applications that are returned and not accepted for review by the Department. The change in reference to the permit is also clarified by eliminating the modifier "complete" which is no longer needed because an application must be complete in order to be accepted.

Subsection (e) is proposed to be revised in a similar fashion to subsection (d) relating to the acceptance of the permit application and also to specify that the notice required under this subsection must be in writing. Also, the newly defined term "local government" is substituted for "city, borough, incorporated town or township," and the requirement for the notice to be sent by registered mail is eliminated. Registered mail is not necessary because it is unimportant to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice. This will also facilitate the use of electronic notices, where appropriate. The contents of the notice are also proposed to be updated to reflect the new term "local government" in subsections (e) and (f).

#### § 77.123. *Public hearings—informal conferences*

Subsection (a)(2) is proposed to be revised to change the reference from § 77.121(d) (relating to public notices of filing of permit applications) to § 77.121(e). This is a correction of an error. The reference is for identifying those parties who should be notified when an application is submitted. Section 77.121(e) lists these parties.

Subsection (b) is proposed to be revised to set the public hearing or informal conference due date based on the close of the comment period rather than on when the request was received. This eliminates the possibility of needing to have multiple hearings if more than one request is received at different times during the public comment period.

Subsection (e) is proposed to be revised to describe the results of the public hearing or informal conference in a report available to the public instead of only giving the findings of the public meeting or informal conference to each person who attended. The deadline for providing the report is proposed to be contemporaneous with the permit decision.

#### § 77.128. *Permit terms*

Subsection (b) is proposed to be revised to change the time frame for when a permit terminates from 3 years to 5 years. The 5-year term is proposed so that the term of the mining permit will be synchronized with the National Pollutant Discharge Elimination System (NPDES) permit, where applicable. NPDES permits have a term of 5 years. This subsection is also revised to allow extensions through the permit renewal process. This assures that updated information is provided before extending the permit beyond the 5-year period.

#### § 77.141. *Permit revisions*

The provisions of subsection (b) are proposed to be deleted to eliminate the requirement for submission of a major permit revision at least 180 days before undertaking the change. This time frame is unnecessary, because the Department has found that often these revisions can be acted upon more quickly than 180 days. With this proposed change incorporated, the applicant must plan the timing of their application based on the complexity of the application rather than on a flat time frame. This deletion results in the relettering of existing subsections (c) through (f) to become (b) through (e) respectively.

Existing subsection (c), relettered to be subsection (b), is proposed to be revised to add a reference to § 77.105 (relating to application contents) to describe what constitutes a complete application for revision and to add "modules" to paragraph (2) to make it clear that only the portions of the application relating to the revision must be included. Paragraph (2) is also revised to correct the typographical error where "the acts" should be "the act."

Existing subsection (d), relettered to be subsection (c), is proposed to be revised to delete "complete" from the description of the application since this is redundant with the previous subsection.

Existing subsection (e), relettered to be subsection (d), is proposed to be revised to clarify how an application for a revision that is adding acreage for support activities will be reviewed and adds an exception from this review for insignificant boundary corrections. Specifically, the reference to "the same procedures as an application for a new permit but will be processed a revision to the existing permit" is intended to allow for a permit to be revised when additional acreage for support activities is needed and to avoid the need for a smaller adjacent permit where plans have changed. The procedures relating to a new permit assure that the environmental impacts are fully vetted prior to approval of the revision. For example, the original application would have been evaluated for the potential impacts to nearby properties. Since the added area would not have been reviewed from this perspective, the additional area must be evaluated to determine if there could be any additional potential impacts for the proposed revision.

Existing subsection (f), relettered to be subsection (e), is proposed to be revised similarly as the previous subsection, but specific additional considerations are identified for the review of revisions to add acreage for mineral extraction, including the effect on hydrologic balance, the relation to the existing operation and reclamation plan, and the practicality of approving a new permit for the additional area. For example, the application for the addition would have been evaluated for the potential impacts to water supplies. Since the added area would not have been reviewed from this perspective, the additional area must be evaluated to determine if there could be any additional potential water supply impacts for the proposed revision.

Subsection (f) is proposed to be added to provide cross references to the requirements for public notice and compliance with the existing permit. This subsection also is proposed to add the requirement that each major revision may be subject to providing current environmental resources information and a review of the bond liability.

Subsection (g) is proposed to be added to identify the circumstances where the Department may require a major permit revision. These include unanticipated sub-

stantial impacts to public health, safety or environment. The impacts included are described as unanticipated and substantial. The intent is to make it clear that a permit revision is not required for impacts that were planned for in the original permit and that the impact must rise to the level of being substantial as opposed to an incidental impact. For example, a highwall failure resulting in encroachment upon areas where mining is prohibited or limited would meet the criteria of being unanticipated and substantial, requiring a major permit revision, while a highwall failure that can be easily remediated within the existing permit area is unanticipated, but it is not substantial and therefore would not require a major permit revision. Another example that illustrates the intent of this requirement is where mining is being conducted in an area prone to the development of karst features. Many of the potential impacts can be predicted based on modeling as part of an application—these impacts would not be unanticipated. However, if sinkhole development as a result of the mining occurs beyond the predicted area of influence, then this would likely require a major permit revision. Another category that may trigger the requirement for a major permit revision is when the permittee must change their plans from what was presented in the application and approved by the Department. This is intended to capture major operational changes or alterations of the post-mining configuration of the reclamation as compared with the approved plans.

§ 77.142. *Public notice of permit revision*

Section 77.142 (relating to public notice of permit revision) is proposed to be revised to add subsections (b) and (c). This necessitates the lettering of the existing single section as subsection (a). Subsection (a) includes three proposed revisions. First, in paragraph (1)(iii), “the addition of reclamation fill” for surface mining activities has been added as an example of the change in type of reclamation that would be subject to the notice requirements of § 77.121. Second, the phrase “but not limited to,” is inserted and permit area additions are proposed to be added to the examples of a physical change to the mine configuration in paragraph (1)(iv). Third, the phrase “but are not limited to” is also inserted and permit area additions are again proposed to be added to the examples of a physical change to the mine configuration in paragraph (2)(ii).

Subsection (b) is proposed to be added to include new mining or support as subject to public notice if the revision includes a lateral or vertical change in the plans. Some large quarries that pump groundwater are limited with respect to the depth to which they are authorized to mine (and pump). For example, where mining is planned for decades, it is not possible to predict the potential hydrologic impacts as the quarry goes deeper with the initial application. The operation may be approved to mine in vertical increments to allow for the reassessment of the hydrologic conditions systematically after a particular depth has been reached. More robust predictions can be made based on the updated hydrologic data available after the initial mining has been conducted as to the potential effects of deepening the operation. This vertical incremental approval necessarily includes further public participation because of the potential off-site impacts of pumping large amounts of groundwater. The reference to lateral changes is intended to include areas added to the footprint of the permit area only. This subsection also excludes incremental approvals within the previously approved permit area from the notice requirement. This

is due to the fact that the environmental impacts of these areas have already been evaluated as part of the initial application review.

Subsection (c) is proposed to be added to clarify that unaffected areas to be deleted from the footprint of the permit may be approved without public notice. This also includes restored areas that have been disturbed only by exploration by drilling.

§ 77.143. *Permit renewals*

Subsection (b)(2) is proposed to be revised to delete the reference to “a new application” and to cross reference § 77.141(d) and (e), which relate to permit revisions. This is intended to clarify that the addition of area to a permit is not integral to a renewal, but constitutes a permit revision.

Subsection (b)(8) is proposed to be revised to change “send copies of its decision to” to “notify” and append “of the Department’s decision” to clarify the requirement.

§ 77.144. *Transfer of permit*

Subsection (a) is proposed to be revised to rephrase the statement of the purpose of this section.

Subsection (b) is proposed to be revised to clarify that name changes, including those changes which result from a conversion in corporate entity, do not subject a permit to the transfer requirements. In the case of a name change, it is still the same entity holding the permit. Conversions of corporate entity provide the resulting entity with the same permit rights that the previous form of entity had.

Subsection (c) is proposed to be revised to clarify that Department approval is required for a transfer to be effective. Paragraph (4) is proposed to be revised to include the exception of small noncoal permits, which are not subject to newspaper public notice, from the public notice requirement to transfer a small noncoal permit. The inclusion of this exception clarifies that a small noncoal permit may be transferred.

§ 77.224. *Special terms and conditions for collateral bonds*

Subsection (c)(2) is proposed to be revised to delete the \$100,000 maximum amount for certificates of deposit. This insurable amount has been revised by the agencies responsible for this and could be subject to further revision. Therefore, is it not appropriate to retain the amount in the regulations. It is proposed to spell out the applicable agency names rather than using the acronyms.

§ 77.231. *Terms and conditions for liability insurance*

Subsection (b) is proposed to be revised to add that the insurance is written on an occurrence basis. Generally, insurance can be written on either a claims-made or occurrence basis. With claims-made insurance, the claim must be filed during the term of the insurance coverage. With occurrence coverage, claims may be filed as long as the damage occurred during the course of the insurance coverage. This is particularly important for the kinds of impacts associated with mining, because the impacts are not instantaneous and may take some time to manifest themselves.

Subsection (d) is proposed to be revised to clarify that notification by the insurer to the Department be made whenever changes occur affecting the adequacy of the policy, including cancellation.

Subsection (e) is proposed to be revised to increase the coverage limits for insurance. Section 5(c) of the act specifies that the amount of insurance be prescribed by regulation. The current limits have been in place since

the regulations were finalized in 1990. The proposed increase in limits is intended to reflect the increase in costs over time. The numbers are consistent with the requirements that are in place for coal mining.

Subsection (h) is proposed to be revised to delete “solely” in describing the certificate holder. There are circumstances where other parties may also be a certificate holder.

§ 77.242. *Procedures for seeking release of bond*

Subsection (g)(2) is proposed to be revised to correct the erroneous reference to subsection (e), which relates to the inspection of the reclamation work. The correct reference is subsection (f), which relates to the subject of the subsection, public hearings and informal conferences.

§ 77.291. *Applicability*

This section is proposed to be revised to refer to the act and The Clean Streams Law (35 P.S. §§ 691.1—691.1001). This revision is proposed because there are many types of violations which violate both the act and The Clean Streams Law. This revision makes it clear that penalties for these violations will be assessed using the same procedures.

§ 77.293. *Penalties*

Subsections (a) and (b) are proposed to be revised to add the reference “of the act or any rule, regulation, order of the Department or a condition of permit issued under the act” because these requirements are from the act, so they only are applicable to violations of the act.

§ 77.301. *Procedures for assessment of civil penalties*

Subsection (a), which relates to the notice of a proposed assessment, is proposed to be revised to change three things: the notice method from registered mail to certified mail, the deadline for service from 30 to 45 days, and the trigger to be the issuance of the enforcement action. Registered mail is not necessary because it is unimportant to track the progress of the mailing, whereas certified mail provides the benefit of documenting receipt of the notice. The deadline for the proposed assessment is proposed to be extended to allow for more time to establish an appropriate initial penalty amount. This will also assist in managing the Department’s workload while maintaining timeliness to assure due process. The existing regulation has the time trigger as the Department’s knowledge of the violation. This is proposed for revision, because it is not always possible to document the first knowledge of a violation. It is more appropriate to use the date of the enforcement action as this is a date that will always be easily identified.

Subsection (d)(2) is proposed to be revised to eliminate the registered mail alternative and to correct the typographical error of “in” instead of “on” in the description relating to the site identification sign, which is required to have the permittee’s address on it.

§ 77.410. *Maps, cross section and related information*

Subsection (a)(11) is proposed to be revised to use the newly defined term “local government” instead of municipality or township. The proposed revision for subsection (a)(13) corrects a typographical error.

§ 77.531. *Dams, ponds, embankments and impoundments—design, construction and maintenance*

Subsection (a) is proposed to be revised to update the name of the Natural Resources Conservation Service, which was formerly known as the Soil Conservation Service.

§ 77.532. *Surface water and groundwater monitoring*

Subsection (c) is proposed to be revised to change Chapter 92 to Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) because Chapter 92 was reserved and replaced with Chapter 92a several years ago.

§ 77.562. *Preblasting surveys*

There are several references to “preblast surveys,” which are proposed to be revised to be “preblasting surveys.” This is consistent with other references in this subchapter.

§ 77.563. *Public notice of blasting schedule*

There is a reference to “preblast survey,” which is proposed to be revised to be “preblasting survey.” This is consistent with other references in this subchapter.

§ 77.564. *Surface blasting requirements*

Subsection (f) is proposed to be revised to change the location of the 133-dB air blast limit from the main paragraph to create new subsection (f)(1). This results in existing subsection (f)(1) and (2) being renumbered as (f)(2) and (3) respectively. New subsection (f)(2) is proposed to be revised to change “lower” to “alternative” to allow for the possibility of a higher air blast level being approved. A higher air blast level may be appropriate where it is clear that the controlling structure will not be subject to damage with the higher threshold.

Subsection (i) is proposed to be revised to change the reference to a peak particle velocity of 2.0 inches per second to be to the z-curve, which is figure 1 in § 77.562 (relating to preblasting surveys). This proposed change makes the requirements more internally consistent.

Subsection (k) is revised to correct the description of the time interval to be used in determining the maximum weight of explosives that could be used. The reference in this subsection to “any 8 millisecond or greater period” is incorrect. The inclusion of “or greater” is wrong and results in the weight of explosives used in the entire blast needing to be considered in the formula. In addition, the formula term “d” is currently omitted in the description of the formula, so the proposed revision inserts “d” where it is needed. Also, in this subsection, the denominator in the formula is proposed to be changed from 50 to 90. This is consistent with the requirements in Chapter 211 (relating to storage, handling and use of explosives).

§ 77.565. *Records of blasting operations*

Several revisions are proposed for the requirements for the blast records. This is primarily an effort to provide consistency with blast record requirements in § 211.133 (relating to blast reports). In paragraphs (10) and (11), “in pounds” is proposed to be inserted for the weight of explosives, because the scaled distance formula requires the weight to be in pounds. These proposed requirements are consistent with the requirements in § 211.133, subsection (a)(14) and (15), respectively. In paragraphs (11) and (12), “8 millisecond or less” is proposed to be inserted, because the scaled distance formula is based on this time period. This is consistent with § 211.133(a)(15). Paragraph (16) is proposed to be revised to insert “total quantity and” so that the number of detonators will be reported. This is consistent with § 211.133(a)(23). Paragraph (17) is proposed to be revised to be more descriptive of what needs to be included in the sketch of the blast. This is consistent with § 211.133(a)(9). Paragraph (19) is proposed to include three instances where “seismographic” is replaced with “seismograph.” Paragraphs (22),



(23) and (24) are proposed to be added to include the scaled distance, the location of the seismographs and the type of circuit, respectively. These requirements are consistent with § 211.133, subsection (a)(2), (16) and (19), respectively.

§ 77.593. *Alternatives to contouring*

Paragraph (1)(i) is proposed to be revised to change “is likely to” to “can.” This is intended to clarify the justification needed for the alternative to contouring. The former phrase is somewhat speculative, where the latter is more concrete. Paragraph (1)(vi) is proposed to be revised to clarify the requirement. Paragraph (2) is revised to correct the error in reference to “subsection (a)” since there is no subsection (a).

§ 77.618. *Standards for successful revegetation*

Subsection (a)(2) is proposed to be revised to change the reference of “United States Department of Agriculture Soil Conservation Service” to be “Natural Resources Conservation Service,” because this agency changed its name several years ago.

§ 77.654. *Cleanup*

This section is proposed to be revised to correct “cleanup” to be two words.

§ 77.655. *Closing of underground mine openings*

This section is proposed to be revised to correct the error where two of the items were run together in subsection (a)(1)(iii). The item “to prevent access to underground workings” is deleted from this subsection and appended in this section as subsection (a)(1)(v).

§ 77.807. *Change of ownership*

The section is proposed to be revised to correct the typographical error where “chance” should be “change.”

F. *Benefits, Costs and Compliance*

*Benefits*

The revisions in this proposed rulemaking will provide clarity to mine operators regarding compliance standards. In some cases, this will result in reduced costs. Clarity in the requirements can prevent errors in applications and improve efficiency.

*Compliance costs*

Very few of the new or revised requirements are likely to increase costs. One example that will increase costs is the proposed updated insurance requirements. The increased coverage limits will increase the cost of insurance for those operators who maintain the minimum coverage amounts. However, many operators already have insurance that meets the proposed increased coverage limits.

*Compliance assistance plan*

Compliance assistance for this proposed rulemaking will be provided through the Department’s routine interaction with trade groups and individual applicants. There are about 1,200 licensed noncoal surface mining operators in this Commonwealth, most of which are small businesses that will be subject to this proposed rulemaking.

*Paperwork requirements*

This proposed rulemaking does not require additional paperwork.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred

means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This proposed rulemaking has minimal impact on pollution prevention since it is predominantly administrative, focused on updating regulations to reflect current requirements, amendments to Commonwealth statutes and references to citations, names and data sources.

H. *Sunset Review*

The Board is not establishing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 25, 2021, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by May 4, 2021.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. *Public Hearings*

If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

PATRICK McDONNELL,  
*Chairperson*

**Fiscal Note:** 7-554. No fiscal impact; (8) recommends adoption.

**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:

\* \* \* \* \*

*Impoundment*—A closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment or waste.

**Insignificant boundary correction**—A small or inconsequential change to the permit boundary to correct an error in mapping, surveying or other minor adjustment that results in no significant difference in environmental impact.

*Intermittent stream*—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

\* \* \* \* \*

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

**Local government**—A city, borough, incorporated town or township.

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

\* \* \* \* \*

*Noncoal minerals*—An aggregate or mass of mineral matter, whether or not coherent, that is extracted by surface mining. The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite, and clay. The term does not include peat[ , ]. **The term does not include** anthracite or bituminous coal or coal refuse, except as provided in section 4 of the act (52 P.S. § 3304).

*Noncoal surface mining activities*—The extraction of minerals from the earth, from waste or stockpiles or from pits or from banks by removing the strata or material that overlies or is above or between them or otherwise exposing and retrieving them from the surface. The term includes strip mining, auger mining, dredging, quarrying and leaching and the surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and

**ancillary and customary** activities related thereto. The term does not include mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings. The term does not include the following:

(i) The extraction of minerals by a landowner for the landowner's noncommercial use from land owned or leased by the landowner.

(ii) The extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes of the Department of Transportation or the extraction of minerals under construction contracts with the Department if the work is performed under a bond, contract and specifications that substantially provide for and require reclamation of the area affected in the manner provided by the act.

(iii) The handling, processing, or storage of slag on the premises of a manufacturer as a part of the manufacturing process.

(iv) Dredging operations that are carried out in the rivers and streams of this Commonwealth and in Lake Erie.

(v) The extraction, handling, processing, or storing of minerals from a building construction excavation on the site of the construction if the minerals removed are incidental to the building construction excavation, regardless of the commercial value of the minerals. For purposes of this section, the minerals removed are incidental if the excavator demonstrates that:

(A) Extraction, handling, processing or storing are conducted concurrently with construction.

(B) The area mined is limited to the area necessary to construction.

(C) The construction is reasonably related to the use proposed for the site.

(vi) The removal and sale of noncoal materials from retail outlets.

**Noxious plants**—Species that have been included on the official State list of noxious plants for the Commonwealth under [ **the Noxious Weed Control Law (3 P.S. §§ 255.1—255.11)** ] **3 Pa.C.S. Chapter 15 (relating to controlled plants and noxious weeds)**.

\* \* \* \* \*

*Recurrence interval*—The interval of time in which a precipitation event is expected, on the average, to occur once. For example, the 10-year, 24-hour precipitation event expected to occur on the average once in 10 years.

**Related party**—A partner, associate, officer, **director, Limited Liability Company member, Limited Liability Company manager**, parent corporation, subsidiary corporation, affiliate, or person by or under common control with the applicant, contractor, or subcontractor.

*Sedimentation pond*—A primary sediment control structure, including, but not limited to, a barrier, dam, or excavated depression which [ **details** ] **detains** water runoff to allow sediment to settle out. The term does not include secondary sedimentation control structures, such as straw dikes, riprap check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that secondary sedimentation structures drain to a sedimentation pond.

\* \* \* \* \*

**Subchapter B. SURFACE MINING OPERATOR'S LICENSE**

**§ 77.51. License requirement.**

\* \* \* \* \*

(c) *Identification of ownership.* The application shall indicate whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity. For business entities other than single proprietorships, the application shall contain the following information if applicable:

(1) The name and address of the applicant, including partners, associates, officers, **directors, Limited Liability Company members, Limited Liability Company managers**, parent, or subsidiary corporations.

\* \* \* \* \*

(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, **director, Limited Liability Company member, Limited Liability Company manager**, 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. A person who opposes the Department's decision on issuance or renewal of a license has the burden of proof.

(f) *License renewal requirements.*

(1) A person licensed as a noncoal surface mining operator shall renew the license annually according to the schedule established by the Department.

(2) Notice of license renewal and filing of an application for license renewal shall conform to the following:

(i) **[ The Department will notify the licensee in writing at least 60 days prior to the expiration of the current license to renew the license. The applicant shall be responsible for filing a license renewal application prior to the expiration of the current license ] The application for renewal shall be made at least 60 days before the current license expires.**

(ii) If the Department does not intend to renew a license, the Department will notify the licensee, a minimum of 60 days prior to expiration of the license. This section does not prevent the Department from not renewing the license for violations occurring or continuing within this 60-day period if the Department provides an opportunity for an informal hearing.

**Subchapter C. PERMITS AND PERMIT APPLICATIONS**

**GENERAL**

**§ 77.107. Verification of application.**

Applications for permits shall be verified by a responsible official of the applicant with a statement that the information contained in the application is true to the best of the official's information and belief[, and attested by a notary public or district justice ].

**§ 77.108. Permit for small noncoal operations.**

\* \* \* \* \*

(f) The Department will publish its decision on a small noncoal permit application and a final bond release in the *Pennsylvania Bulletin*. Permit applications, **transfers** and bond releases under this section are exempt from the newspaper public notice requirements of section 10(a) of the act (52 P.S. § 3310(a)).

\* \* \* \* \*

(m) An application for a small noncoal permit shall be reviewed, approved, or denied in accordance with § 77.126(a)(1)—(8) [ **and** ], (10) **and** (11) (relating to criteria for permit approval or denial).

**§ 77.109. Noncoal exploration activities.**

(a) A person who intends to conduct noncoal exploration outside an existing **noncoal surface mining** permit shall file with the Department a written notice of intention to explore for each exploration area at least 10 days prior to the start of exploration activities on forms provided by the Department. **Except for drilling operations as provided for in § 77.113 (relating to permit waiver—noncoal exploration drilling), no noncoal exploration activity shall occur except as authorized by either of the following:**

**(1) A letter from the Department waiving the requirement for a permit.**

**(2) A permit issued in accordance with the act and this chapter.**

(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.**

**[ (2) ] (3)** A map, at a scale of 1:24,000, of the exploration area showing the extent of the exploration area and approximate locations of drill holes, exploratory pits, trenches, and excavations.

**[ (3) ] (4)** A statement of the period of intended exploration.

**[ (4) ] (5)** The method of exploration and types of equipment to be used.

**[ (5) ] (6)** The purpose of testing.

**[ (6) ] (7)** The amount of mineral needed for testing [ **(if exploration is by test pit, trench, or excavation) that is to be removed.**

**(8) A description of the practices proposed to be followed to prevent adverse impacts to the environment as a result of the exploration activities.**

**(9) A blast plan if explosives are to be used.**

(c) **[ Exploration by drilling methods may proceed 10 days after the notice of intent to explore form is submitted to the Department unless notified otherwise by the Department to provide other information to assure compliance with the environmental acts (for example—the location of access roads) or if the area is located within the distance limitations of § 77.504 (relating to distance limitations and areas designated unsuitable for mining).**

(d) ] The Department will, except as otherwise provided in § 77.124 (relating to public availability of information in permit applications), place the notices on public file and make them available for public inspection and copying during regular office hours at the established fee.

[ (e) A person who intends to conduct noncoal exploration operations in which noncoal minerals will be removed shall, prior to conducting the exploration, obtain a permit under this chapter. Prior to removal of minerals, the Department may waive the requirement for the permit to enable the testing and analysis of noncoal properties. ]

(d) To remove material from an exploration area, a person conducting noncoal exploration shall, prior to beginning exploration obtain a noncoal mining permit under this chapter or receive a waiver from the Department. A person who receives a waiver from the Department shall still comply with the performance requirements in subsections (f)–(k). The Department may waive the requirement for a noncoal mining permit if one of the following apply:

(1) The material removed from the site will be less than 20 tons.

(2) The person conducting noncoal exploration can, to the satisfaction of the Department, justify an amount greater than 20 tons, but which may not exceed 1,000 tons.

(e) In granting a waiver under subsection (d), the Department will consider:

(1) The method of exploration proposed.

(2) The potential for adversely affecting wetlands, streams or water supplies and the designated uses and quality of the receiving stream.

(f) A person who conducts noncoal exploration activities will observe the distance limitations under § 77.504 (relating to distance limitations and areas designated unsuitable for mining).

(g) Exploration activities shall be conducted to accomplish the following:

(1) To minimize environmental impacts on roadways and vegetation.

(2) To provide erosion controls for excavated areas, including access roads, in accordance with Chapter 102 (relating to erosion and sediment control).

(3) To avoid disturbance of wetland areas.

(h) The areas affected by the noncoal exploration shall be graded to approximate original contour [ **when possible or restored to a slope not to exceed 35° unless approved by the Department § 77.594(2)(v) (relating to final slopes)** ] within 30 days after completion of exploration, and will contain no depressions which will impound water. Drill holes shall be sealed under § 77.503 (relating to casing and sealing of drilled holes). The affected areas shall be revegetated within the first planting season after completion of exploration.

(i) Noncoal exploration activities shall be subject to the applicable inspection and enforcement provisions of the Department, and Subchapters E and F (relating to civil penalties for noncoal mining activities; and enforcement and inspection).

(j) Information will be made available to the public as follows.

(1) Except as provided in paragraph (2), information submitted to the Department under this section will be made available for public inspection and copying at the appropriate district mining office.

(2) Information which pertains only to the analysis of the chemical and physical properties of the mineral (except information regarding the mineral or elemental content that is potentially toxic to the environment) will be kept confidential and will not be made a matter of public record.

**(k) Blasting in connection with noncoal exploration activity must comply with the requirements of Chapters 210 and 211 (relating to blaster's license; and storage, handling and use of explosives).**

*(Editor's Note: The following text is proposed to be added and printed in regular type to enhance readability.)*

**§ 77.113. Permit waiver—noncoal exploration drilling.**

(a) Drilling that is done solely for the purpose of exploration where only the drilled material is removed from the site does not require a permit. Exploration by drilling methods may proceed 10 days after the notice of intent to explore is received by the Department except if the following applies:

(1) The applicant is notified by the Department to provide additional information to assure compliance with the environmental acts.

(2) The area is located within the distance limitations of § 77.504 (relating to distance limitations and areas designated unsuitable for mining).

(b) All drill holes must be sealed upon completion or finished as specified in the exploration plan. Drill holes may be used as monitoring wells or water wells provided that the wells are properly constructed and developed for their intended purposes.

**REVIEW, PUBLIC PARTICIPATION, ITEMS AND CONDITIONS OF PERMIT APPLICATIONS**

**§ 77.121. Public notices of filing of permit applications.**

(a) At the time of filing an application with the Department, an applicant for a permit, transfer, renewal or revision under § 77.142 (relating to public notice of permit revision) shall place an advertisement in a local newspaper of general circulation in the locality of the proposed noncoal mining activities once a week for 4 consecutive weeks. The advertisement shall contain the following information:

(1) The name and business address of the applicant.

(2) The [ **township and county** ] **local government** and county in which the operation is located. **If the operation spans multiple jurisdictions, then each local government and county shall be listed.**

\* \* \* \* \*

(c) During the public notification period, the applicant shall notify each property owner within the proposed permit area, by [ **registered** ] **certified** mail, of the proposed permit except for surface landowners who have a completed Consent of Landowner form submitted with the application.

(d) [ **Upon receipt of a complete application** ] **Upon acceptance of an application for review**, the

Department will publish notice of the proposed activities in the *Pennsylvania Bulletin*.

(e) **[ Upon receipt of a complete application ] Upon acceptance of an application for review**, the Department will notify, **in writing**:

(1) **[ By registered mail, the city, borough, incorporated town or township ] Each local government** in which the activities are located.

(2) Federal, State and local government agencies with jurisdiction over or an interest in the area of the proposed activities.

(f) The content of the notice shall include:

(1) The application numbers.

(2) The name and business address of the applicant.

(3) **[ The township ] Each local government** and county in which the operation is located.

(4) The receiving streams.

(5) A brief description of the operation and the location.

(6) The location where a copy of the application may be inspected.

(7) Where comments on the application may be submitted.

**§ 77.123. Public hearings—informal conferences.**

(a) A person having an interest that is, or may be, adversely affected may request in writing that the Department hold a public hearing or an informal conference on an application for a permit. The request shall:

(1) Briefly summarize the issues to be raised by the requestor at the public hearing or informal conference.

(2) Be filed with the Department within 30 days after the last publication of the newspaper advertisement placed by the applicant under § 77.121(a) (relating to public notices of filing of permit applications) or within 30 days of receipt of notice by the public entities to whom notification is provided under § **[ 77.121(d) ] 77.121(e)**.

(b) Except as provided in subsection (c), if a public hearing or an informal conference is requested under subsection (a), the Department will hold a public hearing or an informal conference within 60 days following **[ the receipt of the request ] the close of the public comment period provided under § 77.122(a) (relating to opportunity for submission of written comments or objections on the permit application)**. The public hearing or informal conference will be conducted as follows:

(1) The public hearing or informal conference shall be held in the locality of the proposed mining operation.

(2) The date, time and location of the public hearing or informal conference shall be advertised by the Department in a newspaper of general circulation in the locality of the proposed mine at least 2 weeks prior to the scheduled public hearing or informal conference.

(3) The public hearing or informal conference shall be conducted by a representative of the Department who may accept oral or written statements and other relevant information from a party to the public hearing or informal conference.

(c) If the parties requesting the public hearing or informal conference agree to withdraw their request, the public hearing or informal conference need not be held.

(d) Informal conferences held under § 77.504 (relating to distance limitations and areas designated as unsuitable for mining) may be used by the Department as the public hearing or informal conference required under proposed uses or relocation of public highways.

(e) **[ The Department will give its findings of the public hearing or informal conference to the permit applicant and to each person who is a party to the public hearing or informal conference within 60 days of the public hearings or informal conference ] After the public hearing or informal conference, the Department will prepare a summary report regarding the comments submitted. This document will be made available to the public prior to, or upon approval or denial of, the application.**

(f) Within 60 days of the public hearing or informal conference, the Department will notify the applicant of its decision to approve or disapprove or of its intent to disapprove subject to the submission of additional information.

**§ 77.128. Permit terms.**

(a) A permit will be issued for the duration of the mining and reclamation operation except for the NPDES permit, which shall be renewed every 5 years.

(b) A permit will terminate if the permittee has not begun the noncoal mining activities covered by the permit within **[ 3 ] 5** years of the issuance of the permit, **unless extended in accordance with this section**. The Department may grant reasonable extensions of time for commencement of these activities upon receipt of a written statement showing that the extensions of time are necessary if litigation precludes the commencement or threatens substantial economic loss to the permittee or if there are conditions beyond the control and without the fault or negligence of the permittee. Requests for extensions shall be submitted to the Department prior to expiration of the permit. If a permit has not been activated within **[ 3 ] 5** years, **[ or the permittee has not been granted an extension, ]** the permittee may apply for a permit renewal **that includes updated permit information as described in § 77.161 (relating to responsibilities)**.

(c) A permit renewal application shall be filed under § 77.143 (relating to permit renewals).

**PERMIT REVIEWS, RENEWALS, REVISIONS AND TRANSFERS**

**§ 77.141. Permit revisions.**

(a) A revision to a permit shall be obtained for a change to the noncoal mining activities, as defined by the Department, set forth in the application.

**[ (b) The permittee shall submit the application for permit revisions which require public notification to the Department at least 180 days before undertaking the change. In emergency situations, the Department may waive the 180-day requirement.**

(c) **(b)** An application for revision shall be complete **as described in § 77.105 (relating to application contents)** and contain the following information:

(1) The permittee's name and address and permit number.

(2) A description of the proposed revisions, including appropriate maps, plans and application **modules** to

demonstrate that the proposed revision complies with the [ acts ] act, the environmental acts, and this chapter.

[ (d) ] (c) The Department will approve or disapprove the [ complete ] application for revision under § 77.127 (relating to final permit action).

[ (e) Revisions to change permit boundaries for needed support facilities may be considered by the Department.

(f) The addition of acreage for mineral extraction shall be considered as an application for a new permit, except if the Department deems the area to be an insignificant boundary correction. ]

(d) Except for an insignificant boundary correction, the addition of acreage for support activities is subject to review through the same procedures as an application for a new permit but will be a revision to the existing permit.

(e) Except for an insignificant boundary correction, the addition of acreage for mineral extraction is subject to review through the same procedure as an application for a new permit but will be a revision to an existing permit, with consideration to the following:

- (1) Effect on the hydrologic balance.
- (2) Improvement to or logical extension of the existing overall operations and reclamation plan.
- (3) Feasibility of issuing a new individual permit for the additional area.

(f) Any permit revision for circumstances described under § 77.142 (relating to public notice of permit revision) is a major revision and is subject to the provisions of § 77.121 (relating to public notices of filing of permit applications). The Department may require that any major revision include an update of related permit information to reflect current conditions or requirements including bond liability.

(g) The Department may require a permit revision in response to the following:

- (1) Unanticipated substantial impacts that affect public health, safety or the environment have occurred or are expected to occur as a result of the mining activity.
- (2) The permittee has deviated or must deviate from the approved operational information or reclamation plan.

**§ 77.142. Public notice of permit revision.**

(a) A permit revision request is subject to the notice requirements of § 77.121 (relating to public notices of filing of permit applications) under the following circumstances:

- (1) For surface mining activities:
  - (i) Discharging to a different watershed or a change in water treatment facility design which would result in a change in effluent limits or additional discharge points.
  - (ii) The change of postmining land use.
  - (iii) A change in the type of reclamation (for example—approximate original contour, terrace, water impoundment, the addition of reclamation fill or other alternative reclamation).

(iv) A physical change in the mine configuration. Physical changes include, **but are not limited to**, stream diversion structures, new or expanded haul road connections to a public highway, **permit area additions**, elimination of public highways and increases in approved pit depth.

- (v) The addition of blasting to the operation.
- (vi) The addition of mineral processing to the mining activity.

(2) For underground mining activities:
 

- (i) Discharging to a different watershed or a change in water treatment facility design which would result in a change in effluent limits or additional discharge points.

(ii) A physical change in the mine configuration. Physical changes include, **but are not limited to**, stream diversion structures, new or expanded haul road connections to a public highway, **permit area additions**, elimination of public highways and new openings.

- (iii) A change to the postmining land use.
- (iv) The addition of mineral processing to the mining activity.

**(b) Initiation of new mining or support area is subject to public notice if the plan includes a lateral or vertical change to the previously authorized permit area. Incremental mining within the permit area, as described in the permit application, is not subject to public notice.**

**(c) Deletion of area from within the permit boundary, with the exception of final bond release area, does not require public notice provided that the applicant can demonstrate that the area has not been affected by surface mining. Areas affected only by exploration by drilling may be deleted without public notice.**

**§ 77.143. Permit renewals.**

(a) *NPDES permit renewals.* An application for renewal of an NPDES permit shall be filed with the Department at least 180 days before the expiration date of the NPDES permit in question. A renewal application shall be filed in the format required by the Department.

(b) *Mine permit renewals—general requirements.*

- (1) A valid, existing permit issued by the Department will carry with it the presumption of successive renewals upon expiration of the term of the permit. Successive renewals will be available only for areas which were specifically approved by the Department on the application for the existing permit.

(2) A permit renewal will not be available for extending the acreage of the operation beyond the boundaries of the permit area approved under the existing permit. Addition of acreage to the operation will be considered [ **a new application** ] under § 77.141(d) and (e) (relating to permit revisions). A request for permit revision may accompany a request for renewal and shall be supported with the information required for application as described in this chapter.

\* \* \* \* \*

(8) The Department will [ **send copies of its decision to** ] **notify** the applicant, persons who filed objections or comments to the renewal and [ **to** ] persons who were parties to an informal conference held on the permit renewal of the Department's decision.

§ 77.144. Transfer of permit.

(a) [ A ] **No** transfer, assignment or sale of the rights granted under a permit may [ not ] be made, except as provided in this section.

(b) Permits may be reissued in a new name, **without transfer**, if there is no change in legal entity, **including name changes that result from conversions of a corporate entity**.

(c) The Department may [ allow a permittee to transfer ] **approve the transfer of** a permit to another operator if the successor operator:

(1) Meets the requirements of § 77.126(a)(6)—(9) (relating to criteria for permit approval or denial).

(2) Assumes liability for reclamation, water pollution, planting and other responsibilities under the law, rules and regulations and the terms and conditions of the permit from the date of original issuance of the permit.

(3) Furnishes the Department with an appropriate bond in the amount specified by the Department under Subchapter D (relating to bonding and insurance requirements).

(4) Submits proof of publication as required by § 77.121 (relating to public notices of filing of permit applications) **with the exception of permits issued under § 77.108 (relating to permits for small noncoal operations)**.

(5) Submits additional information to enable the Department to determine that the applicant is able to operate the mine in a manner complying with the environmental acts.

**Subchapter D. BONDING AND INSURANCE REQUIREMENTS**

**FORMS, TERMS AND CONDITIONS OF BONDS AND INSURANCE**

§ 77.224. **Special terms and conditions for collateral bonds.**

\* \* \* \* \*

(c) A collateral bond pledging certificates of deposit is subject to the following conditions:

(1) The Department will require that certificates of deposit be assigned to the Department, in writing, and that the assignment be recorded upon the books of the bank issuing the certificates.

(2) The Department will not accept an individual certificate of deposit for a denomination in excess of [ \$100,000, or ] the maximum insurable amount as determined by the [ FDIC and FSLIC ] **Federal Deposit Insurance Corporation (FDIC) and Federal Savings and Loan Insurance Corporation (FSLIC)**.

\* \* \* \* \*

§ 77.231. **Terms and conditions for liability insurance.**

\* \* \* \* \*

(b) The insurance shall **be written on an occurrence basis and** provide for personal injury and property damage protection in a total amount determined by the Department on a case by case basis, and adequate to compensate persons injured or property damaged as a result of the permittee's mining and reclamation operations and entitled to compensation under Pennsylvania law.

(c) If explosives are to be used by the permittee and loss, diminution in quantity or quality, contamination or interruption of public or private sources of water is

possible as determined by the Department, the liability insurance shall include and the certificate shall provide a rider covering personal injury and property damage from these occurrences. The applicant may provide bond under subsection (i) in lieu of insurance to cover water supply loss, diminution, contamination or interruption.

(d) The insurance shall include a rider requiring that the insurer notify the Department whenever substantive changes are made [ in the policy, including termination ] **affecting the adequacy of the policy, including cancellation** or failure to renew.

(e) Minimum insurance coverage for bodily injury shall be [ \$300,000 per person and \$500,000 aggregate; and minimum insurance coverage for property damage shall be \$300,000 for each occurrence and \$500,000 aggregate ] **\$500,000 per person and \$1 million aggregate. Minimum insurance coverage for property damage shall be \$500,000 for each occurrence and \$1 million aggregate.**

\* \* \* \* \*

(h) The certificate holder shall be [ solely ] the Department.

\* \* \* \* \*

**RELEASE OF BONDS**

§ 77.242. **Procedures for seeking release of bond.**

\* \* \* \* \*

(g) *Review by Department.* Department review and decision will be as follows:

(1) The Department will consider, during inspection, evaluation and public hearing or informal conference decisions:

(i) Whether the permittee has met the criteria for release of the bond under § 77.243.

(ii) Whether the permittee has satisfactorily completed the requirements of the reclamation plan, or relevant portions thereof, and complied with the requirements of the act, this chapter, and the conditions of the permit.

(iii) Whether pollution of surface and subsurface water is occurring or the continuance of present pollution, and the estimated cost of abating pollution.

(2) If a public hearing or informal conference has not been held under subsection [ (e) ] (f), the Department will notify the permittee in writing of its decision to release or not to release all or part of the bond.

(3) If there has been a public hearing or informal conference held, the notification of the decision shall be made to the permittee, and other interested parties, within 30 days after conclusion of the public hearing or informal conference.

(4) The notice of the decision will state the reasons for the decision, recommend corrective actions necessary to secure the release and notify the permittee and interested parties of the right to file an appeal to the decision with the EHB. An appeal shall be filed with the EHB under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and Chapter 1021 (relating to practice and procedures).

**Subchapter E. CIVIL PENALTIES FOR NONCOAL MINING ACTIVITIES**

**GENERAL PROVISIONS**

§ 77.291. **Applicability.**

This subchapter is applicable to assessments of civil penalties under [ the environmental acts and the act. ]:

(a) Section 21 of the act (52 P.S. § 3321).

(b) Section 605(b) of The Clean Streams Law (35 P.S. § 691.605(b)).

§ 77.293. Penalties.

(a) *Cessation order.* The Department will assess a civil penalty of up to \$5,000 per day for each violation of the act or any rule, regulation, order of the Department or a condition of any permit issued under the act which leads to a cessation order. If a violation involves a failure to correct within the period prescribed for its correction, a violation for which a cessation order or other abatement order has been issued, a civil penalty of at least \$750 will be assessed for each day the violation continues beyond the period prescribed for its correction.

(b) *Civil penalty.*

(1) The Department may assess a civil penalty of up to \$1000 per day for each violation of the act or any rule, regulation, order of the Department or a condition of any permit issued under the act, unless the operator demonstrates with clear and convincing evidence that the violations:

- (i) Result in no environmental damage.
- (ii) Result in no injury to persons or property.
- (iii) Are corrected within the required time prescribed for its abatement.

(2) If the violation involves a failure to correct within the period prescribed for its correction, a violation for which a cessation order or other abatement order was not issued, a civil penalty of at least \$250 will be assessed for each day the violation continues beyond the period prescribed for its correction.

PROCEDURES

§ 77.301. Procedures for assessment of civil penalties.

(a) *Initial review.* When the Department determines that a civil penalty will be assessed, it will make an initial review of the violation and will serve a copy of the results of the initial review, including the civil penalty computations, on the party responsible for the violation. The service will be by [ registered ] certified mail within [ 30 ] 45 days of the Department's [ knowledge of the violation ] issuance of the notice of violation or order.

\* \* \* \* \*

(d) *Service.* The Department will serve a copy of the civil penalty assessment on the person responsible for a violation as follows:

(1) Upon the failure of the assessed party to timely request an assessment conference on the results of the initial review.

(2) Upon the completion of an assessment conference, or upon review of timely submitted information for review by the Department, if the Department does not decide to vacate the penalty. The service will be [ registered or ] by certified mail, or by personal service. If the mail is tendered at the address of the assessed person set forth [ in ] on the sign required under § 77.502 (relating to signs and markers), or at an address at which that person is in fact located, and the person refuses to accept delivery of or to collect the mail, the requirements of this paragraph will be deemed to have been complied with upon that tender.

Subchapter G. INFORMATION ON ENVIRONMENTAL RESOURCES

§ 77.410. Maps, cross sections and related information.

(a) An application shall contain maps and plans of the proposed permit area and within 1,000 feet of the permit area, except as otherwise designated by the Department, showing the following:

\* \* \* \* \*

(11) The [ municipality or township ] local government and county.

(12) The elevation and location of test borings and core samplings.

(13) The location and extent of existing or previously deep or [ surfaced ] surface mined areas.

\* \* \* \* \*

Subchapter I. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

HYDROLOGIC BALANCE

§ 77.531. Dams, ponds, embankments and impoundments—design, construction and maintenance.

(a) Dams, ponds, embankments and impoundments shall be designed, constructed and maintained in accordance with the [ Soil ] Natural Resources Conservation Service Engineering Standard # 350 "Pond" and if applicable, Chapter 105 (relating to dam safety and waterway management).

(b) A facility under subsection (a) shall be designed and certified to the Department by a qualified registered professional engineer, if required by Chapter 105, or qualified registered land surveyor.

§ 77.532. Surface water and groundwater monitoring.

\* \* \* \* \*

(c) In addition to the monitoring and reporting requirements established by the Department under Chapter [ 92 ] 92a (relating to National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance), surface water shall be monitored to accurately measure and record the water quantity and quality of the discharges from the permit area and the effect of the discharge on the receiving waters when requested by the Department. The Department will approve the nature of data, frequency of collection, reporting requirements and the duration of the monitoring programs.

USE OF EXPLOSIVES

§ 77.562. Preblasting surveys.

(a) Preblasting surveys will not be required if blasting is designed and conducted below the levels of blasting vibration shown on Figure #1 at the nearest dwelling, school, church, commercial or institutional building neither owned nor leased by the operator. If [ preblast ] preblasting surveys are not conducted, the operator shall provide a seismograph record including both the particle velocity time-history (wave form) and the particle velocity and vibration frequency levels for each blast.

\* \* \* \* \*

(b) If the operator intends to conduct blasting at vibration levels exceeding the levels of vibration in figure #1 at the nearest dwelling, school, church, commercial or institutional building neither owned nor leased by the operator, the operator shall offer [ preblast ] preblast-



ing surveys. At least 30 days before commencement of blasting or resumption of blasting in accordance with § 77.562(a)(3)(i) the operator shall notify, in writing, the residents or owners of dwellings or other structures located within 1,000 feet (304.8 meters) of the area where blasting will occur of their right to request a preblasting survey and how to request a preblasting survey. On the request to the Department or operator by a resident or owner of a dwelling or structure that is located within 1,000 feet (304.8 meters) of the area where blasting will occur, the operator shall promptly conduct a preblasting survey of the dwelling or structure. If a dwelling or structure is renovated or added to subsequent to a [ preblast ] preblasting survey, then, upon request by the resident or owner to the Department or operator, a survey of the additions and renovations shall be performed by the operator in accordance with this section. The operator shall provide the Department with a copy of the request.

\* \* \* \* \*

§ 77.563. Public notice of blasting schedule.

(a) *Blasting schedule publication.*

(1) Copies of the schedule shall be distributed by mail to local governments and to public utilities within 1000 feet of the blasting area.

(2) The blasting schedule shall be revised, published, and distributed in accordance with this section. Advice on requesting a [ preblast ] preblasting survey need not be provided to parties advised in the original distribution under subsection (a)(1).

\* \* \* \* \*

§ 77.564. Surface blasting requirements.

\* \* \* \* \*

(f) Airblasts shall be controlled so that they do not exceed [ 133 dBL ] the airblast level specified in this subsection at a dwelling, public building, school, church or commercial or institutional structure, unless the structure is owned by the person who conducts the surface mining activities and is not leased to another person. The lessee may sign a waiver relieving the operator from meeting the airblast limitations of this subsection.

(1) Maximum decibel level. The maximum allowable airblast level is 133 dBL.

[ (1) ] (2) *Exceptions.* The Department may specify [ lower ] alternative maximum allowable airblast levels than those in this subsection for use in the vicinity of a specific blasting operation, if necessary.

[ (2) ] (3) *Monitoring.* The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The Department may require an airblast measurement of a blast and may specify the location of the requirements.

\* \* \* \* \*

(i) In blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity may not exceed [ 2.0 inches per second ] the levels of blasting vibration shown in Figure 1 in § 77.562 at the location of a dwelling, public building, school, church or commercial or institutional building or other structure designated by the Department. The maximum peak particle velocity shall be the largest of three measurements. The Department may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age

or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

(j) The maximum peak particle velocity limitation of subsection (i) does not apply at a structure owned by the permittee.

(k) When seismographs are not used to monitor peak particle velocity, the maximum weight of explosives to be detonated within any 8 millisecond [ or greater ] period may be determined by the formula [  $W = (d/50)^2$  ]  $W=(d/90)^2$  where W equals the maximum weight of explosives, in pounds, that can be detonated in any 8 millisecond period [ or greater ], and d equals the distance, in feet, from the blast to the nearest dwelling, school, church, commercial or institutional building. The development of a modified scale-distance factor may be authorized by the Department on receipt of a written request by the operator, supported by seismographic records of blasting at the mine site. If the peak particle velocity will exceed .5 inch per second with the adjusted scale-distance, § 77.562(d) shall be complied with prior to blasting at the adjusted levels.

\* \* \* \* \*

§ 77.565. Records of blasting operations.

A record of each blast shall be retained for at least 3 years and shall be available for inspection by the Department. Seismographic reports, if applicable, shall be made a part of that record. The record shall include the following data:

\* \* \* \* \*

(10) The total weight, in pounds, of explosives used.

(11) The maximum weight, in pounds, of explosives detonated per 8 millisecond or less delay intervals.

(12) The maximum number of holes detonated per 8 millisecond or less delay intervals.

\* \* \* \* \*

(16) The total quantity and type of delay detonator and delay periods used.

(17) The sketch [ of the delay pattern ] showing the number of holes, burden, spacing, and pattern dimensions of the delay pattern and point of initiation.

(18) The number of persons in the blasting crew.

(19) The [ seismographic ] seismograph and airblast records, when required, including the type of instrument, sensitivity and calibration signal of the gain setting and certification of annual calibration and the following:

(i) The [ seismographic ] seismograph or airblast level reading, or both, including exact location of the seismograph, its distance from the blast and the name of the property.

(ii) The name of the person taking the seismograph reading.

(iii) The name of person and firm analyzing the [ seismographic ] seismograph record.

(20) The reasons and conditions for an unscheduled blast.

(21) The total number of blasting caps used.

(22) The scaled distance.

**(23) The location(s) of the seismograph(s), when required.**

**(24) The type of circuit, if electric detonation is used.**

**BACKFILLING AND GRADING**

**§ 77.593. Alternatives to contouring.**

Alternative reclamation to approximate original contour may be authorized as follows:

(1) The applicant shall demonstrate that the proposed operation will be carried out over a substantial period of time and that the volume of mineral to be removed is large compared to the overburden to restore the area to approximate original contour. The applicant shall provide a description of the alternative and demonstrate that:

(i) The alternative to contouring [ **is likely to** ] **can** be achieved.

(ii) The alternative poses no actual or potential threat to public health or safety.

(iii) The alternative poses no actual or potential threat to water diminution, contamination, interruption or pollution.

(iv) The alternative is consistent with applicable land use policies, plans and programs.

(v) The alternative is consistent with Federal, State or local law.

(vi) The alternative is [ **capable of supporting** ] the highest or best use [ **it can reasonably support** ] **that can reasonably be supported** after mining and reclamation is completed.

(2) If the applicant does not meet the requirements of [ **subsection (a)** ] **paragraph (1)**, an alternative to contouring may be authorized if the applicant demonstrates that the operation will either restore the land affected to a condition capable of supporting the uses it was capable of supporting prior to mining or to a higher or better use. The applicant shall demonstrate that:

\* \* \* \* \*

**REVEGETATION**

**§ 77.618. Standards for successful revegetation.**

(a) When the approved postmining land use is cropland:

(1) The standards for successful revegetation shall be based upon crop productivity or yield.

(2) The approved standard shall be the average yields per acre for the crop and soil type as specified in the Soil Surveys of the United States Department of Agriculture [ **Soil** ] **Natural Resources** Conservation Service.

(3) The productivity or yield of the mined area shall be equal to or greater than the approved standard for the last two consecutive growing seasons of the 5-year responsibility period established in § 77.615 (relating to species). Productivity or yield shall be considered equal if production or yield is at least 90% of the approved standard.

(b) When the approved postmining land use is other than cropland:

(1) The standards for successful revegetation shall be determined by ground cover.

(2) The approved standard shall be the percent ground cover of the vegetation which exists on the proposed area to be affected by surface mining activities. The Department will not approve less than a minimum of 70% ground cover of permanent plant species with not more than 1% of the area having less than 30% ground cover with no single or contiguous area having less than 30% ground cover exceeding 3000 square feet. When woody species are planted in mixture with herbaceous species, these standards shall be met and a minimum of 400 woody plants per acre shall be established unless alternate plans are approved or required by the Department. On slopes greater than 20 degrees, the minimum number of woody plants shall be 600 per acre.

(3) The percent of ground cover of the mined area shall meet the standards of paragraph (2) to qualify for Reclamation Stage I and Reclamation Stage II approval.

(4) For purposes of this subsection, the term “herbaceous species” means grasses, legumes and nonleguminous forbs. The term “woody plants” means woody shrubs, trees and vines.

**CESSATION AND COMPLETION OF MINING**

**§ 77.654. [ **Cleanup** ] **Clean up.****

Upon completion of mining, the operator shall remove and [ **cleanup** ] **clean up** temporary unused structures, facilities, equipment, machines, tools, parts or other materials, property, debris or junk that were used in or resulted from the surface mining activity.

**§ 77.655. Closing of underground mine openings.**

(a) *Mine openings.*

(1) Upon completion of mining, a mine opening, except those approved for water monitoring or otherwise managed in a manner approved by the Department, shall be closed:

(i) To prevent degradation of surface waters and groundwaters.

(ii) To assist in returning the groundwater as near to its premining level as possible.

(iii) To assist in returning the hydrologic balance as near to its premining condition as possible [ **to prevent access to underground workings** ].

(iv) To ensure the safety of people.

**(v) To prevent access to underground workings.**

(2) Prior to closing a mine opening, the plan for the closing shall be approved by the Department.

\* \* \* \* \*

**Subchapter J. GENERAL PERMITS**

**§ 77.807. Change of ownership.**

For an activity requiring registration under this section, an amended registration shall be filed if there is a [ **chance** ] **change** of ownership of the entity conducting the surface mining activities.

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