

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 United States 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.

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

[EMPLOYEE POSSESSOR—AN INDIVIDUAL WHO IS IN POSSESSION OF OR HAS CONTROL OF EXPLOSIVES MATERIALS.]

EXPLOSIVE MATERIALS—ANY MATERIAL CLASSIFIED AS AN EXPLOSIVE BY THE ATF IN ITS MOST CURRENT LIST PUBLISHED IN THE FEDERAL REGISTER UNDER 18 U.S.C.A. § 841(D) AND 27 CFR 555.23 (RELATING TO LIST OF EXPLOSIVE MATERIALS).]

EXPLOSIVES— 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, SOUIBS, DETONATING CORD, IGNITER CORD, AND

IGNITERS. THE TERM INCLUDES ALL ITEMS IN THE “LIST OF EXPLOSIVE MATERIALS” PROVIDED FOR IN 27 CFR §555.23.”

Limited—A classification of blaster's license applicable to persons who supervise the loading or detonate 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—

(I) AN INDIVIDUAL WHO HAS THE AUTHORITY TO DIRECT THE MANAGEMENT AND POLICIES OF THE ATF LICENSEE OR PERMITTEE PERTAINING TO EXPLOSIVE MATERIALS.

(II) 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] IS IN COMPLIANCE with 18 U.S.C.A. Chapter 40 and 27 CFR Part 555 (relating to commerce in explosives)[, AND HAS UNDERGONE A BACKGROUND CHECK AS EITHER A RESPONSIBLE PERSON OR AN EMPLOYEE POSSESSOR BY THE 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** payable to the Commonwealth of Pennsylvania. The complete application shall be submitted to the Department at least 2 weeks prior to the examination.

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§ 210.16. Examinations.

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(c) An applicant failing to appear for a scheduled examination forfeits the application fee unless the applicant provides written notice to the Department **2 weeks** prior to the examination date or submits a valid medical excuse in writing.

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§ 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.

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(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] 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**, payable to the Commonwealth of Pennsylvania.

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§ 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 and **[Chapter 211 (relating to storage, handling and use of explosives in surface applications)] Chapters 77, 87, 88 and 211.**

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 210.20. Fees.

The Department will assess an annual administration fee for the administration of blaster's licenses. The annual administration fee for a blaster's license is \$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:

***ATF*—The United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives.**

***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 7 and 11 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. § 166) and Reorganization Plan No. 8 of 1981 (71 P. S. § 751-35).**

***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 nonrefundable 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.**

AT THE HOLE COMMUNICATION-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 MAY CONSIST OF 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.

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.

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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. CUBE ROOT SCALED DISTANCE IS USED TO ESTIMATE AIRBLAST LEVELS.**

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.

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.]

[EMPLOYEE POSSESSOR—AN INDIVIDUAL WHO IS IN POSSESSION OF OR HAS CONTROL OF EXPLOSIVES MATERIALS.

[EXPLOSIVE MATERIALS—THE TERM AS DEFINED IN § 210.11 (RELATING TO DEFINITIONS).]

[EXPLOSIVES— 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.]

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

(i) Beyond the blast area.

(ii) **[ONTO PROPERTY NEITHER OWNED NOR LEASED BY THE PERMITTEE OR ITS CUSTOMER.**

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

FMCSA INSPECTION-THE INSPECTION REQUIRED BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION IN 40 CFR §396.3.

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

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Misfire—Incomplete detonation of explosives.

[NUISANCE—A CONDITION WHICH CAUSES A HAZARD TO PUBLIC HEALTH OR SAFETY.]

MSHA-U.S. DEPARTMENT OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION.

OSHA- U.S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION.

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.

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

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

[RESPONSIBLE PERSON—

(i) AN INDIVIDUAL WHO HAS THE AUTHORITY TO DIRECT THE MANAGEMENT AND POLICIES OF THE ATF LICENSEE OR PERMITTEE PERTAINING TO EXPLOSIVE MATERIALS.

(ii) GENERALLY, THE TERM INCLUDES PARTNERS, SOLE PROPRIETORS, SITE MANAGERS, CORPORATE OFFICERS AND DIRECTORS, AND MAJORITY SHAREHOLDERS.]

SQUARE ROOT 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. **SQUARE ROOT SCALED DISTANCE IS USED TO ESTIMATE GROUND VIBRATION.**

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

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 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[, **storing, purchasing and selling**] or storing 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 (relating to prevention of damage or injury).** 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).**

(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 is a violation of this chapter to:

(1) Fail to comply with this chapter or Chapter 77, 87 or 88 (relating to noncoal mining; surface mining of coal; and anthracite coal), regarding storage and use of explosives.

(2) Fail to comply with any order or permit or license of the Department issued under this chapter or Chapter 77, 87 or 88.

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

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

(d) The Department will not issue a permit or license to any person who has done any of the following:

(1) Failed or continues to fail to comply with this chapter, 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 a past or continuing violation.

(3) Not complied with the 18 U.S.C.A. Chapter 40 and 27 CFR Part 555 (relating to commerce in explosives) and does not have an ATF license or permit, when required.

[(4) NOT MET THE REQUIREMENTS TO BE AUTHORIZED AS AN EMPLOYEE POSSESSOR OR RESPONSIBLE PERSON BY THE 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 18 U.S.C.A. Chapter 40 and 27 CFR Part 555 (relating to commerce in explosives) 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.

[(b)] (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) Licenses expire annually on December 31 of each year.] (d) Licenses 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:

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§ 211.113. Application contents.

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(b) A completed license application [shall] must include:

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

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

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(i) A licensee will be deemed to be in compliance with this section as to having deterred or obstructed, to the greatest extent possible, unauthorized intrusion upon a magazine site if the licensee constructs, installs, implements and maintains the security measures specified in subsection (d), which meet the requirements of this section and which are specified by the licensee in one of the following:

(1) A plan submitted to the Department under subsection (f).

(2) A plan submitted to and approved by the Department under subsection (g).

(3) A plan submitted to the Department under § 211.113(b)(6) (relating to application contents).

(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.

(Editor's Note: Sections 211.116 and 211.117 are new and printed in regular type to enhance readability.)

§ 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 20 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 under 27 CFR 555.122, 555.123, 555.124, and 555.125 **AND 555.127** 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 (P. L. 134, No. 65) (35 P. S. §§ 1271—[1277] 1278).

(c) A permit issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19b), or the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326), and the regulations promulgated thereunder, authorizing blasting activity shall act as a blasting activity permit issued under this chapter.

(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.

(e) The Department will not issue a permit to any person who [has either]:

(1) [Failed and continues to fail] FAILS to comply with this chapter or a condition of a permit issued under this chapter or an order issued to enforce this chapter.

(2) [Demonstrated] DEMONSTRATES an inability or lack of intention to comply with this chapter as indicated by past or continuing violations.

(f) The permittee, [ALL SUBCONTRACTORS] THE BLASTING CONTRACTOR 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. [Permits to sell explosives] (Reserved).

[(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. [Permits to purchase explosives] (Reserved).

[(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] must** include:**

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

[(2) A contact person's name, title and telephone number.]

(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]BLASTING CONTRACTOR.

(4) The name, title and telephone number of a 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] THE BLASTING CONTRACTOR 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 SQUARE ROOT scaled distance based on calculations made from actual site conditions[. IN | EXCEPT FOR demolition blasting operations WHERE the minimum scaled distance must be cube root scaled distance MUST BE USED.

[(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 million** 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 FEET (65.61 METERS)] 300 FEET (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] MUST 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)](21) Types of stemming material.

(b) Blasting activity permits are not transferable.

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(d) The permittee may request extensions and modifications by submitting an amended application.

(e) The blaster-in-charge shall have in his 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—1396.19b), 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) [A] Except for blasting activities for the purpose of demolition or seismic exploration, a person [shall] will be deemed to have a permit for a blasting activity if:

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(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 211.126. Fees.

(a) Blasting activity permit fees are as follows:

(1) Blasting activity permit—paper application—\$210

(2) Blasting activity permit—filed online—\$130

(3) Blasting activity permit-by-rule—\$12

(b) Explosives storage license fees are as follows:

(1) Magazine security plan required under § 211.113 (relating to application contents)—\$225

(2) Explosive storage magazine security plan revision required under § 211.113—\$90

(3) Explosive storage magazine decommissioning required under § 211.116 (relating to decommissioning magazines)—\$50 per magazine

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

Subchapter D. RECORDS OF DISPOSITION OF EXPLOSIVES

§ 211.131. [Sales records] (Reserved).

[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. [Purchase records] (Reserved).

[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] must** contain, at a minimum, the following:

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

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

(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] CONDITIONS OF THE AREA IMMEDIATELY SURROUNDING the blast site WHICH INCLUDES IDENTIFYING IF THE AREA IS SOLID ROCK, A MUCK PILE FROM A PREVIOUS BLAST, OR AN OPEN FACE,** and point of initiation.

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

[(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 SQUARE ROOT scaled distance to the nearest building or other structure neither owned nor leased by the blasting activity permittee or its customer EXCEPT FOR DEMOLITION BLASTING WHERE THE CUBE ROOT SCALED DISTANCE MUST BE USED.

[(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] under § 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] under 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).

(b) The Department may require monthly summaries of these reports. The summaries shall include the date and time of the blasts, scaled distance, peak particle velocity, airblast, monitoring location, amount and types of explosives used and other information the Department deems necessary to ensure compliance with this chapter.

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 **OR FMSCA INSPECTION.**

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

* * * * *

[(d)] (e) Blasts shall be designed and conducted to control airblast so that it does not exceed **[the noise levels specified in Table 1 at a] 133 dBL at 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) The Department may establish an alternative peak particle velocity or airblast level if it determines that an alternative standard is appropriate because of density of population, land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.]

(f) Except on permits issued under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19b), 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 alternative standard will provide for adequate protection of the building or other structure.

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

(g) The blasting activity permittee shall 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 and oxides of nitrogen.

(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 shall notify the Department within 4 hours if the [TOXIC] gases generated by the blast affect the health or safety, or both, 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 under 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 shall 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:

* * * * *

(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] under § 211.133** (relating to blast **[report] reports**).

* * * * *

(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 shall 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 flyrock.

(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:

* * * * *

(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]ALL APPROACHES to a blast site. [WHICH CLEARLY WARN OF EXPLOSIVES USE. IF THERE ARE NO SPECIFIC ACCESS POINTS, A MINIMUM OF FOUR SIGNS SHALL BE POSTED ON ALL SIDES OF THE BLAST SITE AT A DISTANCE OF 100 FEET FROM THE BLAST SITE.] POSTING OF SIGNS SHALL COMPLY WITH 29 CFR §1926.905(P), 30 CFR §77.1303(G) OR 30 CFR §56.6306(A), AS APPLICABLE.

§ 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 (4.53 kilograms)] 1 pound (0.454 kilogram)** of explosives shall be used for a blast.

Subchapter G. REQUIREMENTS FOR MONITORING

§ 211.171. General provisions for monitoring.

(a) If the **SQUARE ROOT** 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] inch** 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 x 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 **[effect] 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

§ 211.182. General provisions.

(a) Prior to conducting blasting activities within 200 feet of an underground utility line, the blasting activity permittee shall ensure that the owner of the line is notified of the blasting activities and demonstrate to the Department that that notification has been made.

[(a)] (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.

(Editor's Note: Subchapters I and J are new and printed in regular type to enhance readability.)

Subchapter I. SEISMIC EXPLORATION

Sec.

211.191. Scope.

211.192. Permits.

211.193. Blasting records.

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

§ 211.191. Scope.

This subchapter applies to seismic exploration activities which employ explosives. Unless otherwise specified, Subchapters A—H apply to persons engaging in seismic exploration activities using explosives.

§ 211.192. Permits.

In addition to the requirements of Subchapter C (relating to permits), an application for a blasting activity permit for seismic exploration must 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.

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

- (1) The time and date the explosives were loaded into holes.
- (2) The blaster-in-charge who supervised or loaded the charges, or both.
- (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) Section 211.153(e) and (f) (relating to general requirements for handling explosives) is 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 shall either be detonated or removed from the borehole after the maximum number of days specified in the applicable blasting activity permit.

(2) Explosives charges may not 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) Explosives may not be placed on areas permitted for mining activities under Chapter 77 or 86 (relating to noncoal mining; and surface and underground coal mining: general) 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 the United States Department of Labor, Mine Safety and Health Administration 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 destroy them in place.

(7) The permittee may not allow explosives charges to remain in the ground for more than 1 year.

Subchapter J. CIVIL PENALTIES

Sec.

211.201. Scope.

211.202. Inspection—general.

211.203. Assessment of civil penalty.

211.204. System for assessment of penalties.

211.205. Procedures for assessment of civil penalties.

211.206. Final action.

211.207. Final assessment and payment of penalty.

§ 211.201. Scope.

This subchapter applies to the assessment of civil penalties for the **storage, handling and use of explosives** [ON PERMITTED BLASTING ACTIVITY SITES AND FOR THE UNAUTHORIZED DETONATION, STORAGE, TRANSPORTATION, HANDLING OR USE OF EXPLOSIVES]. This subchapter does not apply in cases when the procedures in Chapter 77 or 86 (relating to noncoal mining; and surface and underground coal mining: general) 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 under 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 \$0 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 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 §§ 1021.61—1021.64 (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 under 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 submitted information in determining the facts surrounding the violation and may revise a civil penalty calculated in accordance with the criteria in § 211.204(b) (relating to system for assessment of penalties), 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 § 211.204(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 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 will 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 EHB 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 final action), the penalty assessment will become final and the penalty assessed will 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 will 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 the person.