

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></p>	
<p>(1) Agency: Department of Environmental Protection</p>		<p>2016 FEB 17 PM 3:10</p>	
<p>(2) Agency Number: Identification Number: 7-522</p>		<p>IRRC Number: 3138</p>	
<p>(3) PA Code Cite: 25 Pa. Code Chapters 210 & 211</p>			
<p>(4) Short Title: Handling and Use of Explosives</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov Secondary Contact: Patrick McDonnell 783-8727, pmcdonnell@pa.gov</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The proposed rulemaking revises current regulations to address the use of explosives for seismic exploration. While permits are currently required for this activity, a supplement to the Department's blasting activity permit application form is necessary, because detailed information is needed for site security and regulatory compliance. This seismic supplement form provides the applicant an opportunity to provide the detailed information. The specifications for this additional information are included in this proposed rulemaking. The rulemaking also updates explosives use requirements and enforcement mechanisms, and eliminates antiquated requirements. The updated requirements will result in more consistency between the requirements for construction blasting and blasting for mining operations. Regarding enforcement, the current regulations entail criminal penalties for blasting-related violations, imposed by means of summary citations and possible misdemeanor charges. The proposed rulemaking provides a system for issuing civil penalty assessments for such violations. The proposed rulemaking also includes a revised fee schedule to cover costs associated with various permit-related work, license renewals, and required on-site safety inspections.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>This proposed rulemaking is promulgated under the authority of Sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 & 510-20); Sections 3 and 7 of the act of July 1, 1937 (P. L. 2681, No. 537) (73 P. S. §§ 157 & 161); Section 3 of the act of July 10, 1957 (P. L. 685, No. 362) (73 P. S. § 166); Reorganization Plan No. 8 of 1981 (71 P. S. § 751-35) (transferring powers and duties conferred under 1937 and 1957 explosives acts from Department of Labor and Industry to Department</p>			

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of Environmental Resources); Section 2(f) of the act of May 18, 1937 (43 P.S. § 25-2(f)) (general workplace safety law regarding “pits, quarries, [noncoal mines], trenches, excavations, and similar operations”); Reorganization Plan No. 2 of 1975 (71 P. S. § 751-22) (transferring powers and duties conferred under 1937 workplace safety law regarding pits, quarries, etc., from Department of Labor and Industry to Department of Environmental Resources); Section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b); and Section 11(e) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311(e)).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The rulemaking is not mandated by any federal or state law.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The blasting and explosives regulations were promulgated in 1972-73, and have undergone only minor revisions since that time. The proposed rulemaking addresses deficiencies in the program created by the lag between advancement in the industry and the lack of meaningful revisions to the regulatory framework since 1973. First, the proposed rulemaking revises current regulations to address the use of explosives for seismic exploration. The use of explosives for seismic exploration is fundamentally different than most other uses of explosives. For example, seismic exploration often necessitates leaving explosive charges in the ground for extended periods of time, and the proposed regulations specify the security measures needed to protect the public safety under these circumstances. The Department has developed an interim seismic supplement to address safety issues at seismic exploration sites. The proposed rulemaking will codify these requirements, providing certainty to the regulated community regarding the regulatory framework for seismic exploration.

The proposed rulemaking also updates explosives use requirements to reflect current practices, eliminates antiquated requirements, and provides a more effective enforcement mechanism. The updated technical requirements will result in more consistency between the requirements for construction blasting and blasting for mining operations, and increase safety for both operators and the public. Regarding enforcement, the current regulations entail criminal penalties for blasting-related violations, imposed by means of summary citations and possible misdemeanor charges. The proposed rulemaking provides a system for issuing civil penalty assessments for such violations, which will provide more efficiency and flexibility to the benefit of both the Department and the regulated community.

The proposed rulemaking also includes a revised fee schedule, which is necessary to cover costs associated with various permit-related work, license renewals, and required on-site safety inspections.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No. The proposed regulation relies upon the federal Bureau of Alcohol Tobacco Firearms and Explosives (ATF) requirements for background checks and approvals in order to possess or use explosives in the U.S. Under this program, an interested party applies for a Federal Explosives License through the ATF. The ATF commences a full review of the application and supporting materials (such as employee data, fingerprint cards, and photographs), and conducts an electronic background check on all "responsible persons" identified on the application.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The fees are in line with those in other states. For example, the relevant permits and licenses in Virginia range between \$100 - \$250. This is comparable to the fee schedule in the proposed rulemaking. Pennsylvania will remain in a competitive position when compared with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The mining regulations in Chapters 77 and 86 require compliance with Chapters 210 and 211. The revisions to the explosives regulations will bring consistency to the use of explosives whether it is for mining, construction or other purposes.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department reviewed the proposed rulemaking with the Mining and Reclamation Advisory Board and the Aggregate Advisory Board since the mining regulations require compliance with Chapters 210 and 211. Outreach with the broader explosives regulated community was accomplished through presentations to the Pennsylvania chapters of the International Society of Explosives Engineers and the trade group representing the seismic exploration contractors. Informal discussions were also held with individual stakeholders.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Approximately 2,000 individuals are licensed blasters in Pennsylvania. The bulk of the activity in Pennsylvania is conducted by large corporations, including several multinational corporations. However, the regulated community is comprised of about 450 businesses, most of which are small businesses that will be subject to this regulation. The regulations will apply consistently among all operations for small and large businesses alike because the effects are the same regardless of who is conducting the blasting.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Approximately 450 companies store explosives or conduct blasting operations in Pennsylvania and will be subject to this regulation. The 2,000 individual licensed blasters in Pennsylvania will be required to comply.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

These regulations will increase the cost of storing explosives, and using explosives as a permittee or licensed blaster. A fee report form has been included with this proposed rulemaking. The proposed fees represent reasonable user fees that cover the cost of operating the permitting program, which provides a public safety benefit.

Approximately 450 small businesses will be subject to this rulemaking. The proposed rulemaking updates many of the technical requirements related to use and storage of explosives, increases licensing fees, and provides a system for the assessment of civil penalties. Because these small businesses account for almost all explosives storage and blasting operators in the Commonwealth, no less stringent requirements exist for small businesses that will accomplish the goals of this rulemaking: improving public safety and covering the cost of operating the regulatory program. The actual and potential costs associated with the regulations will be borne by the regulated community. However, this rulemaking is not expected to significantly increase operational costs to these businesses.

This proposed regulation creates no social impact. The proposed technical updates merely reflect current realities and practices in the blasting and explosives industry.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The increased costs to the regulated community reflected by the proposed fee schedule are necessary to support the explosives program without reliance on general fund monies. The compliance costs are outweighed by the enhanced safety provided by routine safety inspections and transparent record-keeping. Any cost to an individual operator to meet new technical requirements that reflect industry-driven best practices, as opposed to antiquated practices adopted by Pennsylvania's rulemaking in 1973, is outweighed by the improvement to safety of both the operators and the general public. Moreover, these costs should be low because most operators should already be implementing many of these newer practices. Any potential costs associated with imposition of civil penalties are outweighed by the efficiency gained over the current system involving summary offenses and criminal proceedings.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The new blasting activity permit fees are expected to cost the permittees, collectively, about \$65,000 per year. This is based on about 500 applications per year at a cost of \$130 per application. Increased magazine licensing fees are expected to cost the regulated community about \$175,000 per year. Increased blaster license fees will cost each individual blaster an additional \$50 per year.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation will have a minimal impact to local governments. There are a few municipalities that are licensed to store explosives, typically for bomb squads.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

No known additional costs to the state government are expected.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The additional reporting, recordkeeping or other paperwork will not be substantial because the requirements currently exist and are only being clarified. Some additional data will need to be reported but it can accompany the reports that are currently required. Some of the forms currently used may need to be revised, but these will depend on the final regulation.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community	\$0	\$0	\$10,000	\$10,000	\$10,000	\$10,000
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$10,000	\$10,000	\$10,000	\$10,000
Total Savings	\$0	\$0	\$20,000	\$20,000	\$20,000	\$20,000
COSTS:						
Regulated Community	\$0	\$0	\$240,000	\$240,000	\$240,000	\$240,000
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$240,000	\$240,000	\$240,000	\$240,000

REVENUE LOSSES:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Environmental Protection Operations 160-10381	\$77,359,000	\$74,547,000	\$75,184,000	\$84,438,000
Environmental Program Management 161-10382	\$27,755,000	\$24,965,000	\$25,733,000	\$28,517,000
Noncoal Srf Mng Fund 280-20101	\$3,382,000	\$3,059,000	\$3,045,000	\$3,547,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

An estimated 400 small businesses will be subject to this proposed regulation. This regulation is not expected to have an adverse impact on small businesses. No alternative methods to accomplish the revenue generation and public safety elements of this proposed rulemaking are available.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

No special provisions focus on the needs of minorities, the elderly, small businesses or farmers.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternate regulatory provisions considered to be less burdensome were identified during the development of the proposed rulemaking.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

These other regulatory methods were not considered because the impact of blasting is not related to whether it is conducted by a small or large business. Ultimately, regulatory compliance puts all of the regulated community in the best position to show that no adverse effects to the public will result from the handling, use or storage of explosives.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The data used in the development of the proposed rulemaking is related to the calculations of the proposed fees. The fee amounts are based on a workload planning tool used by the Department to manage staffing levels. For example, for a blasting activity permit review the workload analysis assigns 2 hours of time. The salary for a blasting and explosives inspector is \$34.65 per hour, benefits and overhead amount to about 80% of the salary cost and rounding results in the fee of \$130.

(29) Include a schedule for review of the regulation including:

- | | |
|---|-----------------|
| A. The date by which the agency must receive public comments: | Quarter 1, 2016 |
| B. The date or dates on which public meetings or hearings will be held: | NA |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | Quarter 3, 2016 |
| D. The expected effective date of the final-form regulation: | Quarter 4, 2016 |
| E. The date by which compliance with the final-form regulation will be required: | Quarter 4, 2016 |
| F. The date by which required permits, licenses or other approvals must be obtained: | Quarter 4, 2016 |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

Effectiveness will be gauged through ongoing interaction with the blasting industry, advisory boards and the public. The ultimate test is the prevention of adverse impacts. The primary purpose of Chapters 210 and 211 is to prevent property damage and personal injuries.

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FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
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(Pursuant to Commonwealth Documents Law)

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

Amy M. Elliott

By: (Deputy Attorney General)

JAN 28 2016
DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

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

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-522

DATE OF ADOPTION September 15, 2015

BY *John Quigley*

TITLE JOHN QUIGLEY
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive of Independent Agencies

BY *[Signature]*

OCT 15 2015

DATE OF APPROVAL

(~~Executive Deputy General Counsel~~)
(~~Chief Counsel - Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Handling and Use of Explosives

25 Pa. Code, Chapters 210 and 211

ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CHS. 210 & 211]
Handling and Use of Explosives

The Environmental Quality Board (Board) proposes to amend the explosives regulations at 25 Pa. Code Chapter 210 (relating to Blasters' License) and 25 Pa. Code Chapter 211 (relating to Storage, Handling and Use of Explosives).

This proposed rulemaking was adopted by the Board at its meeting of September 15, 2015.

A. Effective Date

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

B. Contact Persons

For further information, contact Thomas Callaghan, PG, Director, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015; or Joseph Iole, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (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.state.pa.us (select: "Public Participation Center," then select "The Environmental Quality Board").

C. Statutory Authority

This proposed rulemaking is promulgated under the authority of Sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 & 510-20); Sections 3 and 7 of the act of July 1, 1937 (P. L. 2681, No. 537) (73 P. S. §§ 157 & 161); Section 3 of the act of July 10, 1957 (P. L. 685, No. 362) (73 P. S. § 166); Reorganization Plan No. 8 of 1981 (71 P. S. § 751-35) (transferring powers and duties conferred under 1937 and 1957 explosives acts from Department of Labor and Industry to Department of Environmental Resources); Section 2(f) of the act of May 18, 1937 (43 P. S. § 25-2(f)) (general workplace safety law regarding "pits, quarries, [noncoal] mines, trenches, excavations, and similar operations"); Reorganization Plan No. 2 of 1975 (71 P. S. § 751-22) (transferring powers and duties conferred under 1937 workplace safety law regarding pits, quarries, etc., from Department of Labor and Industry to Department of Environmental Resources); Section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b); and Section 11(e) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311(e)).

D. Background and Purpose

The proposed rulemaking revises explosive regulations to address blasting activities for seismic exploration. While permits are currently required for this activity, a supplement to the Department's blasting activity permit application form is necessary, because detailed information is needed for site security and regulatory compliance. This seismic supplement form provides the applicant an opportunity to provide the detailed information. The specifications for this additional information are included in this proposed rulemaking. For example, it is often necessary for explosive charges to remain in the ground for extended periods of time-the regulations specify the security measures needed to protect the public safety. The proposed rulemaking will codify requirements, providing certainty to the regulated community regarding the regulatory framework for seismic exploration. The rulemaking also updates explosives use requirements to reflect current practices, eliminates antiquated requirements, and provides a more effective enforcement mechanism. The updated requirements will result in more consistency between the requirements for construction blasting and blasting for mining operations. Regarding enforcement, the current regulations entail criminal penalties for blasting-related violations, imposed by means of summary citations and possible misdemeanor charges. The proposed rulemaking provides a system for issuing civil penalty assessments for such violations. The proposed rulemaking also includes a revised fee schedule to cover costs associated with various permit-related work, license renewals, and required on-site safety inspections.

Advisory Board Collaboration and Outreach

Because the mining regulations require compliance with Chapters 210 and 211, the Department reviewed the proposed rulemaking with the Mining and Reclamation Advisory Board (MRAB) and the Aggregate Advisory Board. On April 23, 2015, the MRAB voted to recommend that the proposed rulemaking proceed. On May 20, 2015, the Aggregate Advisory Board voted to recommend the same.

There is no advisory board for the use of explosives for construction or seismic exploration. The Department did outreach through the trade groups for these industry sectors and with the Pennsylvania Chapters of the International Society of Explosives Engineers.

E. Summary of Proposed Regulatory Requirements

Section 210.11 Definitions

The proposed rulemaking includes the addition of definitions of "ATF," "employee possessor," "explosives materials," "limited" and "responsible person." The term "limited" is being added as a category of Blaster's License. This is the category that blasters who use explosives for activities where blasting is not related to excavation or demolition and which applies to seismic exploration operations. Other explosives users who fit within the limited category include those who detonate or supervise the loading of explosives charges in well perforation operations or industrial processes. The other definitions are being added because the blaster's license requirements are coordinated with the requirements of the federal Bureau of Alcohol, Tobacco,

Firearms and Explosives (ATF). The ATF regulations require background checks for explosives users so there is no need for the Department to duplicate this effort.

Section 210.13 General

The proposed rulemaking adds subsection (b) and labels existing subsections (b) through (d) to be (c) through (e). Subsection (b) requires verification that a person applying for a Blaster's License has complied with the ATF requirements.

Section 210.15 License application

The proposed rulemaking amends subsection 210.15(a) to increase the fee amount for a new blaster's license from \$50 to \$150, in order to cover the costs for administering the blaster's certification program.

Section 210.16 Examinations

The proposed rulemaking revises subsection 210.16(c) to add the timeframe of two weeks to the prior notice needed in order to avoid forfeiture of the application fee if an applicant fails to appear for a Blaster's License examination. This is necessary as the Department needs to be able to plan for classes to provide sufficient resources.

Section 210.17 Issuance and renewal of licenses

The proposed rulemaking revises subsection 210.17(a) to delete the "seismic and pole line" and "well perforation" categories of Blaster's licenses and add a category for "law enforcement." The deleted categories are properly classified under the limited category. The law enforcement category is added to reflect the unique circumstances related to the use of explosives for training by police bomb squads and for regulatory officials. Subsection 210.17(d) is revised to insert "a minimum of" to modify the 8 hours of continuing education required for each three-year renewal period. Subsection 210.17(e) is revised to increase the fee for a Blaster's license renewal from \$30 to \$150.

Section 210.19 Suspension, modification and revocation

The proposed regulations revise Section 210.19 to add a reference to Chapter 77 (relating to Noncoal Mining), Chapter 87 (relating to Surface Mining of Coal) and Chapter 88 (relating to Anthracite Coal) in order to clarify that blasting violations at mine sites are also included in the violations to be considered for suspension, modification or revocation actions. The phrase "in surface applications" is deleted from the description in order to clarify that violations in the underground mining context are also to be included.

Section 210.20 Fees

The proposed rulemaking adds Section 210.20 in order to impose an additional fee of \$10 per year for administering a Blaster's License. This fee is related to the evaluation of continuing education requirements and confirmation that requirements of the ATF are met.

Section 211.101 Definitions

Section 211.101 is being revised to add and delete some definitions and to revise two definitions. The term "Acts" is added in order to provide a reference to the explosive safety laws of 1937 and 1957. The term "Annual administration fee" is added in order to implement new fees for administering, blasting licenses and permits. "ATF" is being added. The definition for "blast area" is being revised to clarify that this area must include the area necessary to be secure to prevent injuries. "Cube root scaled distance" is added to evaluate the potential effects of air blasts from demolition blasting for permit review. "Display fireworks" is deleted because it is no longer used in Chapter 211-the most recent revision in 2001 eliminated the need for the definition but it was inadvertently left in the regulations at that time. "Employee possessor" is added in order to implement the cross reference with the ATF requirements. "Environmental Hearing Board or EHB" is being added because it is referred to in the civil penalty subchapter. The term "explosive" is being deleted and is replaced with "Explosive materials" in order to be consistent with the ATF requirements. The definition of "Flyrock" is revised to provide clarity through more detail. "Nuisance" is added for use relating to enforcement actions by the Department. "Purchase" is being deleted because the requirement for a permit to purchase is being eliminated in the proposed rulemaking. "Responsible person" is added in order to implement the cross reference with the ATF requirements. "Sale or sell" is being deleted because the requirement for a permit to sell is being eliminated in the proposed rulemaking. ATF has rules for the sales and purchase of explosives which are more stringent than the Department's current rules. "Unauthorized detonation of explosives," "Unauthorized handling and use of explosives" and "Unauthorized storage of explosives" are being added so it is clear that the Department can take enforcement action when these illegal activities occur.

Section 211.102 Scope

Subsection (a) is revised to eliminate the reference to "purchasing and selling" since the rulemaking is removing the requirement to have a permit to purchase or a permit to sell. This section is also being revised to clarify which regulations are applicable to underground mining. Subsection (b) is revised to eliminate the reference to "the purchase or sale of explosives"

Section 211.103 Enforcement

Subsection (a) is revised to add that the Department may issue orders for violations and to require corrective actions. Subsection (c) is added to cross-reference the mining-specific explosives regulations and to include interference with the Department and falsification of records as violations. Subsection (d) establishes a permit and license block for violations of state and federal explosives requirements. Persons with an outstanding violation will not be eligible for a permit or license until the outstanding violation is corrected.

Section 211.112 Magazine license and fees

The proposed rulemaking adds subsection (b) to require verification of compliance with ATF requirements prior to approval of a storage magazine license by the Department. The insertion of subsection (b) requires the relettering of existing sections (b) through (d) to be (c) through (e). Newly relettered subsection (d) is revised to remove the restrictions on the expiration date and period of time that a magazine license may be issued for. This will allow the Department to more efficiently manage the workload of processing magazine license renewals by preventing all of the applications from being due every year by December 31. The Department may allow for storage magazine licenses to be renewed for more than a one-year period.

Section 211.113 Application contents

The proposed rulemaking amends subsection (b)(1) to add the ATF license or permit number as required information for a magazine license application.

Section 211.115 Standards for classifying and storing explosives and constructing, maintaining and siting magazines

The proposed rulemaking adds subsection (j) to require that a magazine licensee has a person who is available to respond to emergencies and that the Department be granted access to the magazines within 4 hours of requesting access to the magazines to conduct inspections.

Section 211.116 Decommissioning magazines

Section 211.116 is added to provide the requirements for when an explosives storage magazine license is no longer valid. When magazines are no longer used, a process to ensure that the explosives are removed from the magazines and either used or moved to another storage location is necessary for public safety. In a recent case, a magazine from a long-closed sporting goods store was scrapped without being emptied. A worker was fatally injured while cutting up the magazine.

Section 211.117 Daily summary of magazine transactions

Section 211.117 is added to require that the explosives inventory records required by ATF be made available to the Department upon request.

Section 211.121 General Requirements

Revisions are proposed in subsections (a), (b), and (d) to reflect the elimination of the requirement for permits to purchase and permits to sell. In addition, subsection (f) is added in order to clarify that three parties are each responsible for compliance with permits -- the permittee, the listed subcontractor or subcontractors, and the blaster-in-charge.

Section 211.122 Permits to sell explosives

This section is deleted in order to eliminate the requirement to have a permit in order to sell explosives in Pennsylvania. The requirement to have a permit to sell explosives predates the requirement for a blasting activity permit and the more stringent ATF requirements put in place in the aftermath of the Oklahoma City bombing. These more recent requirements render the permit to sell explosives obsolete.

Section 211.123 Permits to purchase explosives

This section is deleted in order to eliminate the requirement to have a permit in order to purchase explosives in Pennsylvania. The rationale for permits to sell also applies to permits to purchase. The recent requirements render the permit to purchase explosives obsolete.

Section 211.124 Blasting activity permits

Subsection (a) is revised to require that an application for a blasting activity permit be prepared by a blaster licensed in a category that would be required to conduct the blasting proposed under the application. For example, a blaster licensed in the limited category would not be eligible to prepare a blasting activity permit application to conduct blasting for a trenching and construction project. Subsections (a)(2) and (a)(3) are being added to require a signature by the applicant and documentation of the ATF authorization for the applicant. Under the existing regulations, only the licensed blaster's signature is required. Requiring the applicant to sign provides documentation that the permit holder has requested the authorization to be granted under the blasting activity permit. The requirement for documentation of the ATF authorization confirms that the applicant or contract blasting company meets the federal regulatory standards.

The insertion of subsections (a)(2) and (a)(3) necessitates the renumbering of existing subsections (a)(2) through (a)(6) to be (a)(4) through (a)(8). Proposed subsection (a)(4) is revised to state more clearly the requirement for a contact person to be listed on an application. Proposed subsection (a)(6) is revised to include the term "specific" as a modifier for the types of explosives to be used. Different explosives have different characteristics and densities which affect how the explosives perform when detonated and the quantity per volume of the explosives loaded into a borehole. For example, some blasting agent blends have higher detonation velocities than others. Blasting agents with higher detonation velocities produce a stronger shock wave which is ideal for breaking harder rock such as granite. Blasting agent blends with lower detonation velocity produce greater gas pressure and are ideal for breaking sandstone or hard shale. Blast performance is related to the level adverse effects with more efficient blasts resulting in less adverse effects. Including the specific type of explosives in a blasting activity permit application helps the permit reviewer better understand the intent of the applicant so the reviewer can make an informed decision on the feasibility of the activity proposed on the application resulting in regulatory compliance. Proposed subsection (a)(9) is added to require the minimum scaled distance to be included in the application and to specify that for demolition projects the scaled distance to be used is the cube root scaled distance. Scaled distance is an important planning tool in order to limit the adverse effects of blasting. Cube root scaled

distance is used to plan for the effects of air blast which is the most common impact of demolition blasting.

The insertion of subsection (a)(9) necessitates the renumbering of subsections (a)(7) through (a)(17) to be (a)(10) through (a)(20).

Proposed subsection (a)(10) is revised to include that public roads, buildings or other structures must be shown on the map submitted with the application. Proposed subsection (a)(14) is revised to increase the minimum required liability insurance limits and to require that the permittee be covered by the insurance for what is widely accepted as a minimum industry standard amount. Proposed subsection (a)(17) provides standardization for the requirement for identifying the building that will be closest to the blasting. Subsection (a)(20) is revised to change the minimum distance from 200 feet to 300 feet, or another distance to be specified by the applicant or the Department in the permit, for when notification of residents is required. This is necessary due to the potential effects of carbon monoxide produced by blasts. Subsection (a)(21) is added to require specific loading plans describing the ranges of blast design parameter dimensions to more accurately describe how blasts are to be designed and better evaluate the feasibility of the blasting activity to be conducted in compliance with the regulations. Blast design parameter dimensions can be compared to widely accepted norms to evaluate feasibility. Subsection (a)(22) is added to require a description of the stemming material which is proposed to be used. Drill cuttings or crushed stone are typically used as stemming. While drill cuttings may be effective in some cases, crushed stone is better to ensure that the energy of the detonation of the explosives is contained within the rock. In some cases, such as when blasting is conducted in close proximity to people or structures, the only reasonable type of stemming is crushed stone.

Subsection (e) is added to require that the blaster-in-charge have the blasting activity permit or blast plan in his or her possession. This helps assure that the blasting will be conducted as planned and approved.

Section 211.125 Blasting activity permit-by-rule

Subsection (a) is revised to exclude demolition and seismic exploration projects from the automatic approval associated with the permit-by-rule. It is necessary to permit blasting for demolition and seismic exploration with individual permits because these uses of explosives are complex and require site-specific planning.

Section 211.126 Fees

Section 211.126 is added to impose fees for the first time for blasting activity permit applications, magazine security plan applications and revisions, magazine decommissioning and monitoring magazines. The fees are based upon the Department's costs for personnel to complete the work. A lower fee is proposed for a blasting activity permit filed on-line than for one filed by way of a paper application because it is more efficient to process the applications which are filed electronically. Magazine security plan review requires a site visit by the blasting and explosives inspector in order to confirm that the proposed security measures will be effective in the location where the explosives storage is proposed. Magazine decommissioning requires an

inspection to confirm that the magazine has been emptied of the explosives. The monitoring fee is based upon inspecting a magazine at least every other year to determine compliance with the performance standards for explosives storage.

Section 211.131 Sales records

This section is deleted to implement the elimination of the requirement for permits to sell explosives.

Section 211.132 Purchase records

This section is deleted to implement the elimination of the requirement for permits to purchase explosives.

Section 211.133 Blast Reports

The proposed regulations amend Section 211.133 to provide clarifications about the information needed to document each blast. These revisions provide specificity about how to comply with the general requirement in subsection (a) “to provide the Department with sufficient information to reconstruct the conditions and events surrounding a blast.” Subsection (a)(1) is revised to specify that the blast location must be identified using at least one corner of the blast pattern as a reference point. Subsection (a)(2) is added to require the distance and direction from the blast to the location where seismograph monitoring was done. Subsection (a)(3) is added to specify that the latitude and longitude is required for these monitoring locations and that a 911 address be provided for buildings where monitoring is done.

Existing subsections (a)(2) through (a)(6) are renumbered to be (a)(4) through (a)(8), respectively, due to the insertion of new subsections (a)(2) and (a)(3). Existing subsection (a)(7) is renumbered and revised to add the delay timing and description of the ground around the blast site to required items to be included on the sketch which must accompany the blast record. This information is needed in order to verify the amount of explosives and the number of holes or decks detonated per delay period and to determine the degree of horizontal relief provided for the blast, which affects levels of adverse effects such as ground vibration and the risk of flyrock.

Existing subsection (a)(8) is renumbered to be (a)(10) and is revised to specify that the diameter and depth of each blast hole is needed on the blast record. To accurately describe how a blast was loaded, the diameter and depth of each hole must be provided rather than ranges or averages.

Existing subsection (a)(9) is renumbered to be (a)(11). New subsection (a)(12) is added to specify that the amount of explosives loaded in each hole needs to be reported. Subsection 211.154 (f)(5) requires that while loading a blast hole, each blast hole shall be logged throughout the loading process to measure the amount and location of explosives placed in the blast hole and that the information is to be recorded on the blast report required by 211.133. This regulatory requirement is met by specifying that the amount of explosives loaded in each borehole be provided on blast reports.

Existing subsection (a)(10) is renumbered to be (a)(13). Existing subsection (a)(11) is renumbered to be (a)(14) and revised to insert the requirement to include the product density for bulk blasting agents and the weight for packaged blasting agents. This information is needed in order to verify the scaled distance and the maximum number of pounds per delay for the blast. Existing subsections (a)(12) and (a)(13) are renumbered to be (a)(15) and (a)(16), respectively.

Existing subsection (a)(14) is renumbered to be (a)(17) and revised to insert the requirement to provide the direction in degrees to the nearest building and to include leased buildings in the exception to this requirement. Existing subsection (a)(15) is renumbered to be (a)(18) and is revised to include the street address and latitude and longitude for the nearest building and delete the reference to local landmarks. Existing subsection (a)(16) is renumbered to be (a)(19) and is revised to describe where the scaled distance is measured to. Existing subsections (a)(17) through (a)(22) are numbered to be (a)(20) through (a)(25), respectively.

New subsection (a)(26) is added to require a drill log which shows the condition of all holes which were drilled for a blast whether they were loaded or not. Borehole conditions can vary with some boreholes being in rock that is badly cracked and some in rock that isn't cracked. Whether a borehole is cracked throughout its length or not is usually not evident on the surface. It is necessary to provide this information on a blast record because borehole conditions have a significant effect on blast performance. Existing subsections (a)(23) and (a)(24) are renumbered to be (a)(27) and (a)(28), respectively.

Section 211.141 General requirements

The reference to purchase and sale permittees is deleted since the requirement to obtain these permits is being eliminated by this proposed rulemaking. Subsection (13) is revised to specify that it is on-road vehicles that need to pass the state inspection requirements. Subsection (14) is added to require that any vehicle used off-road to transport explosives be properly equipped to do so. Subsection (15) is added to require that explosives be removed from a vehicle before maintenance or repairs are done on the vehicle.

Section 211.151 Prevention of damage or injury

The subsection title is proposed to be revised to include injury. Subsection (a) is revised to insert the concept of prevention of injury. These revisions are focused on safety. The proposed revisions also delete the modifier "real" to property to prevent any property damage, not just damage to real property. Subsection (b) is added to introduce the concept that blasting needs to be conducted in a manner that prevents a nuisance. Existing subsection (b) is relettered to be (c). Existing subsection (c) is relettered to be (d) and revised to specify the location where the scaled distance applies and to remove the grandfather clause which applies to blasting activities approved prior to July 14, 2001. This is no longer needed since enough time has passed that there aren't any remaining cases which qualify for this exception.

Existing subsection (d) is relettered to be (e) and is revised to apply the 133 dBL air blast standard under all circumstances. Table 1 is deleted in order to do this. Table 1 was needed in

the past because of the variety of instruments used to measure air blast. Technology has provided standardization and the variable limits are no longer applicable.

Existing subsection (e) is relettered to be (f) and is revised to describe the circumstances under which an alternate ground movement limit may be applied by the Department.

Subsection (g) is added to require the self-reporting of air blast and ground vibration limit violations within 24 hours of when the violation is identified. High air blast or ground vibration levels are indicative of inefficient blast designs. If inefficient blast designs continue to be employed then other adverse effects such as flyrock or toxic gas migration are more likely to occur. The Department needs to be aware of exceedances of the ground vibration and air blast limits so that it can evaluate the situation to determine if action is necessary to ensure public safety.

Subsection (h) is added to require that blasting be conducted in a manner that protects utility lines. Sections 211.181 and 211.182 provide for the protection of underground utilities. The addition of this section clarifies that all utilities, including overhead utilities must be protected.

Section 211.152 Control of noxious gases, including carbon monoxide (CO) and oxides of nitrogen (NOx)

The title of Section 211.152 is revised to specify carbon monoxide and oxides of nitrogen. Subsection (a) is revised to insert “toxic” to modify the term gases, specify carbon monoxide and oxides of nitrogen and describe the measures which can be taken to reduce the risk of and adverse impact from the gases. Carbon monoxide has become a more prominent issue in recent years due to the proximity of blasting to homes and the availability of CO detectors. Workers and residents of nearby homes are subject to this risk because blasting produces large volumes of gases.

Subsection (b) is added in order to require reporting to the Department of incidents where gases have affected the health or safety of workers or neighbors. In cases where gases have affected the health or safety of workers or neighbors, the Department needs to evaluate the situation to determine what safeguards should be put in place to ensure public safety prior to further blasting operations on the site.

Section 211.154 Preparing the blast

Subsection (a) is revised to specify that both the blaster-in-charge and the permittee are responsible for the effects of a blast. Subsection (b) adds a description of the documentation needed in a request for a lower distance limitation for equipment operation not related to the blast loading. Subsection (d) is revised to specify that at-the-hole communication or written drill logs are required in order for the blaster-in-charge to know the condition of the holes which are to be loaded. It is necessary that this information is provided to blasters because borehole conditions should be used to determine if, or how, each borehole is loaded. These conditions have a significant effect on blast performance. This is necessary to determine how to load boreholes in a manner that results in a safe and efficient blast. Subsection (f)(5) is revised to

correct the erroneous term “leading” to be the correct term “loading.” Subsection (n) is revised to provide very specific options for protecting the traveling public. These measures are consistent with the requirements in Chapter 87 (relating to Surface Mining of Coal).

Section 211.155 Preblast measures

Subsection (7) is added to require the posting of signs at the blast site to provide warning that blasting operations are underway.

Section 211.158 Mudcapping

Section 211.158 is revised to reduce the amount of explosives that may be used since the mudcapping technique results in open-air detonation which can produce extremely high air blasts and presents a higher risk for flyrock.

Section 211.171 General provisions for monitoring

Existing subsection (b) is deleted. It is no longer necessary to allow for this exception for monitoring since technology improvements have made seismographs more readily available compared to 1972 when this exception was established. Existing subsections (c) through (e) are relettered to be (b) through (d) respectively. New subsection (e) is added to require that seismographs meet industry standards as established by the International Society of Explosives Engineers, an international organization comprised of blasters and other explosives industry personnel such as blasting vibration and safety consultants and seismograph manufacturers.

Section 211.172 Monitoring instruments

Section labels (a) through (d) are added to provide specific reference to the reorganized requirements. Existing subsections (1) and (2) are deleted because blasting seismographs have been standardized to eliminate the need for these distinctions. Subsection (b) is added to establish equipment specifications based upon industry standards as established by the International Society of Explosives Engineers.

Subchapter H Blasting activities near underground utility lines

“Underground” is inserted in the title for Subchapter H in order to be consistent with the scope described in Section 211.181.

Section 211.182 General provisions

A new subsection (a) is added to require notification to the owner of an underground utility line when blasting is planned within 200 feet of the line. Notifying a pipeline owner when blasting is proposed within 200 feet of a pipeline is a statutory requirement and is also required under 25 Pa. Code Chapters 77, 87, and 88. The requirement to notify the owners of all underground utility lines is necessary to insure that measures necessary to protect the utility line are implemented. In many cases, PA One Call can be used to make the notification to the underground utility line

owner. Existing subsection (a) is relettered to be (b). Existing subsections (b) and (c) are deleted. These subsections are no longer necessary due to advances in explosives product technology and research focused on the effects of ground vibration on utility lines. The insertion of new subsection (a) and the deletion of existing subsections (b) and (c) result in the relettering of existing subsections (d) and (e) to be (c) and (d), respectively.

Subchapter I Seismic Exploration

Subchapter I is new. It is intended to address the requirements that are unique to the use of explosives for seismic exploration.

Section 211.191 Scope

This section establishes the applicability of Subchapter I to the use of explosive for seismic exploration. This use of explosives requires that explosives remain in the ground for extended periods of time due to the large number of holes to be loaded.

Section 211.192 Permits

This section describes the additional information that is needed in a permit application for the use of explosives for seismic exploration. Subsection (a)(1) requires a plan for control and security of loaded holes. In seismic exploration operations, unlike other blasting operations, the explosives charges remain in the ground for a significant time after loading. Subsection (a)(2) requires reporting of the length of time that the explosives are expected to be in the ground before they are detonated. Two factors must be weighed in the evaluation of an application for seismic blasting. These are the product durability and longevity after loading and how long the explosives remain in the ground. Subsection (a)(3) requires a map showing where the explosives will be loaded and any mine permit areas within 500 feet of this area. For a permit reviewer to make an informed decision as to the degree of risk to public safety or property it is necessary to know where the explosives are proposed to be loaded relative to public activity, infrastructure, homes, other buildings, mining activity or any other area of concern. Subsection (a)(4) requires the specifications for the explosives to be used. This is necessary to minimize the risk for misfires due to product failure.

Section 211.193 Blasting records

This section describes the additional information that is needed on blast records for the use of explosives for seismic exploration. Subsection (a)(1) requires the time and date when each hole was loaded. This is needed because the blast holes are loaded over the course of a number of days. Subsection (a)(2) requires identification of the blaster-in-charge who supervised loading or loaded each hole. Subsection (a)(3) requires the latitude and longitude of each hole. Subsection (a)(4) requires identification of the blaster-in-charge who detonated the explosives in each hole. Subsection (a)(5) requires the time and date when the charges were detonated. This reflects the fact that the holes may be detonated over the course of a number of days.

Section 211.194 General requirements for handling explosives on a seismic exploration operation

This section describes the requirements for the handling and use of explosives for seismic exploration. Subsection (a) excludes subsections 211.153(e) and (f) because in seismic exploration it is necessary to load explosives over the course of a number of days so the explosives remain in the ground for days or weeks. In the alternative, subsections (b)(1) and (b)(3) provide requirements to prevent misfires and provide blast site security. Subsection (b)(2) prohibits the placement of explosives in the ground within 300 feet of a building or other structure, but allows for exceptions to be authorized.

Subsection (b)(4) excludes mining permit areas from the area where explosives may be placed and provides a process for an exception from this exclusion. The exemption process includes requirements for the demonstration of the legal right to enter the property, a safety plan, a map and documentation of any required mine safety training.

Subsection (b)(5) addresses the security of all loaded blast holes. Subsection (b)(6) requires the removal or destruction in place for any explosives which may have been compromised. Subsection (b)(7) sets an upper limit of one year as the amount of time that explosives may remain undetonated in the ground. This time frame was established based upon the characteristics of the explosives typically used for seismic exploration.

Subchapter J Civil penalties

Subchapter J is new. It is intended to provide a system for assessing civil penalties for violations of Chapter 211 that occur at operations where explosives are used for construction, demolition, seismic exploration and other non-mining uses. This provides an alternative to filing summary citations with local magistrates. The system and procedure is modeled after the system and procedure applicable to mining under Chapters 77 (relating to noncoal mining) and 86 (relating to surface and underground coal mining: general). It will make penalties for violations relating to blasting activities conducted in non-mining applications consistent with mining operations.

Section 211.201 Scope

Section 211.201 establishes the scope to be blasting activity sites and for unauthorized activities involving explosives. This section clarifies that for mining violations, if the procedures under the mining regulations are followed, then this subchapter is not applicable.

Section 211.202 Inspection-general

Section 211.202 describes the notification process in cases where an inspection results in the identification of a violation.

Section 211.203 Assessment of civil penalty

Section 211.203 describes the circumstances under which the Department will assess a civil penalty.

Section 211.204 System for assessment of penalties

Section 211.204 establishes the system for calculating civil penalty amounts. Subsection (b) includes seriousness, culpability, speed of compliance, cost to the commonwealth, savings to the violator and history of violations as the factors to be considered in calculating a civil penalty amount.

Subsection (b)(1) provides examples of the elements to be considered in determining the seriousness of a violation. These include injury or death, damage, costs of restoration, interference with person's right to enjoyment of life or property and unauthorized activities. Subsection (b)(2) addresses the culpability factor. The culpability includes evaluation of negligence, willfulness, recklessness and intentional violations. Subsection (b)(3) provides for a credit of up to \$1,000 for rapid compliance with the requirements of an order. Subsection (b)(4) provides for recovery for costs to the Department resulting from a violation. Subsection (b)(5) provides for a calculation to address the cost saving to the violator for avoided costs as a result of a violation. Subsection (b)(6) addresses the history of violations providing for an increase of the penalty based upon other violations for the violator in the one-year period preceding the violation.

Subsection (c) provides for a minimum penalty amount of \$750 if the violation results in the cessation of operations and for a minimum \$750 per day for each day when a violator fails to comply with a previously issued order.

Subsection (d) provides that each day of violation may be considered as a separate violation. Subchapter (e) provides for an upper limit on the penalty amount and that if the violations are attributable to more than one person each person is subject to the maximum penalty amount.

Section 211.205 Procedures for assessment of civil penalties

Subsection (a) provides for an opportunity for a person cited with a violation to provide information to the Department for consideration in determining the penalty amount and for the Department to revise the penalty calculation. Subsection (b) requires the Department to serve a copy of a civil penalty assessment by registered or certified mail or by personal service. Subsection (c) allows for an informal conference to discuss an assessment, either upon request of the person to whom the assessment is issued or by the Department's own volition. Subsection (d) establishes the requirements for an informal civil penalty conference.

Section 211.206 Final action

Subsection (a) provides that an assessment of civil penalty is appealable to the Environmental Hearing Board (EHB). Subsection (b) describes how the Department is to handle the money posted as escrow during the pendency of an appeal of a civil penalty. Subsection (c) requires the

posting of an appeal bond or cash in order to perfect an appeal of a civil penalty. Subsection (d) provides that both the fact of the violation and the amount of the civil penalty may be challenged when an appeal is filed.

Section 211.207 Final assessment and payment of penalty

Subsection (a) provides that an assessment of civil penalty becomes final and the payment is due upon the lapse of the appeal period. Subsection (b) provides that a request for judicial review of an EHB civil penalty appeal decision results in the retention of the escrow status and that otherwise the escrow fund will be transferred. Subsection (c) provides that if the penalty is reduced as a result of the appeal process, the Department will refund the appropriate escrowed amount, with interest within 30 days of the EHB or court order. Subsection (d) provides that if the result of the appeal process is an increase in the civil penalty amount, then the responsible party must pay the difference within 30 days of the EHB or court order.

F. Benefits, Costs and Compliance

This proposed rulemaking updates the existing regulatory framework regarding blasting and explosives. The proposed updates will increase the cost of compliance, but provide more certainty to the regulated community with regard to operational requirements. The fact that these requirements will also improve public safety and documentation of blasting activities suggests that the benefits greatly outweigh the costs.

Benefits

The proposed rulemaking eliminates the obsolete requirements for permits related to the purchase and sale of explosives. It also improves public safety and provides for more complete documentation of blasting activities. Adding a specific subchapter for seismic exploration provides relief from requirements that cannot be met by that segment of the regulated community and provides alternatives that protect the public safety.

Compliance costs

The proposed rulemaking is expected to result in increased costs, specifically due to new or increased fees. However, the new or increased fees are nominal in comparison with the other costs associated with the use of explosives. The fees are intended to recover a portion of the Department's costs associated with the administration of the explosives safety laws in the Commonwealth. The new subchapter imposing civil penalties for violations will also increase costs for those in the regulated community who do not comply with the requirements. It is anticipated that the increased costs from the assessment of civil penalties will be partially offset by the reduction or elimination of the need to pursue enforcement through summary citations.

Compliance Assistance Plan

Compliance with the proposed rulemaking is expected to be seamless since many of the more stringent requirements are in place through permitting or are incremental changes to the existing

requirements. Compliance assistance for this rulemaking will be provided through routine interaction with trade groups and individual applicants.

Paperwork requirements

This rulemaking requires additional information as part of a permit application and for records of blasting activities. The additional requirements are more focused and clarify the requirements.

G. Pollution Prevention

The 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 focused on public safety.

H. Sunset Review

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

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 17, 2016, 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 Senate and House 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 shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board. Comments, suggestions or objections must be received by the Board by March 28, 2016. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The

summary may not exceed one page in length and must also be received by the Board by March 28, 2016. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. 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.

Comments may be submitted to the Board by accessing eComment at www.ahs.dep.pa.gov/eComment. Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

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.

John Quigley
Chairman,
Environmental Quality Board

ANNEX A
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUBPART D. ENVIRONMENTAL HEALTH AND SAFETY
ARTICLE IV. OCCUPATIONAL HEALTH AND SAFETY
CHAPTER 210. BLASTERS' LICENSES

§ 210.11. Definitions.

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

ATF—**The U. S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives.**

Blaster—A person who is licensed by the Department under this chapter to detonate explosives and supervise blasting activities.

Blaster learner—An individual who is learning to be a blaster and who participates in blasting activities under the direct supervision of a blaster.

Blaster's license—A license to detonate explosives and supervise blasting activities issued by the Department under this chapter.

Employee possessor—**An individual who is in possession of or has control of explosives materials.**

Explosives materials—**Any material classified as an explosive by ATF in its most current list published in the Federal Register pursuant to 18 U.S.C. 841(d) and 27 CFT 555.23.**

Demolition and demolition blasting—The act of wrecking or demolishing a structure with explosives.

Limited—**A classification of blaster's license applicable to persons who supervise the loading or the detonation of explosives in operations in which the use of explosives is not related to excavation or demolition.**

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

Person—A natural person.

Responsible person—An individual who has the authority to direct the management and policies of the ATF licensee or permittee pertaining to explosive materials. Generally, the term includes partners, sole proprietors, site managers, corporate officers and directors, and majority shareholders.

§ 210.13. General.

(a) A person may not detonate explosives or supervise blasting activities unless the person has obtained a blaster's license.

(b) A blaster's license will only be issued or renewed after it is verified that the applicant has complied with the 18 U.S.C. Chapter 40 and 27 CFR Part 555, and has undergone a background check as either a responsible person or an employee possessor by ATF. Verification can be provided by the applicant entering the ATF license or permit number under which the requirement for a background check was met.

[(b)] (c) The Department may exempt certain individuals from needing a blaster's license if the person is detonating extremely small amounts of explosives for industrial or research purposes. The Department will consider a written request for an exemption from the person seeking the exemption.

[(c)] (d) Upon request, a blaster shall exhibit a blaster's license to the following:

- (1) An authorized representative of the Department.
- (2) The blaster's employer or an authorized representative of the employer.
- (3) A police officer acting in the line of duty.

[(d)] (e) A blaster's license is not transferable.

§ 210.15. License application.

(a) The license application shall be on forms provided by the Department and be accompanied by a check for [~~\$50~~] **\$150.00** payable to the Commonwealth of Pennsylvania. The complete application shall be submitted to the Department at least 2 weeks prior to the examination.

§ 210.16. Examinations.

(c) An applicant failing to appear for a scheduled examination forfeits the application fee unless the applicant provides written notice to the Department **two weeks** prior to the examination date or submits a valid medical excuse in writing.

§ 210.17. Issuance and renewal of licenses.

(a) A blaster's license is issued for a specific classification of blasting activities. The classifications will be determined by the Department and may include general blasting (which includes all classifications except demolition, mine opening blasting and underground noncoal mining), trenching and construction, **[seismic and pole line work, well perforation,] law enforcement**, surface mining, underground noncoal mining, mine opening blasting, industrial, limited and demolition.

(d) A blaster's license is renewable if the blaster can demonstrate that he has had **a minimum of 8 hours** of continuing education in Department-approved courses related to blasting and safety within the 3 year period.

(e) The blaster's license may be renewed for a 3-year term by submitting a renewal application to the Department and a check for **[\$30] \$150.00**, payable to the Commonwealth of Pennsylvania.

§ 210.19. Suspension, modification and revocation.

The Department may issue orders suspending, modifying or revoking a blaster's license. Before an order is issued, the Department will give the blaster an opportunity for an informal meeting to discuss the facts and issues that form the basis of the Department's determination to suspend, modify or revoke the license. The Department may suspend, modify or revoke a blaster's license for violations of this chapter, **Chapters 77, 87, 88 (provisions related to the handling and use of explosives)** and Chapter 211 (relating to storage, handling and use of explosives **[in surface applications]**).

§ 210.20. Fees

(a) The Department will assess an annual administration fee for the administration of Blaster's Licenses. The annual administration fee for a Blaster License shall be \$10.

CHAPTER 211. STORAGE, HANDLING AND USE OF EXPLOSIVES

Subchapter A. GENERAL PROVISIONS

211.101. Definitions.

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

Access point—A point in the outer perimeter security and a point in the inner perimeter security that allows entry to or exit from the magazine or the magazine site.

Acts—Sections 3 and 7 of the act of July 1, 1937 (P. L. 2681, No. 537) (73 P. S. §§ 157 and 161); section 3 of the act of July 10, 1957 (P. L. 685, No. 362) (73 P. S. §§ 157, 161 and 166); and Reorganization Plan No.8 of 1981 (71 P. S. § 751-35), which authorize the Department to promulgate implementing regulations for the licensing of blasters and the storage, handling and use of explosives.

Airblast—An airborne shock wave resulting from an explosion, also known as air overpressure, which may or may not be audible.

Annual Administration Fee—A non-refundable fee assessed annually based on the cost to the Department of inspecting and administering a permitted activity or a licensed facility and to administer a permit or license.

ATF—The U. S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Blast area—The area around the blast site that [should] must be cleared and secured to prevent the potential for injury to persons and damage to property.

Blast site—The specific location where the explosives charges are loaded into the blast holes.

Concertina razor wire—Razor wire that is extended in a spiral for use as a barrier, such as along or on a fence and having a minimum of 101 coils of wire to 50 linear feet.

Cube Root Scaled distance ($Ds^{1/3}$)—A value calculated by using the formula $Ds^{1/3} = D/(\text{cube root}) W$, where actual distance (D) in feet measured in a horizontal line from the blast site to the nearest building or structure not owned or leased by the blasting activity applicant, the permittee, or their customers, is divided by the cube root of the maximum weight of explosives (W) in pounds detonated per delay period of less than 8 milliseconds.

Delay interval—The designed time interval, usually in milliseconds, between successive detonations.

Detonator—

- (i) A device containing an initiating or primary explosive that is used for initiating detonation of explosives.
- (ii) The term includes electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord, delay connectors and nonelectric instantaneous and delay blasting caps.

[Display fireworks—

- (i) Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration or detonation.**
- (ii) The term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as consumer fireworks. Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the United States Department of Transportation at 49 CFR 172.101 (relating to purpose and use of hazardous materials table).**
- (iii) The term also includes fused setpieces containing components which together exceed 50 mg of salute powder.]**

Employee possessor—An individual who is in possession of or has control of explosives materials.

Environmental Hearing Board or EHB—The board established under the Environmental Hearing Board Act (35 P.S. §§ 7511-7516).

[Explosive—A chemical compound, mixture or device that contains oxidizing and combustible materials or other ingredients in such proportions or quantities that an ignition by fire, friction, concussion, percussion or detonation may result in an explosion.

- (i) The term includes safety fuse, squibs, detonating cord and igniters.**
- (ii) The term does not include the following:**
 - (A) Commercially manufactured black powder, percussion caps, safety and pyrotechnic fuses, matches and friction primers, intended to be used solely for sporting, recreational or cultural purposes in antique firearms or antique devices, as defined in 18 U.S.C.A. § 921 (relating to definitions).**
 - (B) Smokeless powder, primers used for reloading rifle or pistol cartridges, shot shells, percussion caps and smokeless propellants intended for personal use.]**

Explosives Materials—Explosives materials as defined in Chapter 210 (related to blasters' licenses).

Flyrock—Overburden, stone, clay or other material [ejected] cast from the blast [area] site **through the air or along the ground or** by the force of a blast and which travels: [beyond the blast area.]

(i) beyond the blast area;

(ii) onto property neither owned nor leased by the permittee or its customer; or

(ii) beyond permit boundaries on blasting operations on mining permits issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), or the Noncoal Surface Mining and Conservation and Reclamation Act (52 P. S. §§ 3301—3326).

Indoor magazine—A magazine located entirely within a secure intrusion-resistant and theft-resistant building which is primarily used for commercial or industrial purposes.

Misfire—Incomplete detonation of explosives.

Nuisance—A condition which causes a hazard to public health or safety.

Outdoor magazine site—The contiguous area of land upon which the following are located: a magazine or group of magazines; the outer perimeter security, and the inner perimeter security, if any.

Person—A natural person, partnership, association, or corporation or an agency, instrumentality or entity of state government, **or municipality.**

Primer—A cartridge or package of high explosives into which a detonator has been inserted or attached.

[Purchase—To obtain ownership of explosives from another person.]

Responsible person—An individual who has the authority to direct the management and policies of the ATF licensee or permittee pertaining to explosive materials. Generally, the term includes partners, sole proprietors, site managers, corporate officers and directors, and majority shareholders.

[Sale or sell—To transfer ownership of explosives to another person.]

Scaled distance (Ds)—A value calculated by using the **formula $D_s = D/(\text{square root } W)$** , where actual distance (D) in feet, measured in a horizontal line from the blast site to the nearest building or structure, neither owned nor leased by the blasting activity permittee or its customer, divided by the square root of the maximum weight of explosives (W) in pounds, that is detonated per delay period of less than 8 milliseconds.

[$D_s = D/(\text{square root } W)$]

Stemming—Inert material placed in a blast hole after an explosive charge for the purpose of confining the explosion gases to the blast hole, and inert material used to separate explosive charges in decked holes.

Structure—

- (i) A combination of materials or pieces of work built or composed of parts joined together in some definite manner for occupancy, use or ornamentation.
- (ii) The term includes everything that is built or constructed, including bridges, offices, water towers, silos and dwellings.

Unauthorized detonation of explosives—The detonation of explosives by a person who is not licensed to detonate explosives under Chapter 210 (related to blaster's licenses) or the detonation of explosives not authorized by a permit issued under this chapter.

Unauthorized handling and use of explosives—The transportation, handling or use of explosives by a person who is not a responsible person or an employee possessor acting under the authorization of a responsible person.

Unauthorized storage of explosives—Storage of explosives that is not in a magazine licensed by the Department or by persons who are not responsible persons or employee possessors acting under the authorization of a responsible person.

Utility line—An electric cable, fiber optic line, pipeline or other type of conduit used to transport or transmit electricity, gases, liquids and other media including information.

Wheeled vehicle—A vehicle that moves about on three or more wheels and has a gross vehicle weight of less than 11,000 pounds.

§ 211.102. Scope.

(a) This chapter applies to persons using **or[,] storing[, purchasing and selling]** explosives and engaging in blasting activities within this Commonwealth. Persons **[using and]** storing explosives **underground at permitted** underground mines are exempt from this chapter. **Persons conducting blasting underground at underground mines shall comply with § 211.151.** The storage of explosives in magazines on the surface at an underground **[noncoal]** mine is subject to the applicable requirements of this chapter. The provisions of this chapter that are more stringent than

the blasting provisions in Chapters 77, 87 and 88 (relating to noncoal mining; surface mining of coal; and anthracite coal) apply to blasting activities at coal or noncoal surface mines.

(b) Compliance with this chapter does not relieve a person who is engaged in **[the purchase or sale of explosives, or]** blasting activities[,], from compliance with other applicable laws or regulations of the Commonwealth.

§ 211.103. Enforcement.

(a) The Department may issue orders necessary to implement this chapter including an order to suspend, modify or revoke a license or permit authorized by this chapter, **or to require corrective action for a violation identified in subsection (c) of this section.**

(b) Before issuing an order modifying peak particle velocity or airblast limits in a blasting activity permit, the Department will first provide the permittee with an opportunity to meet and discuss modifications.

(c) It shall be a violation of this chapter to:

(1) Fail to comply with this chapter or provisions of Chapters 77, 87 or 88 related to storage and use of explosives;

(2) Fail to comply with any order or permit or license of the Department issued under this chapter or under Chapters 77, 87 or 88 related to the storage and use of explosives;

(3) Hinder, obstruct, or interfere with the Department or its personnel in the performance of any duty hereunder;

(4) Violate the provisions of 18 Pa.C.S. §§ 4903 or 4904 (relating to false swearing or unsworn falsification to authorities).

(d) The Department will not issue a permit or license to any person who has either:

(1) Failed or continues to fail to comply with this chapter or a condition of a permit issued under this chapter or an order issued to enforce the requirements of this chapter.

(2) Demonstrated an inability or lack of intention to comply with this chapter as indicated by past or continuing violation or violations;

(3) Has not complied with the 18 U.S.C. Chapter 40 and 27 CFR 555 and does not have an ATF license or permit, where required;

(4) Has not met the requirements to be authorized as an employee possessor or responsible person by ATF.

Subchapter B. STORAGE AND CLASSIFICATION OF EXPLOSIVES

§ 211.112. Magazine license and fees.

(a) A person storing explosives shall do so in a magazine licensed by the Department. A person may not construct, install or modify a magazine until the Department has issued or amended the license in writing. The licensee shall store explosives in accordance with the approved application, the license and this chapter.

(b) A magazine license will only be issued or renewed after it is verified that the applicant has complied with the 18 U.S.C. Chapter 40 and 27 CFR 555 and is authorized as either a licensee or a permittee by the ATF. Verification can be provided by the applicant entering the ATF license or permit number on the license application.

(c) The license specifies the types and quantities of explosives to be stored in the magazine and any other condition necessary to ensure that the proposed activity complies with applicable statutes and this chapter.

[(c)] (d) Licenses **[expire annually on December 31 of each year.] will be issued for a period of time set by the Department and the expiration date will appear on the license.** If the Department receives a complete renewal application by **[December 31] the expiration date**, the licensee may continue to operate under the current license until the Department acts on the renewal application.

[(d)] (e) License fees are as follows:

(1) License:

(i) Application—\$50

(ii) Site inspection—\$50

(2) License modifications—\$50

(3) License renewals—\$50

(4) License transfers—no fee

§ 211.113. Application contents.

(b) A completed license application shall include:

(1) The applicant's name, address, **[and] telephone number and ATF license or permit number.**

§ 211.115. Standards for classifying and storing explosives and constructing, maintaining and siting magazines.

(j) All magazine licensees shall ensure that a person is available at all times to respond to emergencies and to provide the Department access to the licensed magazines for the purpose of determining regulatory compliance. Department access to the magazines shall be granted within 4 hours of a Department request or within a time frame agreed upon by the Department representative and the magazine licensee. Department requests may be verbal or written.

§ 211.116. Decommissioning magazines.

Prior to the expiration or termination of a magazine license, the licensee shall remove and properly dispose of all explosives from the magazine and submit to the Department documentation as to the disposition of these explosives. This documentation shall be provided within twenty days of the expiration or termination of the magazine license.

§ 211.117 Daily summary of magazine transactions.

The licensee shall make records of inventory required by 27 CFR §§ 555.122, 555.123, 555.124, and 555.125 available to the Department upon request.

Subchapter C. PERMITS

§ 211.121. General requirements.

(a) Except as otherwise provided in this subchapter, a person may not engage in blasting activities[, or sell or purchase explosives] in this Commonwealth without first obtaining the appropriate permit from the Department issued under this chapter.

(b) Permits under this chapter are not required for the [sale, purchase or]use of fireworks governed by the act of May 15, 1939 (35 P. S. § § 1271—1277).

(d) An application for a permit [for the sale or purchase of explosives or] to conduct blasting activities shall be on a form provided by the Department. A permit will not be issued unless the application is complete and demonstrates that the proposed activities comply with the applicable requirements of this chapter. The Department will notify applicants of an incomplete application and identify the items necessary to complete the application. The permittee shall comply with the approved application, the permit and this chapter.

(f) The permittee, all subcontractors listed on the permit and the blaster-in-charge of any blasts conducted on a permit shall comply with the approved application, the permit and this chapter.

§ 211.122. (Reserved). [Permits to sell explosives.

(a) An application for a permit to sell explosives shall:

- (1) Identify the applicant's name, address, telephone number and type of business.**
- (2) Identify a contact person, including name, title and telephone number.**
- (3) Specify the type of explosives to be sold.**
- (4) State whether the applicant will purchase or manufacture the explosives to be sold.**
- (5) For in-State sellers, include the applicant's magazine license number, if applicable.**

(b) Permits to sell explosives are not transferable.

(c) Permits to sell explosives expire on April 30 of each year. If the Department receives a complete renewal application by April 30, the permittee may continue to operate under the current permit until the Department acts on the renewal application.

(d) A permit to sell explosives shall:

- (1) Identify the permittee.**
- (2) Specify the type of explosives that the permittee may sell.**
- (3) Contain conditions, as necessary, to ensure that the proposed activity complies with applicable statutes and this chapter.]**

§ 211.123. (Reserved).[Permits to purchase explosives.

(a) An application for a permit to purchase explosives shall:

- (1) Identify the applicant's name, address, telephone number and type of business.**
- (2) Identify a contact person, including name, title and telephone number.**
- (3) Identify the location and license number of the magazine to be used for storing the explosives, if applicable.**

(4) Specify the type of explosives that will be purchased.

(5) Specify whether the explosives are being purchased for sale or use by the permittee.

(b) Permits to purchase explosives are not transferable.

(c) Permits to purchase explosives expire on April 30 of each year. If the Department receives a complete renewal application by April 30, the permittee may continue to operate under the current permit until the Department acts on the renewal.]

§ 211.124. Blasting activity permits.

(a) An application for a blasting activity permit shall be prepared by a blaster **authorized by the Department to conduct the blasting proposed in the application** and shall include:

(1) The applicant's name, address, telephone number and type of business.

(2) The signature of the applicant or an authorized representative of the applicant.

(3) The ATF license or permit number of the applicant or the contract blaster.

[(2)] (4) [A contact person's] The name, title and telephone number of a [contact] person who can be reached by the Department in the event of an emergency or other reason relating to the blasting activity permitted.

[(3)] (5) The identity of independent subcontractors who will be performing the blasting activities.

[(4)] (6) The [type] specific types of explosives to be used.

[(5)] (7) The maximum amount of explosives that will be detonated per delay interval of less than 8 milliseconds.

[(6)] (8) The maximum amount of explosives that will be detonated in any one blast.

(9) The minimum scaled distance based on calculations made from actual site conditions. In demolition blasting operations the minimum scaled distance must be cube root scaled distance.

[(7)] (10) A map indicating the location where the explosives will be used and the proximity of explosives use to public roads, buildings or other structures.

[(8)] (11) The purpose for which the explosives will be used.

[(9)] (12) The location and license number of the magazine that will be used to store the explosives, if applicable.

[(10)] (13) A description of how the monitoring requirements of Subchapter G (relating to requirements for monitoring) will be satisfied.

[(11)] (14) Proof [of] **that the permittee has** third party general liability insurance in the amount of [300,000] **\$1,000,000** or greater per occurrence **to cover the blasting activity**. This requirement is not applicable if the permittee is a noncoal surface mine operator who produces no more than 2,000 tons (1,814 metric tons) of marketable minerals per year from all its noncoal surface mining operations.

[(12)] (15) The anticipated duration of the blasting activity for which the permit is needed.

[(13)] (16) The anticipated days of the week and times when blasting may occur.

[(14)] (17) The distance **in feet** and direction **in degrees** to the [closest] building not owned by the permittee or its customer **that will be closest to the blasting**.

[(15)] (18) Other information needed by the Department to determine compliance with applicable laws and regulations.

[(16)] (19) The printed name, signature and license number of the blaster who prepared the application.

[(17)] (20) Proof that residents within [200] **300** feet ([65.61] **91.44** meters) of the blast site, **or other distance established in the permit**, were informed of the proposed blasting operation. This notification could be a personal notification, written material left at each residence, or first class mail. The notification will provide general information about the blasting operation including the duration of the operation.

(21) Loading plans which describe ranges of bore hole diameters and their depths, burdens and spacings.

(22) Types of stemming material

(e) The blaster-in-charge shall have in his or her possession a copy of the approved blasting activity permit authorizing the blasting activity being conducted. For blasting activities conducted on and authorized by permits issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1--1396.19a), or the Noncoal Surface Mining and Conservation and Reclamation Act (52 P. S. §§ 3301--3326), possession of the blasting plan for that permit constitutes possession of a copy of the approved blasting activity permit authorizing the blasting activity being conducted.

§ 211.125. Blasting activity permit-by-rule.

(a) Except for blasting activities for the purpose of demolition or seismic exploration, a person shall be deemed to have a permit for a blasting activity if:

- (1) The blasts are designed and performed for a scaled distance of 90 or greater.
- (2) No more than 15 pounds (6.81 kilograms) of explosives are detonated per delay interval of less than 8 milliseconds.
- (3) The total charge weight per blast does not exceed 150 pounds (68.18 kilograms).
- (4) The person notifies the Department either verbally, in writing, or by other means approved by the Department prior to the initial blast. If the person gives verbal notification, a written notice shall be received by the Department within 5 working days. The notification shall indicate the following information for all blasts that will occur under this permit:
 - (i) The identity of the person.
 - (ii) The location where the blasting will occur.
 - (iii) The purpose of the blasting.
 - (iv) The distance to the nearest building not owned or leased by the person or its customer.
 - (v) The days of the week and times when blasting may occur.
 - (vi) The duration of blasting activities under this permit by rule.
 - (vii) The minimum scaled distance.
 - (viii) The maximum weight of explosives detonated per delay period of less than 8 milliseconds.
 - (ix) The maximum total weight of explosives per blast.
 - (x) A contact person and telephone number.
- (5) Blast reports are completed in accordance with § 211.133 (relating to blast report).
- (6) The other monitoring and performance standards of this chapter are met.

§211.126 Fees

(a) Blasting Activity Permit fees are as follows:

(1) Blasting Activity Permit—Paper Application \$210.00

(2) Blasting Activity Permit—Filed on-line \$130.00

(3) Blasting Activity Permit-by-rule--\$12.00

(b) Explosives Storage License fees are as follows:

(1) Magazine Security Plan, required under section 211.113--\$225.00

(2) Explosive Storage Magazine Security Plan Revision, required under Section 211.113--\$90.00

(3) Explosive Storage Magazine Decommissioning, required under Section 211.116--\$50.00 per magazine.

(c) The Department shall assess a fee for inspecting and monitoring an explosive storage magazine. This annual administration fee shall be assessed annually and shall be collected as part of the explosive storage license application renewal process. The Annual Administration Fee for each explosives storage magazine shall be \$85.

Subchapter D. RECORDS OF DISPOSITION OF EXPLOSIVES

§211.131. (Reserved).[Sales records.

The seller shall keep an accurate record of every sale of explosives for 3 years. The record shall identify the purchaser's name and address, the Department purchase permit number, the date of the sale and the amount and types of explosives.]

§ 211.132. (Reserved).[Purchase records.

The purchaser shall keep a record of all purchases of explosives for 3 years. The record shall identify the date, types and amounts of explosives purchased and the name and address of the seller.]

§ 211.133. Blast reports.

(a) The blaster-in-charge shall prepare a report of each blast to provide the Department with sufficient information to reconstruct the conditions and events surrounding a blast. The Department may develop and require a blast report form to be used. The blasting activity permittee shall retain the blast report for at least 3 years and shall make the blast report available to the Department upon request. Blast reports shall contain, at a minimum, the following:

(1) The location[s] of **at least one corner of** the blast **pattern** expressed in latitude and longitude[**and monitoring readings**].

(2) The distance(s) in feet, and direction(s) in degrees from the blast to the seismograph monitoring location(s).

(3) The latitude and longitude and a brief description of the monitoring locations. If monitoring is conducted at a home or other building with a 911 address, the address of the structure must be provided.

[(2)] **(4)** The name of the blasting activity permittee **and blasting contractor, if applicable.**

[(3)] **(5)** The blasting activity permit or appropriate mining permit number.

[(4)] **(6)** The date and time of the blast.

[(5)] **(7)** The printed name, signature and license number of the blaster-in-charge.

[(6)] **(8)** The type of material blasted.

[(7)] **(9)** A sketch showing the number of blast holes, burden, spacing, pattern dimensions, **delay timing sequence, description of the ground surrounding the blast site,** and point of initiation.

[(8)] **(10)** The diameter and depth of **each** blast hole[s].

[(9)] **(11)** The height or length of stemming and deck separation for each hole.

(12) The amount of explosives loaded in each borehole.

[(10)] **(13)** The types of explosives used and arrangement in blast holes.

[(11)] **(14)** The total weight in pounds of explosives, **product density for bulk blasting agents, weight of packaged blasting agents** and primer cartridges used.

[(12)] **(15)** The maximum weight in pounds of explosives detonated per delay period of less than 8 milliseconds.

[(13)] **(16)** The type of circuit, if electric detonation was used:

[(14)] **(17)** The direction **in degrees** and distance in feet from the blast site to the nearest building not owned **or leased** by the blasting activity permittee or its customer.

[(15)] **(18)** A **general** description, **including the street address and latitude and longitude** of the nearest building [location] not owned or leased by the blasting activity permittee or its customer [**based upon local landmarks**].

[(16)] ~~(19)~~ The scaled distance to the nearest building or other structure neither owned nor leased by the blasting activity permittee or its customer.

[(17)] ~~(20)~~ The weather conditions.

[(18)] ~~(21)~~ The direction from which the wind was coming.

[(19)] ~~(22)~~ The measures taken to control flyrock, including whether or not mats were used.

[(20)] ~~(23)~~ The total quantity and type of detonators used and delays used.

[(21)] ~~(24)~~ The number of individuals in the blasting crew.

[(22)] ~~(25)~~ The maximum number of blast holes or portions of blast holes detonated per delay period less than 8 milliseconds.

(26) A drill log showing the condition of all of the blast holes prior to loading and any other bore holes in the blast site related to the blasting activity.

[(23)] ~~(27)~~ The monitoring records required by § 211.173 (relating to monitoring records). Monitoring records shall be made part of the blast report within 30 days of the blast. Beginning July 14, 2004, monitoring records shall be made part of the blast report within 14 days of the blast. The Department may grant a waiver to allow monitoring records to be made part of the blasting record within 30 days of the blast if all blasts, regardless of scaled distance, are monitored and monthly summaries of these reports, including the information required in subsection (b), are provided. Monitoring records shall be made part of the blast report within 7 days, if requested by the Department.

[(24)] ~~(28)~~ If a misfire occurred, the actions taken to make the site safe as specified in § 211.157 (relating to postblast measures).

Subchapter E. TRANSPORTATION OF EXPLOSIVES

§ 211.141. General requirements.

The blasting activity [, **purchase or sale**] permittee shall:

(13) Only load explosives into on-road vehicles that have passed the State safety inspection or certification.

(14) Only load explosives into off-road vehicles that are properly equipped to carry explosives.

(15) Remove explosives prior to conducting maintenance or repair work on vehicles containing explosives or detonators.

Subchapter F. BLASTING ACTIVITIES

§ 211.151. Prevention of damage or injury.

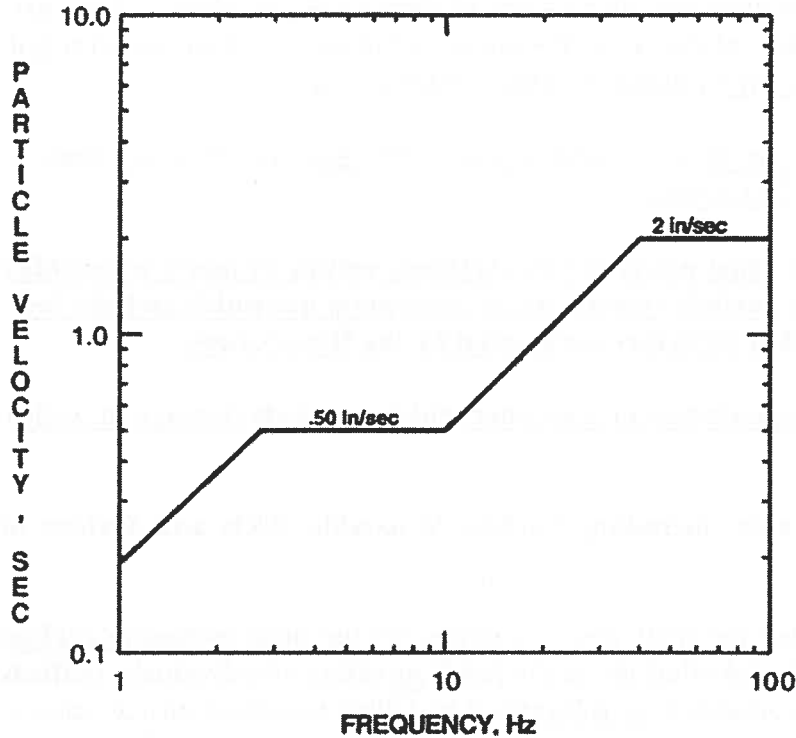
(a) Blasting shall be conducted to prevent injury to persons, [may not] or damage [real] to private or public property except for [real] property [under the control of the] owned or leased by permittee or its customer. If damage [occurs] to property or injuries to persons occurs, the blaster-in-charge shall notify the Department within 4 hours of learning of the damage or injuries occurring.

(b) Blasting shall be conducted in a manner that does not cause a nuisance.

[(b)] (c) Blasting may not cause flyrock. If flyrock occurs, the blaster-in-charge shall notify the Department within 4 hours of learning of the flyrock.

[(c)] (d) Blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 at the closest building or other structure designated by the Department or meets the [maximum] allowable [peak] particle velocity as indicated by Figure 1 at [the closest] any building or other structure designated by the Department. [However, blasting activities authorized prior to July 14, 2001, may continue as authorized unless the authorization is modified, suspended or revoked by the Department.] The scaled distance and maximum allowable peak particle velocity does not apply at a building or other structure owned or leased by the permittee or its customer.

Figure 1.



[(d)] (e) Blasts shall be designed and conducted to control airblast so that it does not exceed [the noise levels specified in Table] **133 dBL** at [a] any building or other structure designated by the Department unless the building is owned or leased by the permittee or its customer.

[Table 1	
Lower frequency limits of measuring System in Hz(+3dB)	Maximum allowable levels in dBL
0.1 Hz or lower — flat response*	134 peak
2.0 Hz or lower — flat response	133 peak
6.0 Hz or lower — flat response	129 peak
C - weighted — slow response*	105 peak
*only when approved by the Department]	

[(e)] (f) Except on permits issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1–1396.19b), [The] the Department may establish an alternative peak particle velocity or airblast level at a building or other structure if it determines that either:

(1) The [an] alternative standard [is appropriate because of density of population, land use, age or type of geology or hydrology of the area, frequency of blasts or other factors] will provide for adequate protection of the building or other structure; or,

(2) The owner of the building or the other structure waives the ground vibration limit in 211.151 (d) or the airblast limit in 211.151(e).

(g) The blasting activity permittee must notify the Department within 24 hours of learning that the maximum allowable peak particle velocity or the maximum allowable airblast level are exceeded at any building or other structure designated by the Department.

(h) All blasting activities shall be conducted in a manner which prevents damage to utility lines.

§ 211.152. Control of noxious gases, including Carbon Monoxide (CO) and Oxides of Nitrogen (NOx).

(a) A blast shall be conducted so that the toxic gases generated by the blast including carbon monoxide and oxides of nitrogen do not affect the health [and] or safety of individuals. [Effects from gases] Gas migration may be prevented or minimized by taking measures such as venting the gases to the atmosphere and interrupting the path along which gases may flow. [and evacuating] Evacuating people from areas that may contain gases could prevent their health from being affected.

(b) The blasting activity permittee must notify the Department within 4 hours if the toxic gases generated by the blast affect the health and/or safety of individuals.

§ 211.154. Preparing the blast.

(a) The blasting activity permittee shall designate a blaster-in-charge for each blast. The blaster-in-charge shall control and supervise the blasting activity. [The] A blaster-in-charge is responsible for all effects of the [blast] blasts that blaster-in-charge detonates. The blasting activity permittee is responsible for the effects of all blasts detonated pursuant to the Blasting Activity Permit.

(b) Only equipment necessary for loading blast holes may be allowed to operate within 50 feet (15.24 meters) of the blast site. The Department may establish, in writing, a different distance limitation. If a written request for a lower distance limitation is submitted to the Department, the request must provide detailed information including why the lower distance limitation is necessary and how blast site safety will be maintained. The Department's written establishment for a lower distance limitation will include all necessary safety requirements.

(c) A blaster-in-charge may not prepare or detonate a blast unless another person is present, able and ready to render assistance in the event of accident or injury.

(d) The blaster-in-charge shall **[make every effort to]** determine the condition of the material to be blasted from the individual who drilled the blast holes, **[or]** from the drill log, **or at-the-hole communication prior to loading a blast. The permittee must ensure that a written drill log or at-the-hole communication is available to the blaster-in-charge.**

(e) Only the blaster-in-charge, other blasters, and up to six assistants per blaster may be at a blast site once loading of blast holes begins.

(f) While loading a blast hole, the following measures shall be followed:

(1) Ferrous material may not be used in the blast hole unless the use is approved by the Department in writing. This includes the use of steel casings, ferrous tools and retrieving equipment.

(2) Only nonferrous, nonsparking tamping sticks may be used in loading a blast hole. Sectional poles connected by brass fittings are permitted, if only the nonferrous, nonsparking end of the pole is used for tamping. Retrieving hooks shall be made from nonsparking metal such as brass or bronze.

(3) When using a pneumatic loading device, every precaution shall be taken to prevent an accumulation of static electricity. A loading operation shall be stopped immediately if static electricity or stray electrical currents are detected. The condition shall be remedied before loading may be resumed.

(4) The blast hole shall be carefully checked for obstructions with a nonferrous, nonsparking tamping pole, a tape, a light or a mirror before it is loaded. The use of magnifying mirrors is prohibited. Explosives may not be forced past an obstruction in a blast hole.

(5) Each blast hole shall be logged throughout the **[leading] loading** process to measure the amount and location of explosives placed in the blast hole. The information is to be recorded on the blast report required by § 211.133 (relating to blast report).

(6) A blast hole containing loose dynamite shall be stemmed but not tamped.

(7) The Department may specify the type and amount of stemming.

(n) **[Blasting activities may not be conducted within 800 feet (243.84 meters) of a public roadway unless precautionary measures are taken to safeguard the public. Precautionary measures include stopping or slowing of traffic and posting signs.] The permittee must ensure that public highways and entrances to the areas where blasting will occur are barricaded and guarded if the highways and entrances to areas where blasting will occur are located within 800 feet of a point where a blast is about to be fired. The permittee may use an alternative measure to this requirement if the permittee demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting**

persons and property from the adverse effects of a blast. Alternative measures are measures such as:

(1) Slowing or stopping traffic in coordination with appropriate State or local authorities, including local police.

(2) Using mats to suppress fly rock.

(3) Designing the blast to prevent damage or injury to persons and property located on the public highways or at the operation's entrances by using design elements such as:

(i) Orienting the blast so that the direction of relief is away from public highways or operation entrances.

(ii) Adjusting blast design parameters including:

(A) The diameter of holes.

(B) The number of rows.

(C) The number of holes.

(D) The amount and type of explosive.

(E) The burden and spacing.

(F) The amount and type of stemming.

(G) The powder factor.

§ 211.155. Preblast measures.

Prior to detonating a blast, the blaster-in-charge shall:

(1) Ensure that all excess explosives have been removed from the blast area and are located in a safe area.

(2) Inspect the blast site to ensure that connections are proper and adequate.

(3) Ensure that the blast area is cleared and safeguarded.

(4) In addition to the warning signal, notify all persons who may be in danger.

(5) Ensure that the necessary precautions are in place to protect the public on public roads.

(6) At least 1 minute but no more than 2 minutes prior to detonation, sound a warning signal of three blasts, each lasting approximately 5 seconds. The warning signal shall be of sufficient power to be heard 1,000 feet (304.80 meters) from the blast site.

(7) Post signs at access points to a blast site which clearly warn of explosives use. If there are no specific access points a minimum of four signs must be posted on all sides of the blast site at a distance of 100 feet from the blast site.

§ 211.158. Mudcapping.

Mudcapping in blasting activities is allowed only if the blaster-in-charge determines that drilling the material to be blasted would endanger the safety of the workers. If mudcapping is necessary, no more than [10 pounds] 1 pound ([4.53] 0.454 kilograms) of explosives shall be used for a blast.

Subchapter G. REQUIREMENTS FOR MONITORING

§ 211.171. General provisions for monitoring.

(a) If the scaled distance of a blast is 90 or numerically less at the closest building not owned or leased by the blasting activity permittee or its customer, ground vibration and airblast monitoring shall be conducted. The Department may require the permittee to conduct ground vibration and airblast monitoring at other buildings or structures even if the scaled distance is greater than 90.

[(b) Blasting activities without monitoring may be considered in compliance with this chapter if at a specified location, on at least five blasts, monitoring has demonstrated that the maximum peak particle velocity at the specified location represents more than a 50% reduction from the limit in the permit and this chapter. Future blasts shall maintain a scaled distance equal to or greater than the scaled distance for the monitored blasts.]

[(c) **(b)** If monitoring is required, a ground vibration and airblast record of each blast shall be made part of the blast report.

[(d) **(c)** If monitoring is performed with instruments that have variable “trigger levels,” the trigger for ground vibration shall be set at a particle velocity of no more than .25 inches per second unless otherwise directed by the Department.

[(e) **(d)** If the peak particle velocity and airblast from a blast are below the set trigger level of the instrument, a printout from the instrument shall be attached to the blast report. This printout shall provide the date and time when the instrument was turned on and off, the set trigger levels and information concerning the status of the instrument during the activation period. When an

instrument is used that does not provide this information, the Department will allow the permittee to supply on/off times on a signed statement.

(e) Blasting seismographs shall be deployed in the field according to the guidelines established by the International Society of Explosives Engineer's Standards Committee

§ 211.172. Monitoring instruments.

(a) If monitoring is required, the monitoring instrument shall provide a permanent record of each blast.

[(1) A monitoring instrument for recording ground vibration, at a minimum, shall have:

(i) A frequency range of 2 Hz to 100 Hz.

(ii) Particle velocity range of .02 to 4.0 inches (5.08×10^{-4} to 0.10 meters) per second or greater.

(iii) An internal dynamic calibration system.

(2) A monitoring instrument used to record airblast shall have:

(i) A lower frequency limit of 0.1, 2.0 or 6.0 Hz.

(ii) An upper end flat-frequency response of at least 200 Hz.

(iii) A dynamic range that, at a minimum, extends from 106 to 142 dBL.]

(b) The monitoring instrument must be constructed to meet the guide established by the International Society of Explosives Engineer's Standards Committee.

[(3)] (c) A monitoring instrument shall be calibrated annually and when an instrument is repaired and the repair may affect the response of the instrument. Calibration shall be done by the manufacturer of the equipment, or by an organization approved by the manufacturer, or by an organization having verifiable knowledge of the calibration procedures developed by the manufacturer. The calibration procedure shall include testing the response of the entire system to externally-generated dynamic inputs. These inputs shall test the entire monitoring system at a sufficient number of discrete frequency intervals to assure flat response throughout the frequency ranges specified by this chapter. Dynamic reference standards used for calibration shall be traceable to the National Institute of Standards and Technology (NIST). Calibration procedures and documentation of calibration shall be made available for review by the Department.

[(4)] (d) A nonalterable sticker that is clearly visible shall be firmly affixed to the instrument. The sticker shall indicate the name of the calibration facility, the calibration technician, the date of calibration and frequency range of the airblast monitor.

Subchapter H. BLASTING ACTIVITIES NEAR UNDERGROUND UTILITY LINES

§ 211.181. Scope.

This subchapter applies to buried or underground utility lines and utility lines making contact with the surface of the ground.

§ 211.182. General provisions.

(a) Prior to conducting blasting activities within two hundred feet of an underground utility line the blasting activity permittee must ensure that the owner of the line is notified of the blasting activities and demonstrate to the Department that that notification has been made.

(b) Blasts shall be designed and conducted so that they provide the greatest relief possible in a direction away from the utility line and to keep the resulting vibration and actual ground movement to the lowest possible level.

(b) Blasting shall use a type of explosive specifically designed to minimize the likelihood of propagation between explosive charges.

(c) When blasting within 200 feet (60.96 meters) of a utility line, blast holes may not exceed 3 inches (7.62 x 10⁻² meters) in diameter.]

[(d)] (c) Blasting in the vicinity of a utility line shall be conducted as follows:

(1) Excavation from the ground surface to a depth corresponding to the elevation of the top of the buried utility line may proceed at the discretion of the blaster-in-charge, using safe, accepted techniques.

(2) Once the excavation has attained a depth equal to the elevation of the top of the buried utility line or if the line is exposed, or makes solid contact with the surface, the vertical depth of subsequent blast holes shall be restricted to one half the horizontal distance from the closest portion of the utility line.

[(e)] (d) If one or more of the requirements listed in this section are not feasible or creates a potential safety problem, the permittee may apply to the Department for a waiver of the provision or provisions in question. This waiver will be granted if, in the judgment of the Department and the utility owning the lines, the alternate procedure does not endanger the utility line.

Subchapter I. SEISMIC EXPLORATOIN

§211.191 Scope

This subchapter is applicable to seismic exploration activities which employ explosives. Unless otherwise specified, all of the provisions of Subchapters A through H apply to persons engaging in seismic exploration activities using explosives.

§211.192. Permits

(a) In addition to the requirements of Subchapter C (relating to permits), an application for a Blasting Activity Permit for seismic exploration shall include the following:

(1) A detailed plan describing how explosives loaded in the ground will be kept under the control of the permittee, secured against being compromised, detonated, unearthed, or otherwise tampered with.

(2) The maximum time, in days that explosives will be allowed to remain in the borehole from loading until detonation.

(3) A map clearly delineating all of the areas where the placement of explosives charges is planned and the footprint of any mining permits where mining, reclamation or water treatment are occurring, or may occur, within 500 feet of where the placement of explosives charges is planned .

(4) Detailed information, including data sheets and warranty information, on the explosives products to be used.

§ 211.193 Blasting Records

(a) In addition to the requirements of §211.133, blast reports on seismic exploration operations shall contain, at a minimum, the following:

(1) The time and date the explosives were loaded into holes.

(2) The blaster-in-charge who supervised and/or loaded the charges

(3) The specific location of the loading of the charges, expressed in latitude and longitude

(4) The blaster-in-charge who detonated the charges,

(5) The time and date the charges were detonated.

§211.194. General requirements for handling explosives on a seismic exploration operation

(a) Sections 211.153 (e) and (f) are not applicable to the handling and use of explosives for seismic exploration operations.

(b) Except as specified in subsection (a), in addition to the requirements of Subchapter F (relating to Blasting Activities), the following provisions apply to the handling and use of explosives on seismic exploration operations:

(1) All explosives loaded into boreholes must either be detonated or removed from the borehole after the maximum number of days specified in the applicable blasting activity permit.

(2) No explosives charges shall be placed closer than 300 feet from any building or other structure designated by the Department unless authorized by the Department.

(3) All detonators used in seismic exploration operations must employ the best technology available for security and functionality under the conditions into which the detonators are loaded.

(4) No explosives may be placed on areas permitted for mining activities pursuant to Chapter 77 (relating to noncoal mining) or Chapter 86 (relating to surface and underground coal mining general requirements) without prior Department approval. To obtain Department approval to place explosives on area permitted for mining activities, the permit applicant shall provide information including but not limited to the following:

(i) Demonstration of authorization to place explosives charges and to conduct activities on the site.

(ii) A plan to ensure the safety and security of explosives charges on the mining permit from loading through detonation of the charges.

(iii) A map detailing the specific location of where charges are to be placed on the mining permit area.

(iv) If MSHA required training is necessary, how and when that training will be obtained and who will obtain the training. The permittee shall provide written documentation of the training to the Department prior to entry onto the mining permit.

(5) The permittee is responsible for the security of all charges in the ground to prevent the charges from being detonated, removed, or otherwise tampered with. The permittee shall secure all explosives charges in accordance with the approved blasting activity permit.

(6) For all incidents where explosives are loaded into boreholes and have had their functionality compromised by loading, handling or manufacturing defects, the permittee shall remove the explosives from the borehole or destroyed them in place.

(7) The permittee may not allow explosives charges to remain in the ground for more than one year.

Subchapter J. CIVIL PENALTIES

§211.201. Scope.

This subchapter is applicable to the assessment of civil penalties for the use of explosives on permitted blasting activity sites and for the unauthorized detonation, storage, transportation, handling or use of explosives. This subchapter is not applicable in cases where the procedures in Chapter 77 (relating to noncoal mining) or Chapter 86 (relating to surface and underground coal mining general requirements) are used.

§211.202. Inspection—general.

When the Department determines that a person subject to this chapter has violated any provision of this chapter or a permit issued pursuant to this chapter, the Department will notify the alleged violator either by copy of an inspection report, a notice of violation or through a Department order or other enforcement document. The failure of the Department to issue a notice of a violation may not be interpreted to be evidence of the absence of a violation. The Department will provide notices, orders or other public records for public inspection at the appropriate Department district office.

§211.203. Assessment of civil penalty.

(a) The Department will assess a civil penalty for each violation which is included as a basis for a cessation order.

(b) The Department may assess a civil penalty for each violation.

(c) The amount of the civil penalty may not exceed \$10,000 per day for each violation.

§211.204. System for assessment of penalties.

(a) The penalty per day for each violation may be set at any amount from zero through the maximum of \$10,000.

(b) Civil penalties will be assessed based on the following criteria:

(1) *Seriousness.* Up to \$10,000 per day for each violation will be assessed based on the seriousness of the violation, including:

(i) Personal injury or death.

(ii) Damage or injury to the lands or to the waters of the Commonwealth or their uses.

(iii) The cost of restoration.

(iv) A hazard to the health or safety of the public.

(v) Private property damage.

(vi) Government property damage

(vii) The interference with a person's right to the comfortable enjoyment of life or property.

(viii) Unauthorized detonation of explosives.

(2) Culpability. If the violation was caused, contributed to or allowed to continue due to negligence on the part of persons working on the blasting activity site, a penalty of up to \$2,000 per day for each violation will be assessed depending on the degree of negligence of the persons. If the violation was willful or the result of reckless conduct on the part of the person working on the blasting activity permit site, or a result of unauthorized detonation, transportation, storage, handling or use of explosives, a penalty of up to the maximum of \$10,000 per day for each violation, but at least \$500, will be assessed. Blasting to intentionally cause private property damage, government property damage, personal injury or death will be assessed at the maximum of \$10,000 per day for each violation.

(3) Speed of compliance. A credit will be given of up to \$1,000 per day for each violation based on the person's attempt to achieve rapid compliance after the person knew or should have known of the violation. If the violation is abated within the time period set forth in an abatement order, a credit will not be given under this paragraph unless the violation is abated in the shortest possible time, in which case a credit of up to \$1,000 per day for each violation will be given. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) Cost to the Commonwealth. A penalty may be assessed based on the costs expended by the Commonwealth as a result of the violation. The costs may include:

(i) Administrative costs.

(ii) Costs of inspection.

(iii) Costs of the collection, transportation and analysis of samples.

(iv) Costs of preventive or restorative measures taken to prevent or lessen the threat of damage to a property or environmental value, or to prevent or reduce injury to a person.

(5) Savings to the violator. If the person who commits the violation gains economic benefit as a result of the violation, a penalty may be assessed in an amount equal to the savings up to the regulatory maximum for each violation.

(6) History of previous violations. In determining a penalty for a violation, the Department will consider previous violations of the applicable laws for which the same person or municipality has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree which became final within the previous 1-year period on the permit where the violation has occurred. The penalty otherwise assessable for each violation will be increased by a factor of 5% for each previous violation. The total increase

in assessment based on history of previous violation will not exceed \$1,000 per day for each violation.

(i) A previous violation will not be counted if it is the subject of pending administrative or judicial review, or if the time to request the review or to appeal the administrative or judicial decision determining the previous violation has not expired.

(ii) Each previous violation will be counted without regard to whether it led to a civil penalty assessment.

(c) Whenever a violation is included as a basis for an administrative order requiring the cessation of a blasting operation, or for another abatement order, and if the violation has not been abated within the abatement period set in the order, a civil penalty of at least \$750 per day for each violation shall be assessed for each day during which the failure to abate continues. If the person to whom the order was issued files an appeal of the order with respect to the violation, the abatement period will be extended if suspension of the abatement requirement is ordered in a supersedeas order is issued by the EHB under §§ 1021.76—1021.78 (relating to supersedeas). In this case, the period permitted for abatement will not end until the date on which the EHB issues a final adjudication with respect to the violation in question or otherwise revokes the supersedeas order.

(d) Each day of a continued violation of the acts, this chapter, or a permit, license or order of the Department issued pursuant to this chapter, will be considered a separate violation for purposes of this chapter. The cumulative effect of a continued violation will be considered in assessing the penalty for each day of the violation.

(e) If a penalty calculated under the criteria in this section would yield a penalty in excess of the regulatory maximum for a violation, the maximum penalty will be imposed for that violation. Separate violations occurring on the same day may each be assessed a penalty of up to the regulatory maximum. When violations may be attributed to two or more persons, a penalty of up to the regulatory maximum may be assessed against each person.

§211.205. Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice of violation or order, the person to whom it was issued may submit written information about the violation to the Department and to the inspector who issued the order. The Department will consider any information so submitted in determining the facts surrounding the violation and may revise a civil penalty calculated in accordance with the criteria in subsection (b), if the Department determines that, taking into account exceptional factors present in the particular case, the civil penalty is demonstrably unjust. The Department will not reduce the civil penalty on the basis of an argument that a reduction in civil penalty could be used to abate violations of the acts, this chapter, or a condition of a permit or exploration approval. The Department will explain and document the basis for every revision of a civil penalty in the records of the case. If the Department revises the civil penalty, the Department will use the general criteria in subsection (b) to determine the appropriate civil penalty. When the Department has elected

to revise a civil penalty, the Department will give a written explanation of the basis for the revised civil penalty to the person to whom the order was issued.

(b) The Department will serve a copy of the civil penalty assessment on the person responsible for a violation. This assessment will be served within the time set forth in the applicable statute of limitations. Service will be by registered or certified mail, or by personal service. If the mail is tendered at the address in the permit, or at an address the person is located, and delivery is refused, or mail is not collected, the requirements for service will be deemed to have been met.

(c) Upon written request of the person to whom the assessment was issued, the Department will arrange for an informal conference to review the assessment. The Department may also initiate an informal conference.

(d) The procedures for informal assessment conferences are as follows:

(1) The Department will assign a representative to hold the informal assessment conference. The informal assessment conference will not be governed by requirements for formal adjudicatory hearings, and may be held at any time at the convenience of the parties.

(2) The Department will post notice of the time and place of the informal assessment conference at the regional or district office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The Department will consider all relevant information on the violation. After the informal assessment conference is held, the Department may do one of the following:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by appropriate representatives of the Department and the person assessed the penalty.

(ii) Affirm, raise, lower or vacate the penalty.

(e) The Department representative may terminate the informal assessment conference when the representative determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under § 211.206 (relating to final action), evidence as to statements made or evidence produced by one party at an informal assessment conference may not be introduced as evidence by another party or to impeach a witness.

(g) The time for appeal from an assessment will not be stayed by the request for or convening of an assessment conference.

§211.206. Final action.

(a) The person upon whom a civil penalty assessment has been served may file an appeal of the civil penalty assessment with the Environmental Hearing Board in accordance with § 1021.52 (relating to timeliness of appeal). Prepayment of the civil penalty shall be made in accordance with § 1021.54a(a) and (d) (relating to prepayment of penalties). Payment under this section shall be cash in the form of certified check, treasurer's check, bank check or cashier's check or a bond in the amount of the assessed civil penalty executed by a surety who is licensed to do business in this Commonwealth and who is otherwise satisfactory to the Department.

(b) The Department will hold the payment of civil penalty in escrow pending completion of the administrative and judicial review process, at which time it will disburse the payment as provided in § 211.207 (relating to final assessment and payment of penalty).

(c) An appeal from a penalty assessment will not be considered to be timely unless a properly executed appeal bond or cash equal to the full amount of the assessed penalty, or a verified statement that the appellant is unable to pay, is received by the Department within 30 days of the appellant's receipt of the assessment or reassessment.

(d) A person may challenge either the fact of the violation or the amount of the penalty once an appeal of that issue has been perfected. In either challenge, the appellant will be bound as to actions of the Department which have become final under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514). A final action includes a compliance order which has become final, even though the order addresses the same violation for which a civil penalty is assessed.

§211.207. Final assessment and payment of penalty.

(a) If the person to whom a civil penalty assessment is served does not file an appeal of the penalty assessment as provided in § 211.206 (relating to appeal procedures), the penalty assessment shall become final and the penalty assessed shall become due and payable upon expiration of the time allowed to file the appeal.

(b) If a party requests judicial review of an adjudication of the EHB, the initial payment of the penalty assessed shall continue to be held in escrow until completion of the review.

(c) If the final decision in the administrative and judicial review process results in an order reducing or eliminating the proposed penalty assessed under this chapter, the Department will, within 30 days of receipt of the order, refund to the person assessed all or part of the escrowed amount, with any interest accumulated by the escrow deposit.

(d) If the final decision in the administrative and judicial review processes results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Department within 30 days after the order is mailed to such person.

FEE REPORT FORM

Agency: Bureau of Mining Programs
Department of Environmental Protection

Contact: Thomas Callaghan, P.G.
Director
Bureau of Mining Programs

Phone: 717-787-5015

Fee Collections:	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
Current – Total	\$107,960	\$105,000	\$110,000	\$110,000	\$110,000
Proposed-Projected	NA	NA	\$300,000	\$300,000	\$300,000

FEE TITLE AND RATE

Explosives Program Fees

Current Fee Schedule


The current fee schedule is as follows:

CATEGORY	FEE
Blaster's License	\$50 for a new license, \$30 for three-year renewal
Explosives Storage Magazine License	\$50 per year

Proposed Fee Schedule:

The proposed fees would be in accordance with the following schedule:

Category	Current Fee	Proposed Fee
New Blaster's License	\$50	\$150
Blaster's License Three-year Renewal	\$30	\$180
New Explosives Storage Magazine License	\$100	\$100
Blasting Activity Permit-Paper	\$0	\$210
Blasting Activity Permit-Filed on-line	\$0	\$130
Blasting Activity Permit-by-rule	\$0	\$12
New Explosive Storage Magazine Security Plan	\$0	\$225
Explosive Storage Magazine Security Plan Revision	\$0	\$90
Explosive Storage Magazine Decommissioning	\$0	\$50
Explosive Storage Magazine Annual Renewal	\$50	\$135



EXPLOSIVES PROGRAM FEES
FEE REPORT FORM
Page 2 of 3

Fee Objective:

The fees have been calculated to cover the costs to DEP to review license applications, permit applications, and to administer permits and licenses for the non-mining uses of explosives. The non-mining Explosives Program implements the Explosives Manufacture, Storage and Possession Law (1937) and Explosives Use Regulation Law (1957) ("Laws"). The Laws provide for the safe storage, handling and use of explosives in the Commonwealth. The program is implemented by the Bureaus of Mining Programs and District Mining Operations. The explosives program is paid for from the general appropriation to the Department. The current fees are deposited in the General Fund. The increased revenue will be deposited in the General Fund.

Fee Related Activities and Costs:

The permit application fee amounts were calculated based on the staff time needed to review the various kinds of license and permit applications. The Bureau of District Mining Operations maintains a workload analysis system that tracks the permit applications and the review times. This workload analysis assigns a number of hours of staff time per application based on historical data recording staff review time. Similarly, costs are assigned to implement permit requirements in the workload analysis. The workload hours were multiplied by a typical hourly wage rate then supplemented to cover benefits and overhead.

Analysis:

The current permit fees for the explosives program are minimal. Under the new fee schedule, DEP will collect fees to support the program. The annual personnel costs for this program are about \$250,000, with a total program cost of about \$300,000. The existing program fees amount to about \$110,000 per year.

Over the last several years, the non-mining explosives program has been managed to improve efficiency and reduce costs. This has been accomplished by having larger blaster's license classes, combining the permit-to-sell and permit-to-purchase for sellers of explosives, and implementing on-line permitting for blasting activity permits. It is not anticipated that the new regulatory requirements will increase workload.

The recommended fees are estimated to generate about \$300,000 annually. The intent is to cover the Department's current costs to administer the program, including the personnel costs and administrative costs. These costs include, among other things, the cost of conducting the blaster's training and examination program, performing inspections of explosives storage locations, compliance assistance, and permitting actions. The administrative costs include the cost of producing the instructional materials for training, travel costs and equipment.

EXPLOSIVES PROGRAM FEES
FEE REPORT FORM
Page 3 of 3

Comment:

The proposed regulations, including the fee schedule, have been reviewed by the Mining and Reclamation Advisory Board and the Aggregate Advisory Board. Both boards recommended that the rulemaking should proceed.



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February 17, 2016

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Proposed Rulemaking: Handling and Use of Explosives (#7-522)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission (Commission). This proposal is scheduled for publication in the *Pennsylvania Bulletin* on February 27, 2016 with a 30-day public comment period. The Environmental Quality Board (EQB) adopted this proposal on September 15, 2015.

This enclosed rulemaking proposes to amend the Commonwealth's explosives regulations at 25 Pa. Code Chapter 210 (relating to Blasters' Licenses) and Chapter 211 (relating to Storage, Handling and Use of Explosives). These regulations are authorized under the 1937 and 1957 Explosives Acts, the Surface Mining Conservation and Reclamation Act, the Noncoal Surface Mining Conservation and Reclamation Act and the Administrative Code of 1929.

This rulemaking proposes to update explosives use requirements to reflect current practices, eliminate outdated requirements, and provide a more effective enforcement mechanism. The updated technical requirements will result in more consistency between the requirements for construction blasting and blasting for mining operations, and will increase safety for both operators and the public. The proposed rulemaking will also codify existing collaboration between DEP and the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to ensure compliance with the federal Safe Explosives Act of 2002.

The blasting and explosives regulations were promulgated in 1972-73, and have undergone only minor revisions since that time. This proposed rulemaking addresses deficiencies in the program created by advancement in the industry without meaningful revisions to the regulatory framework since 1973. This rulemaking proposes to revise current regulations to address the use of explosives for seismic exploration. The use of explosives for seismic exploration is fundamentally different than most other uses of explosives. For example, seismic exploration often necessitates leaving explosive charges in the ground for extended periods of time, and the proposed regulations specify the security measures needed to protect the public safety under these circumstances. The Department of Environmental Protection (DEP or Department) has developed an interim seismic supplement to address safety issues at seismic exploration sites.

The proposed rulemaking will codify these requirements, providing certainty to the regulated community regarding the regulatory framework for seismic exploration.

The rulemaking also proposes an enforcement mechanism. The current regulations include criminal penalties for blasting-related violations, imposed by means of summary citations and possible misdemeanor charges. The proposed rulemaking provides a system for issuing civil penalty assessments for such violations.

In addition, the proposed rulemaking includes a revised fee schedule to cover costs associated with various permit-related work, license renewals, and required on-site safety inspections. Approximately 2,000 individuals are licensed blasters in Pennsylvania. The bulk of the activity in Pennsylvania is conducted by large corporations, including several multinational corporations. However, the regulated community is comprised of about 450 businesses, most of which are small businesses. The regulations will apply consistently among all operations for small and large businesses alike because the effects are the same regardless of who is conducting the blasting. Compliance assistance for this rulemaking will be achieved through routine consultation with trade groups, citizens, and individual applicants.

DEP reviewed the proposed rulemaking with the Mining and Reclamation Advisory Board on April 23, 2015 and with the Aggregate Advisory Board on May 20, 2015. Both Boards recommended that the rulemaking move forward for EQB consideration. DEP also conducted outreach to the broader explosives regulated community through presentations to the Pennsylvania chapters of the International Society of Explosives Engineers and the trade group representing the seismic exploration contractors. Informal discussions were also held with individual stakeholders.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendations or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

Please contact me by e-mail at ledinger@pa.gov or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,



Laura Edinger
Regulatory Coordinator

Enclosures

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

I.D. NUMBER: 7-522 *Handling and Use of Explosives*

SUBJECT:

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>2-17-16</u>	<u><i>Shelly Weaner</i></u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Representative John Maher</i>
<u>2-17-16</u>	<u><i>Serik Kolk</i></u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Representative Greg Vitali</i>
<u>2-17-16</u>	<u><i>Günther Heintzelmann</i></u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator Gene Yaw</i>
<u>2-17-16</u>	<u><i>Richard J Fox</i></u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator John Yudichak</i>
<u>2/17/16</u>	<u><i>K Cooper</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION <i>David Sumner</i>
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
<u>2/17/16</u>	<u><i>Courne Bryant</i></u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

