



COMMENT AND RESPONSE DOCUMENT

HANDLING AND USE OF EXPLOSIVES

25 Pa. Code Chapters 210 and 211
46 Pa. B. 996 (October 3, 2015)
Environmental Quality Board Rulemaking #7-522
(Independent Regulatory Review Commission #3138)

List of Commentators on the Proposed Rulemaking

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Comments and Responses

1. **Comment:** Consider using existing Federal definitions and references to assure regulatory consistency. (3)(5)(8)

Response: Changes have been made to ensure that the final-form rulemaking does not conflict with any Federal regulations. The final-form rulemaking requires persons to comply with laws and regulations administered by the Federal Bureau of Alcohol, Tobacco, and Firearms and Explosives (ATF) and defines “explosives” consistent with ATF’s definition. The definition of blast area differs from the Mine Safety and Health Administration (MSHA) definition because Pennsylvania’s regulations apply to offsite effects as well as onsite effects. For mining sites, MSHA regulations apply, and for non-mining blasting sites Occupational Safety and Health Administration (OSHA) regulations apply. The rulemaking was revised to require that blast site warning signs be posted at all approaches to the blast site, the same requirement as OSHA. Section 211.117 (daily summary of magazine transactions) was changed by adding that the “daily summary of magazine transactions” required by 27 CFR 555.127 be made available to the Department on request, to be consistent with ATF requirements and for clarity.

2. **Comment:** Use the ATF definition to define explosives. (5)(8)

Response: The final-form rulemaking has been revised to incorporate the ATF definitions of “explosives” and “explosives materials” into the definition of “explosives.” This change is consistent with the current language in Chapters 210 and 211 and does not conflict with any Federal regulation. The definition was revised to define explosives as “Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion.” The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The term includes all items in the “List of Explosive Materials” provided for in 27 CFR 555.23.”

3. **Comment:** The definition of mine opening blasting needs to be changed. (5)

Response: The proposed regulatory changes do not include the definition of mine opening blasting as further review would be required to determine the scope of an appropriate change. This definition was established in 2008 through the regulatory process after careful deliberation. Further, it matches the definition in Chapter 89.

4. **Comment:** The fee increases are excessive. (3)(4)(8)

Response: After careful consideration, the Department has removed the proposed fee schedule revisions. Fees will be addressed separately in a subsequent rulemaking.

5. **Comment:** Reword section 210.17(a) because it is confusing as currently worded. (5)

Response: The Department believes this provision is sufficiently clear. However, the Department has added “law enforcement” and removed “well perforation” and “seismic and pole line work” as blaster’s license categories.

6. **Comment:** The addition of “must” and “secured” to the proposed definition of Blast Area is adequate to meet the board’s intentions. Adding “the potential for” makes the requirement more stringent than Federal regulations. (1) (4)(6)

Response: The Department agrees with this comment and has removed “the potential for” from the blast area definition in the final-form regulations.

7. **Comment:** Please clarify the difference between the terms blaster and blaster-in-charge. (See § 211.121 and § 211.124.) (1)

Response: The term blaster is generic to refer to any individual who may detonate explosives. Blaster-in-charge is used to identify the one person who is responsible for a specific blast. Blaster-in-charge is a defined term in section 211.101 of the existing regulations.

8. **Comment:** Clarify in the definitions that “cube root scaled distance” is to be applied to demolition activity only. (3)

Response: The rulemaking has been clarified to describe what cube root scaled distance is to be used for. Section 211.124(a)(9) now reads “except for demolition blasting operations where the cube root scaled distance must be used.”

9. **Comment:** The definition of flyrock in section 211.101 needs to be changed. “Onto property neither owned nor leased by the permittee or its customer” needs to be removed from the definition. (7)

Response: In the proposed rulemaking, the intent was to ensure that the blaster/permittee had control over the area they needed to secure. After further analysis, it was determined that property control is complex and that in some cases neither the permittee nor their customer may have control over property that needs to be secured. Therefore, the phrase “Onto property neither owned nor leased by the permittee or its customer” has been deleted from the final-form regulations.

10. **Comment:** Remove “Unauthorized detonation of explosives”, “unauthorized handling and use of explosives” and “Unauthorized storage of explosives” because these create an unreasonable requirement. (3)(8)

Response: The regulation has been revised to remove “Unauthorized detonation of explosives,” “Unauthorized handling and use of explosives” and “Unauthorized storage of explosives.”

11. **Comment:** The proposed regulations provide for a permit or license block. We request clarification as to the time frame of a permit or license block. (1)(4)(6)(8)

Response: When a permit or license block is applied, it is done through an order, which is an appealable action. A permit or license block is applied on a case-by-case basis if the permittee or licensee has demonstrated an unwillingness or inability to comply with regulations. A formulaic approach to blocking of permits or licenses which considers number of violations over set time frames has the potential to be more burdensome to the explosives industry and to the Department.

12. **Comment:** Remove section 211.115 as requirements set by ATF, OSHA, MSHA, Department of Transportation (DOT) and Homeland Security are already in place and proven to be effective. (5)

Response: This is beyond the scope of the proposed regulatory changes. The proposed rulemaking did not include modifications to § 211.115 other than the addition of § 211.115(j) which ensures that explosives magazines are accessible to the Department for inspection. It is important for the Department to retain the authority to enforce these requirements because the Department's inspectors conduct inspections to assure compliance more frequently than the Federal partner agencies.

13. **Comment:** The requirement for a 4-hour time limit for the Department to be given access to explosives magazines for inspection may not always be feasible. (3)(4)(7)

Response: The proposed change to the regulations states that "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." If the 4-hour time limit is not feasible, the licensee should propose a different time frame to the Blasting and Explosives Inspector.

14. **Comment:** Eliminate section 211.116 regarding decommissioning of magazines as this entire section is redundant due to Federal regulations and will create a burden to comply. (3)

Response: When magazines are no longer being used or storage licenses have expired, it is important that the Department ensures the explosives are removed from the magazine and properly disposed. The disposal of explosives is regulated in part by storage regulations which generally require that explosives are either being used, handled, or stored. Therefore, this section has been retained in the final-form rulemaking.

15. **Comment:** Delete sections 211.122 and 211.123 (requiring explosives sales and purchase permits) as they are redundant due to Federal regulations. (3)(5)

Response: These sections were proposed for deletion with the proposed rulemaking. The final-form rule reflects this deletion.

16. **Comment:** Please provide clarification on how to provide distance, direction and mapping information if multiple blasts are planned on a Blasting Activity Permit. (1)(4)(6)(8)

Response: When a Blasting Activity Permit application is reviewed, the Department must consider if it is reasonable that the activity can be conducted in compliance with the regulations. The distance and direction of blasting is to be conducted from roads; buildings and other structures are the critical factors considered in how blasts are designed. Therefore, these are shown on the maps submitted with the permit applications. A map for the area where blasting is proposed meets the regulatory requirement.

17. **Comment:** It must be made clear that electronic signatures will be accepted for Blasting Activity Permit applications. (3)(8)

Response: Existing regulations allow the Department to accept electronic signatures. The acceptance of electronic signatures is subject to the Commonwealth Electronic Transactions Act (73 P.S. §§ 2260.101—2260.5101).

18. **Comment:** Why must the specific type of explosives be listed on a Blasting Activity Permit application? (3)

Response: For Blasting Activity Permit applications it is relevant for the Department to know if, for example, packaged or bulk blasting agents are proposed for use. In some cases, it is relevant if electronic detonators are going to be used instead of non-electric detonators. “Specific” in this context does not include brand names or other unnecessarily detailed information.

19. **Comment:** We provide a map now with Blasting Activity Permit applications. Is it necessary or required to add arrows and footage distances to each item listed? (3)

Response: It may not be necessary to add arrows and “footage distances” to maps. However, many of the maps currently provided with Blasting Activity Permit applications lack sufficient detail to be useful in evaluating if there is a reasonable expectation that the blasting proposed in the application can be done within regulatory limits. To make a fair determination, the Department needs to be able to assess spatial relationships and distances between where blasting will occur and where buildings, roads, etc. are located.

20. **Comment:** The requirement to provide notification to people within 200 feet of blasting has worked fine. Increasing the distance can cause unnecessary or excessive burden and cost to contractors. (3)(8)

Response: The requirement for notification has been removed. After further consideration, the proposed requirement was determined to be less effective than other regulatory requirements in ensuring public safety. Clearing and securing the blast area, an existing requirement, is more effective than warning people who may be within 200 feet of a blast. If people are close enough to where blasting is going to take place that they need to

be warned, the area they are in needs to be cleared and secured. The distance from the blast that needs to be cleared and secured is determined by blast design. If a blaster or permittee can only clear and secure a small area, the blast must be designed accordingly.

21. **Comment:** Will a digital/electronic version such as EX smart phone, iPad, laptop, etc. be accepted to comply with the requirement for a blaster to have a copy of the Blasting Activity Permit? (3)(8)

Response: Yes. A copy of the permit needs to be made available to the blaster-in-charge. To demonstrate compliance with this provision of the proposed regulation the blaster-in-charge would only have to show the blasting inspector that he has a copy of the permit. An electronic copy is acceptable. The regulation does not specify the format.

22. **Comment:** DEP occasionally requests the permit application be submitted on paper. In those instances, will the applicant be eligible for the reduced "online" cost? (3)

Response: Applicants who submit a paper permit application are not eligible to receive the reduced "online" cost. The reason that some Blasting Activity Permits need to be submitted on paper instead of electronically is because those projects are sufficiently complex and the information is too voluminous to be submitted to the Department electronically. These complex projects, such as demolition or seismic exploration operations, require significantly more review time than typical Blasting Activity Permits and are typically large, complex and big budget projects.

23. **Comment:** How are the fees for Blasting Activity Permits required by section 211.126 going to be paid in a timely manner? (3)

Response: After careful consideration, the Department has removed the proposed fee schedule revisions. Fees will be addressed separately in a subsequent rulemaking.

24. **Comment:** While we agree that it is reasonable for DEP to collect fees for reviewing, administering and enforcing the blasting program, as supported by regulation, and in a manner consistent, efficient and equitable, we request clarification as to the actual cost of the blasting program and a listing of DEP personnel assigned to the program with their associated yearly hours. We also suggest that a more efficient, long-term solution to the fees is the use of the Consumer Price Index (CPI) average for All-Urban Consumers for the most recent calendar year, adjusted annually by the percentage, either upward or downward by which the CPI for the most recent calendar year exceeds the CPI for the previous calendar year. This is the CPI currently utilized by DEP Air Quality's Title V program.

Furthermore, in support of DEP's transparency policy and to provide a baseline of the Blasting Program operations, we request a yearly report on blasting be a part of an overall Mining Program financial statement report to be completed no later than December 31 of the most recent fiscal year. (1)

Response: After careful consideration, the Department has removed the proposed fee schedule revisions. Fees will be addressed separately in a subsequent rulemaking.

25. **Comment:** Under the proposed regulations it appears as though there is no difference between a license for the use of explosives for construction or mining blasting and one for detonation of an explosive for law enforcement purposes. Municipal bomb squad personnel should be properly licensed, yet their activities should not be regulated in the same matter as persons conducting blasting operations. (2)(8)

Response: Bomb squad members and other police who have blaster's licenses are not required to have blaster's licenses as the activities they engage in involving explosives, except storage, are not regulated by the Department. They obtain blaster's licenses because they wish to have a credential and better understand how explosives storage, handling and use is regulated in the Commonwealth. A law enforcement classification for blaster's licenses will be used for these activities.

26. **Comment:** The proposed regulation should require maintaining accurate sales and purchase records in accordance with Federal regulations. (5)

Response: The proposed regulations remove the requirements for Department sales and purchase permits in order to avoid duplicating Federal requirements.

27. **Comment:** The final-form regulation should be changed to state "the latitude and longitude, and where available, the 911 address should be included" because a house may have an address but not everyone posts those addresses in a readily visible or accessible manner. (3)

Response: The final-form rulemaking has not been revised in response to this comment. Street addresses are readily available through tools such as Google Earth. The regulation change includes that "if monitoring is conducted at a home or other building with a 911 address, the address of the structure must be provided" so if there is no 911 address it does not need to be provided. Providing a street address removes all doubt regarding locational information on a blast report and provides information to a blaster in the field designing a subsequent blast without access to a mapping program. Modern GPS units, if properly used, are the most consistent and accurate method of obtaining locational information such as distances and direction. That information can then be applied to maps using mapping programs which is very useful in any investigation into what may have occurred as a result of a blast.

28. **Comment:** The final-form regulation should be changed to allow the electronic signature of the blaster-in-charge on the blast record. (5)

Response: Existing regulations allow the Department to accept for electronic signatures. The acceptance of electronic signatures is subject to the Commonwealth Electronic Transactions Act (73 P.S. §§ 2260.101—2260.5101).

29. **Comment:** The requirement for describing the ground surrounding the blast site on the blast record sketch showing the number of blast holes, burden, spacing, pattern dimensions, delay timing sequence, and point of initiation should be removed. (3)

Response: Most blast reports prepared by blasters in Pennsylvania describe the condition of the ground surrounding the blast site as, for example, previous shot, solid, open, etc. This information is valuable to understand the effects resulting from a blast when Department investigations are conducted and aids in making determinations for blasters to modify blast designs if necessary or for the Department to evaluate proposed blast design modifications. Examples have been included in the final-form rulemaking to improve clarity.

30. **Comment:** Change the proposed requirement to provide the amount of explosives in each hole on the blast record to require compliance with Federal and industry guidelines for loading or delete the requirement. (5)

Response: ATF, OSHA, and MSHA do not require blast reports. The Federal Office of Surface Mining Reclamation and Enforcement's (OSMRE) regulations require blast reports for coal mines and in 30 CFR§816.68(h), (i) and (j) they include that the diameter and depth of holes, types of explosives used and the type and length of stemming be provided on the record. "The amount of explosives loaded in each borehole" was added to the final-form rulemaking to clarify that the information obtained from logging of the blast hole during loading required in the current regulation be added to the blast report. This information is necessary to comply with the general requirement to provide the Department with sufficient information to reconstruct the blast.

31. **Comment:** The requirement in the proposed regulation should be to provide either the street address or the latitude, not both. (7)

Response: Modern GPS units, if properly used, are the most consistent and accurate method of obtaining locational information such as distances and direction. Online tools allow for data collection that can be applied to maps to obtain locational information.

32. **Comment:** There should not be a requirement for a log of holes drilled but not loaded on the blast record drill log. (7)

Response: On most drill logs that are currently attached to blast records, the condition of all holes drilled on the blast site is reported. This is necessary because it provides information about the condition and the extent of the rock being blasted, which is important information for both the blaster and the Department to evaluate why a blast performed the way it did.

33. **Comment:** The proposed regulation should be changed to require that the blaster-in-charge shall determine the condition of the material to be blasted by consulting with the driller, information from the drill log, or "at-the-hole" communication with others familiar with the specific drilling process prior to loading the holes. (3)

Response: This requirement in section 211.133(a)(26) of the proposed regulation refers to providing drill log information for a blast report so that blast performance can be adequately evaluated. The condition of the boreholes and how the holes were loaded in response to their condition is necessary when reconstructing the blast and to understand why a blast performed as it did.

34. **Comment:** Relating to section 211.133(a)(14), it is unreasonable to provide the density for gassed emulsions. Gassed emulsions have variable densities which are always changing in the borehole up to the point of detonation. The exact product density, for these types of explosives is unknown causing it to be difficult to determine the amount of this product placed into a borehole. (7)

Response: The final-form rulemaking requires the “product density for bulk blasting agents.” Since gassed emulsions have variable densities, providing a range complies with the requirement.

35. **Comment:** Section 211.141 (13) should be changed to state only load explosives into on-road vehicles that have passed Federal Motorized Carrier Safety Administration (FMCSA) (under DOT) safety inspection or certification because explosives trucks may be licensed other states. (1) (3)

Response: The final-form rulemaking has been revised to change “the State safety inspection” to a “State or an FMSCA inspection.”

36. **Comment:** We ask for clarification and a clear definition of a “nuisance.” (1)(3)(4)(5)(6)(7)(8)

Response: The final-form rulemaking reflects the removal of the definition of “nuisance” and the requirement to prevent a nuisance.

37. **Comment:** Proposed section 211.151(e) should be changed to include that an alternative peak particle velocity or air blast level can be “designated by the Department unless the building is owned or leased by the permittee or customer, or granted via DEP approved variance.” (3)

Response: The regulations provide for alternative airblast levels in section 211.151(f).

38. **Comment:** Please clarify the difference between noxious and toxic gases. (1)(8)

Response: Neither “noxious” nor “toxic” are necessary descriptions of the gases produced by blasting from a regulatory standpoint. The final-form rulemaking removes both terms.

39. **Comment:** Section 211.152 is too broad and should be deleted. (5)

Response: The Department retained section 211.152. As provided in the proposed

rulemaking, the Department modified this section by adding “including carbon monoxide (CO) and oxides of nitrogen (NOx),” changing “health and safety” to “health or safety”, and replacing “noxious” with “toxic”. As the Department notes above in its response to Comment 38, neither “noxious” nor “toxic” are necessary descriptions of the gases produced by blasting from a regulatory standpoint. The final-form rulemaking removes both terms. The remaining edits are clarifications of provisions that have been in place since July 2001.

40. **Comment:** The term blaster-in-charge should be defined. (5)

Response: Blaster-in-charge is a defined term in Section 211.101 of the existing regulations.

41. **Comment:** We request a clearer definition of the responsibilities regarding the determination of the condition of bore holes prior to loading including a description of “at-the-hole communication.” (1) (6)

Response: It is the blaster-in-charge’s responsibility to determine the condition of the material to be blasted from the individual who drilled the blast holes, from the drill log, or at-the-hole communication prior to loading a blast. It is the permittee’s responsibility to ensure that a written drill log or at-the-hole communication is available to the blaster-in-charge. The final-form regulation defines “at-the hole-communication” as “communication between the driller who drilled the blast holes to be loaded in a blast and the blaster-in-charge of that blast in which the driller describes the conditions of the boreholes that the driller drilled. At-the-hole communication occurs prior to blast loading and may consist of but not be limited to the following: cones placed in the boreholes with messages describing borehole conditions or verbal communication in which the driller describes the condition of the boreholes.”

42. **Comment:** Clearing and safeguarding the blast area should be the responsibility of the permittee. (5)

Response: Clearing and safeguarding the blast area is a shared responsibility of the permittee, the blaster-in-charge, and where applicable, the contract blaster. Blast areas are usually sufficiently large that it requires coordination and communication between all parties to secure them and that effort should be coordinated by the permittee who shares the responsibility of securing the blast area with the blaster. Each party has knowledge and expertise that must be communicated and coordinated in order to provide the needed level of security.

43. **Comment:** The proposed requirements regarding blast site signs are confusing and conflict with Federal requirements. We suggest wording to say "adequate signage" at the safest, most logical, and most convenient location. (3)(4)(6)(7)(8)

Response: The final-form rulemaking has been revised to reflect OSHA rules and will state “warning signs shall be maintained at all approaches to the blast site.” The final-form

rulemaking revision also states that posting of warning signs must be in compliance with OSHA and MSHA regulations. The requirement for posting signs was moved to section 211.154 (relating to preparing the blast) from section 211.155 (relating to preblast measures) to clarify that signs need to be posted prior to blast loading which is consistent with Federal regulations.

44. **Comment:** The requirements for deployment of seismographs should be changed to “established by the International Society of Explosives Engineers Standards Committee and/or manufacturer's recommendations.” (3)(5)

Response: The ISEE standards are developed by professionals who represent the explosives industry and account for the manufacturer’s recommendations. Maintaining one set of standards will prevent confusion and will be easier to follow. Therefore, the Department did not add this to the regulation.

45. **Comment:** The requirement to use 3-inch diameter holes in section 211.182 (c) should be eliminated. (3)

Response: The proposed rulemaking eliminated the 3-inch hole diameter requirement. This final-form rulemaking reflects this elimination.

46. **Comment:** The imposition of an entirely new civil penalty structure exceeds the reasonable powers of the board. The existing legal framework applicable to blasting contractors is adequate to protect Pennsylvania citizens. The proposed regulations do not establish why Subchapter J is necessary, nor do they accurately weigh the costs and benefits of Subchapter J. As drafted, the proposed rule imposes penalties that are too burdensome, gives undue discretion to investigators, and creates a standard of proof that is contrary to established jurisprudence. (3)(8)

Response: After careful consideration, the Department has removed Subchapter J from this rulemaking. Civil penalties for non-mining explosives violations will be addressed separately in subsequent rulemaking.

47. **Comment:** In section 211.204 (b)(1)(vii) “the interference with a person’s right to the comfortable enjoyment of life or property” is problematic. We believe this cannot be able to be measured consistently, equitably or without personal bias and request that it be removed from the proposed rulemaking. (1)(4)(6)

Response: Subchapter J has been removed from this rulemaking.

48. **Comment:** Relating to section 211.204(b)(4) (Cost to the Commonwealth), a penalty may be assessed based on the costs expended by the Commonwealth as a result of the violation. We ask for clarification as to how this section will be assessed. As written there is no limitation on costs or how they will be determined. (1)(4)(6)

Response: Subchapter J has been removed from this rulemaking.

49. **Comment:** Regarding section 211.204 (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. We ask for clarification on “attributed to.” Will this be applied to the blaster-in-charge, permittees, blasting crew, etc.? (6)

Response: Subchapter J has been removed from this rulemaking.

50. **Comment:** Regarding section 211.204 (System for assessment of penalties), what is the basis for the "per-day" charges as it relates to blasting incidents? They generally are singular events. Will there be a clear breakdown for monetary assessment of each criteria category in 211.204 (b). How will each of the six categories be measured? Will positive history of no violations be included? Will an assessment worksheet be created? (6)

Response: Subchapter J has been removed from this rulemaking.

51. **Comment:** The regulations specify that “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.” Civil penalties could be assessed to one or all of the permittee, all subcontractors listed on the permit and the blaster-in-charge of any blasts conducted on a permit.” Prior to implementation of the regulations the Department will develop penalty assessment guidelines and will solicit input from the regulated community. This is too wide open to abuse of its intent. There are no limitations. Who will do this and how will this be determined? (6)

Response: Subchapter J has been removed from this rulemaking.

52. **Comment:** Specify which document has preeminence when dealing with other agencies, MSHA, Fire Marshal or OSHA (5)(8)

Response: The Department’s regulations must be complied with, regardless of other regulations. Blasting is complex and ultra-hazardous and is highly regulated. It is of the utmost importance that the regulations provide for public protection. Every effort has been made to assure consistency in the requirements.

53. **Comment:** Add a statement clarifying if any “adopted by reference” laws come into play. (5)

Response: The final-form rulemaking makes clear that Chapters 210 and 211 require compliance with relevant Federal laws, including those of the ATF (18 U.S.C.A. Chapter 40 and implementing regulations at 27 CFR Part 555), and, where applicable, those of OSHA, MSHA, and the FMCSA.

54. **Comment:** The regulatory analysis form (RAF) does not provide the necessary explanation of the need for these regulations. Nor does the RAF adequately explain the cost benefit analysis for the fee increases. (8)

Response: After careful consideration, the Department has removed the proposed fee schedule revisions. Fees will be addressed separately in a subsequent rulemaking.

55. **Comment:** Regarding section 211.151 (relating to prevention of damage or injury), subsection (d) addresses how blasts shall be designed and conducted. EQB proposes to modify the phrase “maximum allowable peak particle velocity” to “allowable particle velocity,” but then uses the phrase “maximum allowable peak particle velocity” in the last sentence. EQB uses this same phrase in Subsection (g). EQB should review this section to ensure the language is consistent and clear for the regulated community to comply. (8)

Response: The regulation has been revised to state “particle velocity” instead of “peak particle velocity” throughout the final-form rulemaking.