PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 189]

Hauling in Excess of Posted Weight Limit

The Department of Transportation (Department), under 75 Pa.C.S. §§ 4902 and 6103 (relating to restrictions on use of highways and bridges; and promulgation of rules and regulations by department), proposes to amend Chapter 189 (relating to hauling in excess of posted weight limit) to read as set forth in Annex A.

Purpose of Chapter

The purpose of Chapter 189 is to establish Department regulations regarding the use of weight restricted highways by vehicles and combinations having a gross weight in excess of the posted weight limit on highways posted with weight restrictions under 75 Pa.C.S. § 4902.

Purpose of this Proposed Rulemaking

Currently, Chapter 189 provides definitions and key terminology, including local traffic criteria, and establishes agreements, permits, security requirements and conditions to allow over-posted-weight vehicles to travel on weight-restricted highways. Recent amendments to 75 Pa.C.S. § 4902 require amendments to Chapter 189 to reflect a broader definition of "local traffic," refine requirements relative to letters of local determination and minimum use permits, establish mandatory guidance for investigations and audits, and institute mandatory guidance relative to suspending, revoking and denying agreements and permits.

Significant Provisions of this Proposed Rulemaking

Proposed amendments include definitions of key terms in the recent amendments to 75 Pa.C.S. § 4902, which include "at-risk industry sector," "commercial site," "Department," "develop," "extract," "freeze-thaw period," "harvest," "heavy user," "letter of local determination," "load," "local traffic," "natural resource," "permanent coal reprocessing or preparation plant," "permanent forest product processing mill," "reachable only through posted highways," "unconventional oil and gas development," "user" and "user vehicle."

The available types of permits and letters of local determination were combined to allow a single permit to be issued with various permit categories including the minimum use permit category for hauling activity of less than 700 loads per year per road.

The proposed rulemaking describes the posting authority's ability to conduct investigations and audits and also to suspend, revoke and deny agreements and permits. Special hauling permits issued under Chapter 179 (relating to oversize and overweight loads and vehicles) are recognized as valid authorization to travel on a weight restricted highway.

Persons and Entities Affected

The proposed rulemaking will allow travel on weight-restricted highways and reduce administrative requirements for businesses and special hauling permits by all over-posted-weight haulers.

Fiscal Impact

Implementation of these regulations will not require the expenditure of additional funds by the Commonwealth or local municipalities. These regulations will potentially impact all over-posted-weight traffic. However, those impacts are minimal because of clarity provided by this proposed rulemaking and extensive feedback from the regulated community.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 17, 2016, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

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

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* following appropriate evaluation of comments, suggestions or objections received during the public comment period.

Sunset Date

The Department is not establishing a sunset date for these regulations, as the regulations are needed to administer provisions required under 75 Pa.C.S. (relating to Vehicle Code). The Department will continue to closely monitor these regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Richard N. Roman, PE, Director, Bureau of Maintenance and Operations, Department of Transportation, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, fax (717) 705-5520, riroman@pa.gov within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions regarding this proposed rulemaking is Halley Cole, PE, Bureau of Maintenance and Operations, Department of Transportation, 400 North Street, 7th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 783-6146, fax (717) 705-5520.

LESLIE S. RICHARDS,
Secretary

Fiscal Note: 18-467. (1) Motor License Fund; (2) Implementing Year 2013-14 is $1,000,000 to $5,000,000; (3) 1st Succeeding Year 2014-15 through 5th Succeeding Year 2018-19 are $1,000,000 to $5,000,000; (4) 2012-13

Program—$1,874,000; 2011-12 Program—$2,419,000; 2010-11 Program—$2,387,000; (7) Various Appropriations; (8) recommends adoption. The various appropriations are able to absorb the increased cost.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VII. VEHICLE CHARACTERISTICS

CHAPTER 189. HAULING IN EXCESS OF POSTED WEIGHT LIMIT

§ 189.1. Scope; authority.

(a) This chapter regulates the use of highways posted with weight restrictions authorized under 75 Pa.C.S. § 4902 **(relating to restrictions on use of highways and bridges)** by vehicles and combinations having a gross weight in excess of the posted weight limit, and applies to both State highways and highways under the jurisdiction of local authorities **unless otherwise stated**.

* * * * *

§ 189.2. Definitions.

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

***At-risk industry sector*—Industry sectors defined by the Department of Labor and Industry as having experienced a 20% or more decline in Statewide employment between March 2002 and March 2011 and additional industry sectors that the Department determines, in consultation with the Department of Labor and Industry, to show evidence of economic decline.**

***Commercial site*—A place including the rooms, buildings and interior or exterior places where commodities or services are exchanged, bought or sold.**

***Department*—The Department of Transportation of the Commonwealth.**

***Develop*—The processes associated with conventional and unconventional oil and gas development.**

Excess maintenance—**[Maintenance] Repairs** or restoration**,** or both (but not betterment), of a posted highway in excess of normal maintenance**[, caused by use of over-posted weight vehicles]**.

***Extract*—The processes associated with gathering or removal of minerals, wind and other natural resources from the air, surface or subsurface, including, but not limited to, coal, stone, water and related site preparation, construction and onsite stockpiling.**

***Freeze-thaw period*—The calendar period between February 15th and April 15th during which time thawing of previously frozen roadbed materials compromises the structural integrity of the pavement system. The posting authority may alter or modify this time period based on recent and anticipated weather conditions for a permit or agreement.**

***Harvest*—The processes associated with the cutting, gathering, stacking or removal of timber and other similar natural resources for future use, whether cultivated or wild, including, but not limited to, site excavation, grading and construction activities.**

***Heavy user*—The user responsible for generating user vehicles equal to or exceeding 700 loads in any 12-month period on a particular posted highway.**

***Industry sector*—A sector included in the North American Industry Classification System.**

***Letter of local determination*—A determination made by the Department identifying particular vehicles, routes or uses as local in nature.**

***Load*—A single user vehicle and cargo traversing a posted highway in a single direction.**

Local traffic—The following shall be regarded as local traffic for the purposes of § 189.3 (relating to local traffic):

[(1)] (i) Emergency vehicles.

[(2)] (ii) School buses.

[(3) Vehicles and combinations of governmental agencies and utilities or their contractors engaged in construction or maintenance on a posted highway or in a location which can be reached only via a posted highway.

(4) Vehicles and combinations going to coming from a residence, commercial establishment, or farm located on a posted highway or which can be reached only via a posted highway.]

(iii) Government-owned vehicles.

(iv) User vehicles of local governmental agency or Department contractors engaged in or providing material for construction or maintenance located on or reachable only through posted highways.

(v) User vehicles of utilities or their contractors engaged in maintenance located on or reachable only through posted highways.

(vi) User vehicles going to or coming from a residence, commercial site, farm, or local government or Department facility located on or reachable only through posted highways.

(vii) User vehicles going to or coming from a permanent forest product processing mill located on or reachable only through posted highways.

(viii) User vehicles going to or coming from a permanent coal reprocessing or preparation plant located on or reachable only through posted highways and not located on the same posted highway as a site where coal is extracted.

***Natural resource*—**

(i) Material from nature having potential economic value including, but not limited to, timber, minerals, oil, gas, wind and water.

(ii) The term does not include trees grown specifically for use in landscaping or as Christmas trees, or food crops, animals or animal products intended for human or animal consumption such as corn, wheat and milk.

Normal maintenance—The usual and typical activities necessary to maintain the roadway, shoulders and drainage facilities in the state of repair existing at the date of the inspection prescribed in § 189.4(f)(1) (relating to use under permit).

[*Over-posted-weight vehicle*—A vehicle or combination having a gross weight in excess of a posted weight limit.]

***Permanent coal reprocessing or preparation plant*—**

(i) One or more permanent facilities located adjacently on a single roadway where coal is delivered directly from the natural resource extraction site and is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. Stockpile or storage facilities located on the same posted highway as the processing facility may be included.

(ii) The term does not include ancillary facilities located separately from the initial processing facility site or at the coal extraction site.

***Permanent forest product processing mill*—**

(i) One or more permanent facilities located adjacently on a single roadway where logs, pulpwood, wood chips or other forest products are delivered directly from the natural resource harvest site to undergo processing. Processing includes bark removal, sawing, resawing, slicing, chipping, pelletizing, edging, trimming, planing or machining.

(ii) The term includes log stockpile facilities.

(iii) The term does not include log landing sites or portable sawmills unless the portable sawmill has become permanently affixed to the real estate.

Posted highway—A highway having a posted weight limit.

Posted weight limit—A restricted weight limit posted on a highway under authority of 75 Pa.C.S. § 4902 **(relating to restrictions on use of highways and bridges)**.

Posting authority—The Department, as to State designated highways and local authorities, as to all other streets and highways.

***Reachable only through posted highways*—One or more posted highways needed to travel to a location from the nearest nonposted highway or from the location to the nearest nonposted highway by the most direct route possible. The most direct route may not include posted highways which can be avoided by travel on nonposted highways. If available, a reasonable alternate nonposted highway must be taken.**

***Unconventional oil and gas development*—**

(i) The activities associated with unconventional oil or gas well construction including site preparation and reclamation, drilling, completion and pipeline construction on oil and gas gathering pipelines, not including transmission and distribution pipelines.

(ii) The term shall be read consistently with "unconventional formation" and "unconventional gas well" as defined in 58 Pa.C.S. § 2301 (relating to definitions).

(iii) The terms "gathering," "transmission" and "distribution pipelines" shall be read consistently with the definitions of those terms in the Federal pipeline safety regulations of the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration in 49 CFR 192.3 (relating to definitions).

***User*—The individual or entity responsible for generating user vehicle traffic.**

***User vehicle*—A vehicle or combination having a gross weight in excess of a posted weight limit.**

§ 189.3. Local traffic.

(a) *General rule.* **[Over-posted-weight local traffic] Local traffic user vehicles** may exceed posted weight limits unless the posting authority determines that **[an over-posted-weight] a user** vehicle or vehicles being driven to or from a particular **[destination or destinations are likely to damage the highway] location or locations are likely to cause damage to the highway. User vehicles related to natural resource development, harvesting or extraction are not local traffic when going to or coming from a site at which minerals, gas or natural resources are developed, harvested or extracted, notwithstanding whether the site is located at a residence, a commercial site, farmland, or a local government or Department facility.**

(b) **[*Vehicles*] *User vehicles*** *determined likely to damage highway.* If the posting authority determines that one or more **[over-posted-weight] user** vehicles are likely to damage the highway, the posting authority will so notify the registrants of the **[over-posted-weight] user** vehicles or owners of the **[destination or destinations] location or locations**, or both, and will also notify State and local police. After 2 business days following delivery of the notice, or after 5 days following mailing of the notice, **[such over-posted-weight vehicles shall] user vehicles may** not exceed the posted weight limits except in accordance with **[the provisions of]** § 189.4 (relating to use under permit).

(c) **[*Proof*] *Self-certification; proof*** *of local traffic status.* The following types of documents will constitute evidence that a **[vehicle is local traffic:] user vehicle is traveling to or from a particular site with an address located on or reachable only through posted highways: bills of lading, shipping orders, service orders or other documents on company letterhead which indicate the address of the site and purpose of the user vehicle. The use of the posted road and purpose of the user vehicle must comply with the definition of "local traffic." An authorized permit from the posting authority is not required unless the local traffic status has been previously revoked in writing; if requested, a local determination permit may be issued for the user's benefit.**

[(1) A bill of lading, shipping order or similar document which shows a destination on the posted highway.

(2) Certification by the permittee or an official of a permittee company on the company letterhead describing the local traffic nature of the activity which the vehicle is engaged in.]

§ 189.4. Use under permit.

(a) *General rule.* No **[over-posted-weight vehicle] user vehicles**, except local traffic **user vehicles** authorized under § 189.3(a) (relating to local traffic), shall be driven on a posted highway with a gross weight in excess of the posted weight limit unless the posting authority

has issued a permit for the **user** vehicle or vehicles in accordance with this section. **A user shall, at all times, carry evidence of the user vehicle's destination, which must consist of the type of documents in § 189.3(c). A single permit may authorize permit categories for local determination highways, annual bonded highways and seasonal bonded highways. An original or copy of the issued permit must be carried in the user vehicle at all times. The Department may determine through policy to allow use of electronic permits and self-certification documents to be utilized as acceptable proof of authorized hauling.**

[(b) *Types of permits.* Types of permits shall include the following:

(1) A Type 1 permit authorizes use of a particular posted highway or portion thereof by an over-posted-weight vehicle. It is valid only when carried in the over-posted-weight vehicle.

(2) A Type 2 permit authorizes use of a particular posted highway or portion thereof by any number of over-posted-weight vehicles being driven to or from a common destination.

(i) Documents of the type set forth in § 189.3(c) (relating to local traffic) will constitute evidence of the destination of a vehicle.

(ii) A Type 2 permit will be issued only upon request of the permittee and if the posting authority determines that it is not feasible to issue a Type 1 permit for each vehicle, for example, most over-posted-weight vehicles hauling to and from the place of business of the permittee belong to or are hauling under contract with customers or suppliers of the permittee.

(3) A Type 3 permit authorizes use of a number of specified posted highways or portions thereof by an over-posted-weight vehicle.

(i) A Type 3 permit is valid only when carried in the over-posted-weight vehicle.

(ii) A Type 3 permit is issued only if the posting authority determines that damage to the posted highway covered by the permit will be minimal because of the limited number of moves by over-posted-weight vehicles and short term use of the highways anticipated by the permittee.]

(b) *Permit categories.* Permit categories include the following:

(1) *Local determination.* User vehicles may be authorized to exceed a posted weight limit on local determination highways without an excess maintenance agreement and security if the user vehicles meet one or more of the following criteria:

(i) *Local traffic.* User vehicles that are classified as local traffic in accordance with § 189.3 may be authorized as a local determination permit category if requested by the user.

(ii) *At-risk.* The Department may use an at-risk permit category when the user belongs to an at-risk industry sector and is hauling on a posted highway currently bonded by an unconventional oil and gas development company.

(iii) *De minimis.* Hauling activity identified as de minimis under Chapter 190 (relating to letter of local determination—statement of policy) may be authorized as a local determination permit category.

(iv) *Minimum use.* The Department may use a minimum use permit category when the user responsible for generating user vehicles is not a heavy user for a particular highway. This category is restricted during the designated freeze-thaw period unless written authorization from the Department is provided.

(v) *Application to local highways.* The nonbonded local determination categories in subparagraphs (ii)—(iv) do not apply to local authorities unless the local authority elects to enact an ordinance adopting the minimum use permit category.

(vi) *Use of copy.* The Department may issue a paper or electronic original permit to a user. A user may copy a permit issued for a local determination highway for vehicles owned or operated by the user but may not copy and share a permit issued for a local determination highway with any other user or their contractors and subcontractors.

(2) *Annual and seasonal bonded.* User vehicles may be authorized to exceed a posted weight limit on highways which cannot be authorized under paragraph (1) conditioned upon the user entering an excess maintenance agreement and providing security during the permit authorization period. The posting authority may provide, or require a user to provide at the user's expense, detailed inspections or condition reports showing the condition of the highway at beginning and end of any authorized permit period. Bonded permit categories may include the following:

(i) *Annual bonded.* An annual bonded permit category may be used for any requested posted highway for all desired times of the calendar year including the freeze-thaw period.

(ii) *Seasonal bonded.* A seasonal bonded permit category may be used for any requested posted highway for any portion of the calendar. This permit category may be used in conjunction with a nonbonded local determination permit category which is otherwise restricted for reoccurring or readily anticipated periods of the year.

(c) *Excess maintenance agreement.* **[Issuance of a permit to exceed a posted weight limit or limits will be conditioned on the agreement by the permittee to accept financial responsibility for excess maintenance of the posted highway or portion thereof to be used by the permittee. The agreement may provide for the work to be performed by the posting authority or its contractor or by the permittee or its contractor, except that in the case of a self-bonded agreement, the Department will require that all work be performed by the permittee or its contractor.] Bonded authorization shall be conditioned on an agreement by the user to accept financial responsibility for excess maintenance of the posted highway or portion thereof to be used by the user. The agreement may provide for the work to be performed by the posting authority or its contractor or by the user or its contractor, except that in the case of a self-bonded agreement, the Department will require that all work be performed by the user or its contractor.**

(d) *Security*. Except as provided in paragraph (4), the **[permittee] user** shall be required to provide security in favor of the posting authority to assure compliance with **[the maintenance-reconstruction agreement] an excess maintenance agreement**. **Security is not required for nonbonded authorizations.**

(1) *Amount of security*. Amount of security shall be as follows:

[(i) *Type 1 and Type 2 permits.* Type 1 and Type 2 permits shall include:

(A) $6,000 per linear mile for unpaved highways to be maintained at a level consistent with the type of highway.

(B) $12,500 per linear mile for paved highways to be maintained at a level consistent with the type of highway.

(C) $50,000 per linear mile for any highway which the posting authority allows to be maintained below a level consistent with the type of highway.

(ii) *Type 3 permits.* $10,000 for each county or municipality covered by the permit.]

(i) *Annual or seasonal bonded highways.* Bonded highway amounts include:

(A) $6,000 per linear mile for unpaved highways to be maintained at a level consistent with the type of highway.

(B) $12,500 per linear mile for paved highways to be maintained at a level consistent with the type of highway. The posting authority may alternatively elect $10,000 per county for state highways or $10,000 per municipality for local government highways.

(C) $50,000 per linear mile for any highway which the posting authority allows to be maintained below a level consistent with the type of highway.

(ii) *Duration of security.* A user may hold a security bond indefinitely to sustain use during annual or seasonal bond permit periods, or may purchase and make available any bond or other acceptable security of any appropriate duration for use during annual bonded or seasonal bonded permit periods. The security will remain in effect until it is released by the posting authority.

(iii) *Schedule of bonding amounts*. The Department **[will] may** from time to time, but not more often than annually, publish a revised schedule of bonding amounts based on increased or decreased maintenance costs.

(2) *Form of security*. The security may be in the form of a performance bond with surety by a company authorized to do business in **[the] this** Commonwealth; or, at the option of the **[permittee] user**, in the form of a certified or cashier's check, bank account**[,]** or irrevocable letter of credit in favor of the posting authority; or in some other form of security acceptable to the posting authority.

(3) *Additional security*. When the amount of damage in excess of normal maintenance to a posted highway is estimated by the posting authority to constitute 75% or more of the amount of the security, the posting authority may require the highway to be maintained or reconstructed within 30 days unless the **[permittee] user** agrees to provide **[such]** additional security as the posting authority shall determine.

(4) *Self-bonding*. The posting authority may authorize self-bonding if it determines, on the basis of the financial ability of the **[permittee] user**, that it is unlikely that the posting authority will be unable to collect a judgment rendered against the **[permittee] user** for failure to comply with **[the] an excess** maintenance agreement.

(i) The posting authority may require corporate officers and stockholders and their spouses to execute a self-bond, if the financial ability of a corporation is insufficient in itself to justify self-bonding.

(ii) The posting authority may require the **[permittee] user** to execute liens on real or personal property, or both, as a condition for authorizing self-bonding.

(iii) **[In order to] To** be considered for self-bonding by the Department, a **[permittee] user** shall file Contractor's Financial Statement, Department Form CS 4300, Part 1. The financial statement shall be updated annually, and within 30 days of any Department request for an update.

(e) *Multiple* ***[permittees] users***. Multiple **[permittees] users** shall conform with the following:

(1) *Agreement to share excess maintenance responsibility*. If two or more **[persons wish to obtain Type 1 or Type 2 permits to operate over-posted-weight] users wish to obtain bonded authorization to operate** vehicles on the same posted highway or portion thereof, they may agree among themselves as to their relative responsibility for the cost of excess maintenance and the posting authority will enter into agreements and accept security on the basis of the agreed shares.

(2) *Determination by posting authority*. If multiple **[applicants for Type 1 or Type 2 permits] bonded users** cannot agree on their relative responsibility, the posting authority **[will] may** determine their relative shares, and **[will]** enter into agreements with and accept security from any person agreeing to **[such] the** determination.

(3) *Subsequent permit applicants*. **[Paragraphs (1) and (2) shall apply even if one or more persons have already entered into a Type 1 or Type 2 permit agreement and posted security when another person expresses the desire to obtain a Type 1 or Type 2 permit to operate over-posted-weight vehicles on the same posted highway.] Paragraphs (1) and (2) apply even if one or more users have already entered into a bonded authorization and posted security when another user expresses the desire to obtain a bonded authorization to operate vehicles on the same posted highway.**

(f) *Determination of highway condition*. Determination of highway condition shall consist of the following:

(1) *Inspection*. Representatives of the posting authority and of the **[permittee or permitees] user or users** will make an onsite inspection of the posted highway immediately before issuance of **[each permit in order] a permit** to determine its condition.

(2) ***[Reinspection.] Interim inspection or reinspection.*** The posted highway will be reinspected:

(i) Upon issuance of any new permit.

(ii) From time to time as the posting authority determines repairs may be required.

(iii) Upon termination of any permit, **[in order]** to determine the amount of damage for which the **[permittee or permittees] user or users** are responsible.

(3) **[*Type 3 permits.* Before and after using a Type 3 permit on any posted highway specified in the permit, the representatives of the permittee and the posting authority will make an onsite inspection to determine the relative condition of the highway before and after the use and to assess any excess maintenance caused by the permittee.] *Roadway condition surveys.* The posting authority may conduct frequent but less detailed roadway condition surveys to determine overall condition and identify any areas in need of repair.**

(4) *Notification of inspections and reinspections.* All **[Type 1 and Type 2 permittees] bonded users** on a posted highway or portion thereof will be notified of all inspections and reinspections on the highway or portion, and may participate in the inspections and reinspections. **The posting authority is not required to notify bonded users of roadway condition surveys.**

(5) *Inspection costs.* The inspection costs of the posting authority**, including the costs of roadway condition surveys,** shall be paid by the **[permittee or permittees] user or users**. **[Inspection costs related to a county wide or municipality wide—Type 3—permit will be paid solely by the Type 3 permittee.]**

(g) *Administrative fee.* The Department will charge a $15 administrative fee for issuance of each **[Type 3] bonded** permit. Local authorities may charge an administrative fee of no more than $15 for issuance of each **[Type 3] bonded** permit.

(*Editor's Note*: Sections 189.5—189.7 are new and printed in regular type to enhance readability.)

§ 189.5. Investigations and audits.

The posting authority may conduct investigations and audits. Users shall provide requested information within 30 days of the request. Users may designate records or portions of records as trade secrets or confidential proprietary information, and the records or parts of records so designated shall be used and retained for audit and investigation purposes only, and shall be protected from disclosure to the extent possible under the law; redaction may be undertaken by the users if the posting authority agrees in advance. Audits shall be limited to determining hauling activity under local determination permit categories to ensure the user has not exceeded the authorized hauling activity. Investigations may be used for any permit category.

§ 189.6. Suspending, revoking or denying agreements or permits.

If the posting authority has determined and notified the user that a violation of a legal or contractual obligation has occurred, the posting authority may suspend, revoke and/or deny any current or future agreements and permits under its jurisdiction. The posting authority shall provide advanced notification and justification to the user prior to revocation of a permit. A permit may be suspended without prior notice if a highway becomes unsafe and impassable. Nothing in this section is intended to diminish the user's due process and administrative appeal rights or the posting authority's right to take any other action allowed by law, including, but not limited to, imposing appropriate traffic restrictions and closing a highway.

§ 189.7. Use of special hauling permits for certain vehicles.

Users using permits under Chapter 179 (relating to oversize and overweight loads and vehicles) may be exempt from obtaining a permit under this chapter if adequate security is otherwise provided.

[Pa.B. Doc. No. 16-320. Filed for public inspection February 26, 2016, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA CODE CHS. 210 AND 211]

Handling and Use of Explosives

The Environmental Quality Board (Board) proposes to amend Chapters 210 and 211 (relating to blasters' licenses; and storage, handling and use of explosives) to read as set forth in Annex A.

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

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Thomas Callaghan, PG, Director, Bureau of Mining Programs, Rachel Carson State Office Building, 5th Floor, 400 Market Street, P. O. Box 8461, Harrisburg, PA 17105-8461, (717) 787-5015; or Joseph Iole, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us (select "Public Participation," then "Environmental Quality Board (EQB)").

C. *Statutory Authority*

This proposed rulemaking is promulgated under the authority of sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20), 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), Reorganization Plan No. 8 of 1981 (71 P. S. § 751-35) (transferring powers and duties conferred under the 1937 and 1957 explosives acts from the Department of Labor and Industry to the Department of Environmental Resources), section 2(f) of the act of May 18, 1937 (P. L. 654, No. 174) (43 P. S. § 25-2(f)), Reorganization Plan No. 2 of 1975 (71 P. S. § 751-22) (transferring powers and duties conferred under the 1937 workplace safety law regarding pits, quarries, and the like, from the Department of Labor

and Industry to the Department of Environmental Resources), section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b) and section 11(e) of the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. § 3311(e)).

D. *Background and Purpose*

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

Advisory board collaboration and outreach

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

There is not an advisory board for the use of explosives for construction or seismic exploration. The Department did outreach through the trade groups for these industry sectors and with the Pennsylvania chapters of the International Society of Explosives Engineers.

E. *Summary of Proposed Regulatory Requirements*

Chapter 210. Blasters' licenses

§ 210.11. Definitions

The proposed rulemaking includes the addition of definitions of "ATF," "employee possessor," "explosive materials," "limited" and "responsible person." The term "limited" is proposed to be added as a category of a blaster's license. This is the category that blasters who use explosives for activities when blasting is not related to excavation or demolition and which applies to seismic exploration operations. Other explosives users who fit within the limited category include those who detonate or supervise the loading of explosives charges in well perforation operations or industrial processes. The other definitions are proposed to be added because the blaster's license requirements are coordinated with the requirements of the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). ATF regulations require background checks for explosives users so there is no need for the Department to duplicate this effort.

§ 210.13. General

Subsection (b) is proposed to be added and existing subsections (b)—(d) are proposed to be renumbered as subsections (c)—(e). Proposed subsection (b) requires verification that a person applying for a blaster's license has complied with ATF requirements.

§ 210.15. License application

Proposed amendments to subsection (a) increase the fee amount for a new blaster's license from $50 to $150 to cover the costs for administering the blaster's certification program.

§ 210.16. Examinations

Proposed amendments to subsection (c) add the time frame of 2 weeks to the prior notice needed to avoid forfeiture of the application fee if an applicant fails to appear for a blaster's license examination. This is necessary as the Department needs to be able to plan for classes to provide sufficient resources.

§ 210.17. Issuance and renewal of licenses

Proposed amendments to subsection (a) delete the seismic and pole line and well perforation categories of blaster's licenses and add a category for law enforcement. The deleted categories are properly classified under the limited category. The law enforcement category is proposed to be added to reflect the unique circumstances regarding the use of explosives for training by police bomb squads and for regulatory officials. Proposed amendments to subsection (d) add "a minimum of" to modify the 8 hours of continuing education required for each 3-year renewal period. Proposed amendments to subsection (e) increase the fee for a blaster's license renewal from $30 to $150.

§ 210.19. Suspension, modification and revocation

Cross-references are proposed to be added to Chapters 77, 87 and 88 (relating to noncoal mining; surface mining of coal; and anthracite coal) to clarify that blasting violations at mine sites are also included in the violations to be considered for suspension, modification or revocation actions.

§ 210.20. Fees

Proposed § 210.20 (relating to fees) imposes an additional fee of $10 per year for administering a blaster's license. This fee is related to the evaluation of continuing education requirements and confirmation that ATF requirements are met.

Chapter 211. Storage, handling and use of explosives

Subchapter A. General provisions

§ 211.101. Definitions

Proposed amendments to this section add and delete definitions and amend two definitions. The definition of "ATF" is proposed to be added. The definition of "acts" is proposed to be added to provide a reference to the explosive safety laws of 1937 and 1957. The definition of "annual administration fee" is proposed to be added to implement new fees for administering blasting licenses and permits. The definition of "blast area" is proposed to be amended to clarify that this area must include the

area necessary to be secure to prevent injuries. The definition of "cube root scaled distance ($Ds^{1/3}$)" is proposed to be added to evaluate the potential effects of air blasts from demolition blasting for permit review. The definition of "display fireworks" is proposed to be deleted because it is no longer used in Chapter 211; the most recent amendment in 2001 eliminated the need for the definition. The definition of "employee possessor" is proposed to be added to implement the cross-reference with ATF requirements. The definition of "explosive" is proposed to be deleted and is replaced with the proposed definition of "explosive materials" to be consistent with ATF requirements. The definition of "flyrock" is proposed to be amended to provide clarity through more detail. The definition of "nuisance" is proposed to be added for use regarding enforcement actions by the Department. The definition of "purchase" is proposed to be deleted because the requirement for a permit to purchase is being eliminated in the proposed rulemaking. The definition of "responsible person" is proposed to be added to implement the cross-reference with ATF requirements. The definition of "sale or sell" is proposed to be deleted because the requirement for a permit to sell is proposed to be deleted. The ATF has rules for the sales and purchase of explosives which are more stringent than the Department's existing regulations. The definitions of "unauthorized detonation of explosives," "unauthorized handling and use of explosives" and "unauthorized storage of explosives" are proposed to be added so it is clear that the Department can take enforcement action when these illegal activities occur.

§ 211.102. Scope

Proposed amendments to subsection (a) delete the reference to "purchasing and selling" since the requirement to have a permit to purchase or a permit to sell is proposed to be deleted. Proposed amendments also clarify which regulations are applicable to underground mining. Subsection (b) is proposed to be amended to delete the reference to "the purchase or sale of explosives."

§ 211.103. Enforcement

Proposed amendments to subsection (a) add that the Department may issue orders for violations and to require corrective actions. Proposed subsection (c) cross-references the mining-specific explosives regulations and includes interference with the Department and falsification of records as violations. Proposed subsection (d) establishes a permit and license block for violations of State and Federal explosives requirements. Persons with an outstanding violation will not be eligible for a permit or license until the outstanding violation is corrected.

Subchapter B. Storage and classification of explosives

§ 211.112. Magazine license and fees

Proposed subsection (b) requires verification of compliance with ATF requirements prior to approval of a storage magazine license by the Department. Existing subsections (b)—(d) are proposed to be renumbered as subsections (c)—(e). Proposed subsection (d), existing subsection (c), is proposed to be amended to delete the restrictions on the expiration date and period of time that a magazine license may be issued for. This will allow the Department to more efficiently manage the workload of processing magazine license renewals by preventing all of the applications from being due every year by December 31. The Department may allow for storage magazine licenses to be renewed for more than a 1-year period.

§ 211.113. Application contents

Proposed amendments to subsection (b)(1) add the ATF license or permit number as required information for a magazine license application.

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

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

§ 211.116. Decommissioning magazines

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

§ 211.117. Daily summary of magazine transactions

Proposed § 211.117 (relating to daily summary of magazine transactions) requires that the explosives inventory records required by the ATF be made available to the Department upon request.

Subchapter C. Permits

§ 211.121. General requirements

Proposed amendments to subsections (a), (b) and (d) reflect the deletion of the requirement for permits to purchase and permits to sell. In addition, proposed subsection (f) clarifies that three parties are each responsible for compliance with permits—the permittee, the listed subcontractor and the blaster-in-charge.

§ 211.122 Permits to sell explosives

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

§ 211.123. Permits to purchase explosives

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

§ 211.124. Blasting activity permits

Proposed amendments to subsection (a) require that an application for a blasting activity permit be prepared by a blaster licensed in a category that would be required to conduct the blasting proposed under the application. For example, a blaster licensed in the limited category would not be eligible to prepare a blasting activity permit application to conduct blasting for a trenching and construction project. Proposed subsection (a)(2) and (3) requires a signature by the applicant and documentation of the ATF authorization for the applicant. The paragraphs within subsection (a) are proposed to be renumbered

accordingly. Under the existing regulations, only the licensed blaster's signature is required. Requiring the applicant to sign provides documentation that the permit holder has requested the authorization to be granted under the blasting activity permit. The requirement for documentation of the ATF authorization confirms that the applicant or contract blasting company meets the Federal regulatory standards.

Proposed subsection (a)(4) is proposed to be amended to state more clearly the requirement for a contact person to be listed on an application. Proposed subsection (a)(6), existing subsection (a)(4), is proposed to be amended to add "specific" as a modifier for the types of explosives to be used. Different explosives have different characteristics and densities which affect how the explosives perform when detonated and the quantity per volume of the explosives loaded into a borehole. For example, some blasting agent blends have higher detonation velocities than others. Blasting agents with higher detonation velocities produce a stronger shock wave which is ideal for breaking harder rock such as granite. Blasting agent blends with lower detonation velocity produce greater gas pressure and are ideal for breaking sandstone or hard shale. Blast performance is related to the level adverse effects with more efficient blasts resulting in less adverse effects. Including the specific type of explosives in a blasting activity permit application helps the permit reviewer better understand the intent of the applicant so the reviewer can make an informed decision on the feasibility of the activity proposed on the application resulting in regulatory compliance.

Proposed subsection (a)(9) requires the minimum scaled distance to be included in the application and to specify that for demolition projects the scaled distance to be used is the cube root scaled distance. Scaled distance is an important planning tool to limit the adverse effects of blasting. Cube root scaled distance is used to plan for the effects of air blast which is the most common impact of demolition blasting.

Proposed subsection (a)(10), existing subsection (a)(7), is proposed to be amended to include that public roads, buildings and other structures must be shown on the map submitted with the application. Proposed subsection (a)(14), existing subsection (a)(11), is proposed to be amended to increase the minimum required liability insurance limits and to require that the permittee be covered by the insurance for what is widely accepted as a minimum industry standard amount. Proposed subsection (a)(17), existing subsection (a)(14), provides standardization for the requirement for identifying the building that will be closest to the blasting. Subsection (a)(20), existing subsection (a)(17), is proposed to be amended to change the minimum distance from 200 feet to 300 feet, or another distance to be specified by the applicant or the Department in the permit, when notification of residents is required. This is necessary due to the potential effects of carbon monoxide produced by blasts.

Proposed subsection (a)(21) requires specific loading plans describing the ranges of blast design parameter dimensions to more accurately describe how blasts are to be designed and better evaluate the feasibility of the blasting activity to be conducted in compliance with the regulations. Blast design parameter dimensions can be compared to widely accepted norms to evaluate feasibility. Proposed subsection (a)(22) requires a description of the stemming material which is proposed to be used. Drill cuttings or crushed stone are typically used as stemming. While drill cuttings may be effective in some cases, crushed stone is better to ensure that the energy of the detonation of the explosives is contained within the rock. In some cases, such as when blasting is conducted in close proximity to people or structures, the only reasonable type of stemming is crushed stone.

Proposed subsection (e) requires that the blaster-in-charge have the blasting activity permit or blast plan in his possession. This helps ensure that the blasting will be conducted as planned and approved.

§ 211.125. Blasting activity permit-by-rule

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

§ 211.126. Fees

Proposed § 211.126 (relating to fees) imposes fees for the first time for blasting activity permit applications, magazine security plan applications and revisions, magazine decommissioning and monitoring magazines. The fees are based upon the Department's costs for personnel to complete the work. A lower fee is proposed for a blasting activity permit filed online than for a paper application because it is more efficient to process the applications which are filed electronically. Magazine security plan review requires a site visit by the blasting and explosives inspector to confirm that the proposed security measures will be effective in the location where the explosives storage is proposed. Magazine decommissioning requires an inspection to confirm that the magazine has been emptied of the explosives. The monitoring fee is based upon inspecting a magazine at least every other year to determine compliance with the performance standards for explosives storage.

Subchapter D. Records of disposition of explosives

§ 211.131. Sales records

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

§ 211.132. Purchase records

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

§ 211.133. Blast reports

Proposed amendments to this section provide clarifications about the information needed to document each blast. The proposed amendments provide specificity about how to comply with the general requirement in subsection (a) "to provide the Department with sufficient information to reconstruct the conditions and events surrounding a blast." Proposed amendments to subsection (a)(1) specify that the blast location must be identified using at least one corner of the blast pattern as a reference point. Proposed subsection (a)(2) requires the distance and direction from the blast to the location where seismograph monitoring was done. Proposed subsection (a)(3) specifies that the latitude and longitude is required for these monitoring locations and that a 911 address be provided for buildings where monitoring is done. The paragraphs within subsection (a) are proposed to be renumbered accordingly.

Proposed subsection (a)(9), existing subsection (a)(7), is proposed to be amended to add the delay timing and

description of the ground around the blast site to required items to be included on the sketch which must accompany the blast record. This information is needed to verify the amount of explosives and the number of holes or decks detonated per delay period and to determine the degree of horizontal relief provided for the blast, which affects levels of adverse effects such as ground vibration and the risk of flyrock.

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

Proposed subsection (a)(12) specifies that the amount of explosives loaded in each hole needs to be reported. Section 211.154(f)(5) (relating to preparing the blast) requires that while loading a blast hole, each blast hole shall be logged throughout the loading process to measure the amount and location of explosives placed in the blast hole and that the information is to be recorded on the blast report required under § 211.133 (relating to blast reports). This requirement is met by specifying that the amount of explosives loaded in each borehole be provided on blast reports.

Proposed subsection (a)(14), existing subsection (a)(11), is proposed to be amended to add the requirement to include the product density for bulk blasting agents and the weight for packaged blasting agents. This information is needed to verify the scaled distance and the maximum number of pounds per delay for the blast.

Proposed subsection (a)(17), existing subsection (a)(14), is proposed to be amended to add the requirement to provide the direction in degrees to the nearest building and to include leased buildings in the exception to this requirement. Proposed subsection (a)(18), existing subsection (a)(15), is proposed to be amended to include the street address and latitude and longitude for the nearest building, and delete the reference to local landmarks. Proposed subsection (a)(19), existing subsection (a)(16), is proposed to be amended to describe where the scaled distance is measured to.

Proposed subsection (a)(26) requires a drill log which shows the condition of all holes which were drilled for a blast whether they were loaded or not. Borehole conditions can vary with some boreholes being in rock that is badly cracked and some in rock that is not cracked. Whether a borehole is cracked throughout its length or not is usually not evident on the surface. It is necessary to provide this information on a blast record because borehole conditions have a significant effect on blast performance.

Subchapter E. Transportation of explosives

§ 211.141. General requirements

The reference to purchase and sale permittees is proposed to be deleted since the requirement to obtain these permits is proposed to be deleted in this proposed rulemaking. Paragraph (13) is proposed to be amended to specify that it is on-road vehicles that need to pass the State inspection requirements. Proposed paragraph (14) requires that any vehicle used off-road to transport explosives be properly equipped to do so. Proposed paragraph (15) requires that explosives be removed from a vehicle before maintenance or repairs are done on the vehicle.

Subchapter F. Blasting activities

§ 211.151. Prevention of damage or injury

The heading of this section is proposed to be amended to add "or injury."

Subsection (a) is proposed to be amended to add the concept of prevention of injury. The proposed amendments are focused on safety. The proposed amendments also delete the modifier "real" to property to prevent any property damage, not just damage to real property.

Proposed subsection (b) introduces the concept that blasting needs to be conducted in a manner that prevents a nuisance. Existing subsection (b) is proposed to be renumbered as subsection (c).

Proposed subsection (d), existing subsection (c), is proposed to be amended to specify the location where the scaled distance applies and to delete the grandfather clause which applied to blasting activities approved prior to July 14, 2001.

Proposed subsection (e), existing subsection (d), is proposed to be amended to apply the 133 dBL air blast standard under all circumstances. Table 1 is proposed to be deleted to do this. Table 1 was needed in the past because of the variety of instruments used to measure air blast. Technology has provided standardization and the variable limits are no longer applicable.

Proposed subsection (f) describes the circumstances under which an alternate ground movement limit may be applied by the Department.

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

Proposed subsection (h) requires that blasting be conducted in a manner that protects utility lines. Sections 211.181 and 211.182 (relating to scope; and general provisions) provide for the protection of underground utilities. Proposed subsection (h) clarifies that all utilities, including overhead utilities, must be protected.

§ 211.152. Control of noxious gases, including carbon monoxide and oxides of nitrogen

The heading of this section is proposed to be amended to add carbon monoxide and oxides of nitrogen. Subsection (a) is proposed to be amended to add "toxic" to modify gases, specify carbon monoxide and oxides of nitrogen, and describe the measures which can be taken to reduce the risk of and adverse impact from the gases. Carbon monoxide has become a more prominent issue in recent years due to the proximity of blasting to homes and the availability of carbon monoxide detectors. Workers and residents of nearby homes are subject to this risk because blasting produces large volumes of gases.

Proposed subsection (b) requires reporting to the Department of incidents when gases have affected the health or safety of workers or neighbors. In cases when gases have affected the health or safety of workers or neighbors, the Department needs to evaluate the situa-

tion to determine what safeguards should be put in place to ensure public safety prior to further blasting operations on the site.

§ 211.154. Preparing the blast

Subsection (a) is proposed to be amended to specify that both the blaster-in-charge and the permittee are responsible for the effects of a blast. Proposed amendments to subsection (b) add a description of the documentation needed in a request for a lower distance limitation for equipment operation not related to the blast loading. Subsection (d) is proposed to be amended to specify that at-the-hole communication or written drill logs are required for the blaster-in-charge to know the condition of the holes which are to be loaded. It is necessary that this information is provided to blasters because borehole conditions should be used to determine if, or how, each borehole is loaded. These conditions have a significant effect on blast performance. This is necessary to determine how to load boreholes in a manner that results in a safe and efficient blast. Subsection (f)(5) is proposed to be amended to replace the erroneous term "leading" to be the correct term "loading." Subsection (n) is proposed to be amended to provide very specific options for protecting the traveling public. These measures are consistent with the requirements in Chapter 87.

§ 211.155. Preblast measures

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

§ 211.158. Mudcapping

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

Subchapter G. Requirements for monitoring

§ 211.171. General provisions for monitoring

Existing subsection (b) is proposed to be deleted as it is no longer necessary to allow for this exception for monitoring since technology improvements have made seismographs more readily available compared to 1972 when this exception was established. The remainder of the subsections are proposed to be renumbered accordingly. Proposed subsection (e) requires that seismographs meet industry standards as established by the International Society of Explosives Engineers, an international organization comprised of blasters and other explosives industry personnel such as blasting vibration and safety consultants and seismograph manufacturers.

§ 211.172. Monitoring instruments

Existing paragraphs (1) and (2) are proposed to be deleted because blasting seismographs have been standardized to eliminate the need for these distinctions. Proposed subsection (b) establishes equipment specifications based upon industry standards as established by the International Society of Explosives Engineers. This section is proposed to be renumbered accordingly.

Subchapter H. Blasting activities near underground utility lines

"Underground" is proposed to be added in the heading of this subchapter to be consistent with the scope described in § 211.181.

§ 211.182. General provisions

Proposed subsection (a) requires notification to the owner of an underground utility line when blasting is planned within 200 feet of the line. Notifying a pipeline owner when blasting is proposed within 200 feet of a pipeline is a statutory requirement and is also required under Chapters 77, 87 and 88. The requirement to notify the owners of all underground utility lines is necessary to insure that measures necessary to protect the utility line are implemented. In many cases, PA One Call can be used to make the notification to the underground utility line owner. Existing subsections (b) and (c) are proposed to be deleted as no longer necessary due to advances in explosives product technology and research focused on the effects of ground vibration on utility lines. This subsection is proposed to be renumbered accordingly.

Subchapter I. Seismic exploration

Proposed Subchapter I (relating to seismic exploration) is intended to address the requirements that are unique to the use of explosives for seismic exploration.

§ 211.191. Scope

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

§ 211.192. Permits

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

§ 211.193. Blasting records

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

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

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

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

Subsection (b)(5) addresses the security of all loaded blast holes. Subsection (b)(6) requires the removal or destruction in place for any explosives which may have been compromised. Subsection (b)(7) sets an upper limit of 1 year as the amount of time that explosives may remain undetonated in the ground. This time frame was established based upon the characteristics of the explosives typically used for seismic exploration.

Subchapter J. Civil penalties

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

§ 211.201. Scope

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

§ 211.202. Inspection—general

This section describes the notification process in cases when an inspection results in the identification of a violation.

§ 211.203. Assessment of civil penalty

This section describes the circumstances under which the Department will assess a civil penalty.

§ 211.204. System for assessment of penalties

This section establishes the system for calculating civil penalty amounts.

Subsection (b) includes seriousness, culpability, speed of compliance, cost to the Commonwealth, savings to the violator and history of violations as the factors to be considered in calculating a civil penalty amount.

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

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

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

§ 211.205. Procedures for assessment of civil penalties

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

§ 211.206. Final action

Subsection (a) provides that an assessment of civil penalty is appealable to the Environmental Hearing Board (EHB). Subsection (b) describes how the Department is to handle the money posted as escrow during the pendency of an appeal of a civil penalty. Subsection (c) requires the posting of an appeal bond or cash to perfect an appeal of a civil penalty. Subsection (d) provides that both the fact of the violation and the amount of the civil penalty may be challenged when an appeal is filed.

§ 211.207. Final assessment and payment of penalty

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

F. *Benefits, Costs and Compliance*

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

Benefits

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

Compliance costs

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

Compliance Assistance Plan

Compliance with the proposed rulemaking is expected to be seamless since many of the more stringent requirements are in place through permitting or are incremental changes to the existing requirements. Compliance assistance for this proposed rulemaking will be provided through routine interaction with trade groups and individual applicants.

Paperwork requirements

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

G. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has minimal impact on pollution prevention since it is focused on public safety.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 17, 2016, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

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

J. *Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Board. Comments, suggestions or objections must be received by the Board by March 28, 2016. In addition to the submission of comments, interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by March 28, 2016. The one-page summary will be distributed to the Board and available publicly prior to the meeting when the final rulemaking will be considered.

Comments including the submission of a one-page summary of comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

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

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

JOHN QUIGLEY,
Chairperson

Fiscal Note: 7-522. No fiscal impact; (8) recommends adoption.

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).**

***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 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.

* * * * *

§ 210.17. Issuance and renewal of licenses.

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

* * * * *

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

* * * * *

§ 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.**

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/(cube root) W, where actual distance (D) in feet measured in a horizontal line from the blast site to the nearest building or structure not owned or leased by the blasting activity applicant, the permittee or their customers, is divided by the cube root of the maximum weight of explosives (W) in pounds detonated per delay period of less than 8 milliseconds.**

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

Detonator—

(i) A device containing an initiating or primary explosive that is used for initiating detonation of explosives.

(ii) The term includes electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord, delay connectors, and nonelectric instantaneous and delay blasting caps.

[*Display fireworks*—

(i) Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration or detonation.

(ii) The term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as consumer fireworks. Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the United States Department of Transportation at 49 CFR 172.101 (relating to purpose and use of hazardous materials table).

(iii) The term also includes fused setpieces containing components which together exceed 50 mg of salute powder.

***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).**

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).

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

* * * * *

Misfire—Incomplete detonation of explosives.

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

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

* * * * *

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

Scaled distance (Ds)—A value calculated by using the **formula Ds = D/(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.

[Ds = D/(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:

* * * * *

§ 211.113. Application contents.

* * * * *

(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 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 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 an inability or lack of intention to comply with this chapter as indicated by past or continuing violations.

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

§ 211.122. **[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.

(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 who will be performing the blasting activities.

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

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

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

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

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

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

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

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

[(11)] (14) Proof **[of] that the permittee has** third party general liability insurance in the amount of **[$300,000] $1 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) 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:

* * * * *

(*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 surrounding the blast site** 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 scaled distance **to the nearest building or other structure neither owned nor leased by the blasting activity permittee or its customer**.

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

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

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

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

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

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

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

[(23)] **(27)** The monitoring records required **[by] 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.

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

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

* * * * *

[(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 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.

§ 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 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 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.

[Pa.B. Doc. No. 16-321. Filed for public inspection February 26, 2016, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1, 3, 5, 23 AND 29]

[L-2015-2507592]

Reduce Barriers to Entry for Passenger Motor Carriers

The Pennsylvania Public Utility Commission (Commission), on November 5, 2015, adopted a proposed rulemaking order to reduce the current barriers to entry for qualified passenger motor carrier applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.

Executive Summary

The Pennsylvania Public Utility Commission is vested with jurisdiction over passenger common carrier service in Pennsylvania. The Commission recognizes several distinct types of passenger common carriers in its regulations, including scheduled route carriers, call or demand (taxi) carriers, group and party carriers, limousine carriers, airport transfer carriers, paratransit carriers, and experimental service carriers. 52 Pa. Code §§ 29.301—29.356. Each of these carriers has unique equipment and operating characteristics.

Historically, the Commission has required applicants for passenger carrier authority to establish that they are technically and financially fit, can operate safely and legally, and that there is a public demand or need for the services. 52 Pa. Code §§ 3.381 and 41.14. Upon consideration of the acknowledged benefits of increased competition among passenger motor carriers and advances in technology, the Commission believes that it is appropriate to reduce the current barriers to entry for qualified applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. Rather than determining public need by means of a complex, costly and time consuming administrative process, public need or demand will be determined in the marketplace by competition among passenger carriers in regard to price, quality and reliability, as well as the experienced demand for their services by consumers who may freely choose among those competing carriers. Passenger carrier applicants will continue to be required to establish, in the application process at 52 Pa. Code § 3.381, that they have the technical and financial ability to provide the proposed service safely, reliably and legally, and that they are fully insured in accordance with the requirements of state law and Commission regulations.

As a corollary to the proposed elimination of public demand or need in the application process, the Commission envisions an industry that will grow even more competitive. Competition drives market pricing, obviating the need to engage in traditional ratemaking processes geared toward monopoly markets. The Commission proposes to permit all passenger carriers to change rates without filing the extensive supporting financial justification required by 52 Pa. Code § 23.64 by eliminating the threshold interstate revenue amount for passenger carriers in § 23.68. Passenger carriers will continue to be required to submit filings notifying the Commission of tariff changes and to provide the basic operational and financial data enumerated at 52 Pa. Code § 23.68 to support those filings.

Another consequence of eliminating the public need requirement for passenger carrier applicants is that the current territorial restrictions that accompany a carrier's certificate are no longer necessary. Therefore, passenger carriers will be deemed to have statewide authority, unless otherwise requested. Additionally, given the elimination of the public need requirement for passenger carrier applicants and the statewide authorization for all passenger carriers, the Commission believes that the regulatory provisions providing for Emergency Temporary Authority (ETA) and Temporary Authority (TA) are no longer applicable to passenger carriers. 52 Pa. Code §§ 3.383—3.385.

Public Meeting held
November 5, 2015

Commissioners Present: Gladys M. Brown, Chairperson; John F. Coleman, Jr., Vice Chairperson; Pamela A. Witmer; Robert F. Powelson; Andrew G. Place

Proposed Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29 to Reduce Barriers to Entry for Passenger Motor Carriers and to Eliminate Unnecessary Regulations Governing Temporary and Emergency Temporary Authority; Doc. No. L-2015-2507592

Proposed Rulemaking Order

By the Commission:

Pursuant to Section 1101 of the Public Utility Code (Code), 66 Pa.C.S. § 1101, a public utility must obtain a certificate of public convenience from the Commission in order to offer, render, furnish, or supply public utility service in Pennsylvania. Section 1103 of the Code, 66 Pa.C.S. § 1103, establishes the procedure to obtain a certificate of public convenience. That provision provides, inter alia, that "[A] certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public."

Pursuant to Section 102 of the Code, 66 Pa.C.S. § 102, common carriers by motor vehicle are public utilities. The Commission recognizes several distinct types of common carriers in its regulations. 52 Pa. Code Chapters 21, 29, and 31. A passenger carrier is defined as "a motor common or contract carrier that transports passengers." 52 Pa.C.S. § 21.1. Our regulations recognize several types of passenger carriers, including scheduled route carriers, call or demand (taxi) carriers, group and party carriers, limousine carriers, airport transfer carriers, paratransit carriers, and experimental service carriers. 52 Pa. Code §§ 29.301—29.356.

Each of these carriers has unique equipment and operating characteristics:

Scheduled route carriers operate over a scheduled route and pick up and discharge persons at points along that route, as authorized by their certificate. These carriers are obligated to provide printed time schedules for their routes, and must provide notice of any changes in routes or time schedules. In addition, these carriers must operate vehicles with seating capacities of six passengers or greater, excluding the driver. 52 Pa. Code §§ 29.301—29.305.

Call or demand carriers, or taxis, transport persons on an exclusive or nonexclusive basis in vehicles with seating of eight passengers or less, excluding the driver. These carriers must transport passengers by the shortest practical route unless otherwise directed by the passenger, and must maintain log sheets for each trip. The call and demand vehicle must also be equipped with a meter that records the fare. The meter must be plainly visible to the passenger and, if requested, the carrier must provide a receipt to the passenger. 52 Pa. Code §§ 29.311—29.316.

Group and party carriers transport persons in charter service, tour or sightseeing service, or special excursions, and operate vehicles with seating capacities of 10 passengers or greater, excluding the driver. Unless these carriers obtain a special permit from the Commission, they may not provide service that duplicates a direct or connecting service rendered by a scheduled route carrier or a public transportation system. 52 Pa. Code §§ 29.321—29.324.

Limousine carriers transport persons on an advance reservation basis in exclusive service provided by luxury vehicles with seating capacities of 10 passengers or less, excluding the driver. These carriers must provide service on an advance reservation service and not by street hail, must charge a single person or organization for the service and not by passengers as individuals, and must maintain trip logs for each vehicle. In addition, limousine carrier rates must be based solely upon time, and must be contained in tariffs. 52 Pa. Code §§ 29.331—29.335.

Airport transfer carriers transport persons on a nonexclusive, individual charge basis from points authorized by the certificate to the airport specified by the certificate, and vice versa. Airport transfer service may be offered on a scheduled basis serving specified points according to a published time schedule or on a request basis with the origin or destination of the transportation to or from the airport arranged between the individual and the carrier, or on both bases. A material change in a time schedule shall be posted at terminals and in vehicles engaged in service affected by the change for a period of not less than seven days prior to the effective date of the change. 52 Pa. Code §§ 29.341—29.343.

Paratransit carriers transport persons on an advance reservation basis in nonexclusive service in vehicles with seating capacities of 15 passengers or less, excluding the driver. The paratransit vehicles used to transport handicapped persons must contain equipment necessary for the safety and comfort of handicapped passengers. The service must be provided on an advance reservation basis, and the rates charged must be contained in tariffs. 52 Pa. Code §§ 29.353—29.356.

Experimental carriers provide a new, innovative, or experimental type of service not encompassed within the other recognized categories of service. A certificate for experimental service is valid only until the service is abandoned, until two years have elapsed from the time the certificate was approved, or until the Commission enacts regulations covering the service, whichever occurs first. Carriers must abide by any regulations or requirements which the Commission prescribes. 52 Pa. Code § 29.352.

Discussion

Historically, the Commission has required applicants for passenger carrier authority to establish that they are technically and financially fit, can operate safely and legally, and that there is a public demand or need for the services. 52 Pa. Code §§ 3.381 and 41.14. Upon consideration of the acknowledged benefits of increased competition among passenger motor carriers and advances in technology, we believe that it is appropriate to reduce the current barriers to entry for qualified applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.[1] Rather than determining public need by means of a complex, costly and time

[1] Pursuant to our Order in dated March 22, 2001, we adopted a final policy statement wherein we eliminated the requirement that applicants for limousine authority are required to establish that the proposed service is responsive to a public demand or need, and that the proposed service will not endanger or impair the operation of existing carriers. Evidentiary Criteria Used to Decide Motor Common Applications, Docket No. L-00980135 (Order entered March 22, 2001). Notwithstanding our adoption of this policy statement for these carriers, we still must address ancillary regulatory provisions that may be affected by our action. Additionally, we note that 49 U.S.C. § 14501(a) preempts state regulation of intrastate 'charter bus service' as far as rates, routes, and service requirements. This preemption was implemented in 1998. The Commission has previously determined that "charter bus transportation," per § 14501(a)(1)(C), is limited to group and party service provided in vehicles with seating capacities of 16 or more, including the driver. Regulation of Group and Party Carriers, Docket No. P-00981458 (Order entered January 11, 1999). *Regency Transportation Group, Ltd., v. Pa. Public Utility Commission*, 44 A. 3d 107 (Pa. Cmwlth. 2012). We also determined that it was appropriate to extend the preemption to the ancillary tour and sightseeing and special excursion services. Therefore, per our January 11, 1999 order, we bifurcated the group and party service category into 'group and party 11-15' and 'group and party greater than 15,' for regulatory purposes. Since that time, we have not required proof of public demand or need for processing of group and party greater than 15 carrier applications, but maintained the public need requirement for group and party 11-15 carrier applications. Our proposed regulations will reflect these changes.

consuming administrative process, public need or demand will be determined in the marketplace by competition among passenger carriers in regard to price, quality and reliability, as well as the experienced demand for their services by consumers who may freely choose among those competing carriers.

In a competitive market with reduced barriers to entry for qualified carriers, the Commission finds no reason to continue to protect, by an administrative process, passenger carriers whose services are no longer demanded by consumers who have chosen other carriers. Indeed, lowering outdated barriers to entry will further promote competition in this industry, which will, in turn, provide consumers with more choices and more competition among carriers as to price, quality and reliability.

Consistent with our policy statement and in light of the benefits of increased competition in the passenger carrier industry, we believe that it is appropriate to modify our regulations governing all passenger carrier applications by lowering the barriers to entry for qualified carriers who are technically and financially fit and who can provide service that is safe, reliable and fully insured.

We note that our legal authority to eliminate the public need requirement has been considered and affirmed by the Pennsylvania Supreme Court. *Elite Industries, Inc. v. Pa. Public Utility Commission*, 832 A.2d 428 (Pa. 2003). In *Elite*, the Court posited:

> Allowing the applicant to meet a less stringent evidentiary burden makes expansion of the market possible. This situation falls squarely within the PUC's area of expertise and is best left to the commission's discretion.

Id. at 432. The Court found that an agency may revise its policies and amend its regulations in interpreting its statutory mandates. Citing *Seaboard Tank Lines v. Pa. Public Utility Commission*, 502 A.2d 762 (Pa. Cmwlth. 1985), the Court reiterated that an agency's past interpretation of a statute, though approved by the judiciary, does not bind that agency to that particular interpretation. Moreover, the Court in *Elite* cited, with approval, the *Seaboard* description of the Commission's scope of authority, as follows:

> The PUC's mandate with respect to the granting of certificates of public convenience is a broad one: "a certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public." The legislature, however, provided no definition of specifically what the criteria were to be in determining the propriety of granting a certificate, leaving the formulation of such criteria to the PUC. . . .

Id. at 432. Accordingly, the *Elite* and *Seaboard* cases hold that the various and specific factors to be considered in determining whether to grant a certificate of public convenience to an applicant for motor carrier authority, beyond those expressly stated in the statute, are matters left to the administrative expertise, sound discretion, and good judgment of the Commission.

Other jurisdictions, such as New Jersey, Ohio and Maryland, as well as the Federal Motor Safety Administration, do not require passenger carrier applicants to establish a public demand or need as a prerequisite to certification. We believe that at this juncture, it is appropriate and in the public interest to eliminate the need requirement from the passenger carrier application process. This will foster further competition in this market.

As a corollary to the proposed elimination of public demand or need in the application process, we envision an industry that will grow even more competitive. Competition drives market pricing, obviating the need to engage in traditional ratemaking processes geared toward monopoly markets. Therefore, as barriers to entry are reduced and competition increases, the Commission is able to reduce and eliminate regulations that were adopted for a monopoly environment and are no longer necessary.

Chapter 23 of our regulations, 52 Pa. Code Chapter 23, governs tariffs and ratemaking procedures for common carriers. Specifically, 52 Pa. Code § 23.68 provides that small passenger carriers with gross annual intrastate revenue of less than $500,000 need not file the substantiating data required by 52 Pa. Code § 23.64, to support changes in rates. We now propose to permit all passenger carriers to change rates without filing the extensive supporting financial justification required by 52 Pa. Code § 23.64 by eliminating the threshold interstate revenue amount for passenger carriers in § 23.68. Passenger carriers are still required to submit filings notifying the Commission of tariff changes and to provide the basic operational and financial data enumerated at 52 Pa. Code § 23.68, including the reasons for the proposed tariff change, the effect of the change on the carrier's revenues, the gross intrastate revenue for the most recent fiscal year, the projected operating revenue and expense, and the projected operating ratio. The Commission will continue to review such filings to ensure that rates are just and reasonable based on the required submittal.[2] See 66 Pa.C.S. § 1301.

Another consequence of eliminating the public need requirement for passenger carrier applicants is that the current territorial restrictions that accompany a carrier's certificate are no longer necessary.[3] Currently, passenger carriers generally demonstrate that their business will serve a useful public purpose, responsive to a public demand or need by presenting witnesses who testify that the service is needed in a particular geographic territory. As such, the PUC routinely limits carriers' authority to the geographic territories where the carrier was able to demonstrate a need for the service. With the elimination of the need requirement, the corresponding limitation on carriers' certificates to specific service territories is no longer necessary. Therefore, existing passenger carriers will be deemed to have statewide authority. However, a carrier may wish to limit its operating territory due to operational concerns, insurance costs, or other factors. If this is the case for an existing carrier, the carrier may advise the Commission accordingly. New carriers will

[2] By Order entered October 16, 1997, the Commission allowed limousine and group and party carriers to engage in flexible ratemaking. Investigation of Flexible Ratemaking for the Bus and Limousine Industries, Docket No. I-00960063 (Order entered October 16, 1997). In that Order, the Commission allowed group and party and limousine carriers to establish initial rates and change existing rates with at least (1) day notice to the Commission, with no supporting financial justification as provided at 52 Pa. Code §§ 23.62—23.64 for new tariffs or changes to existing tariffs. Finally, we waived the requirement that group and party and limousine carriers post a notice of changes in fares. 52 Pa. Code § 23.61.

Since our 1997 Order establishing flexible ratemaking, we have not observed any reason to deviate from this practice. Market driven pricing, obviating the need to engage in traditional ratemaking processes geared toward monopoly markets, has been successful. We will modify our regulations to reflect our 1997 order and current practice accordingly.

[3] We have followed this practice since 2001 in the limousine industry and have observed a functional marketplace without the strictures of unnecessary economic regulation. Likewise, large group and party carriers and property carriers have been operating with statewide authority since federal preemption in 1998 and 1994, respectively.

retain the ability to propose limitations on its operating territory at the time of application.

Given the elimination of the public need requirement for passenger carrier applicants and the statewide authorization for all passenger carriers, we believe that the regulatory provisions providing for Emergency Temporary Authority (ETA) and Temporary Authority (TA) are no longer applicable to passenger carriers. 52 Pa. Code §§ 3.383—3.385. The regulations governing ETA and TA are designed to meet emergency situations when there is an immediate need for service that cannot be met by existing carriers. These provisions would not be relevant in a competitive market served by carriers that are not constrained by artificial territorial restrictions. To the extent an emergency would arise requiring service or a change in rates, we believe that our regulations governing Emergency Relief in general, would suffice. 52 Pa. Code §§ 3.1—3.12.[4]

We stress that passenger carrier applicants are still required to establish, in the application process at 52 Pa. Code § 3.381, that they have the technical and financial ability to provide the proposed service safely, reliably and legally, and that they are fully insured in accordance with the requirements of state law and our regulations.[5]

In sum, while we are eliminating certain outdated barriers to entry for passenger carriers and unnecessary regulations as a result of these changes, applicants will continue to be required to demonstrate their technical and financial fitness to provide the proposed service, including adequate training and experience, capitalization and insurance coverage. Moreover, we intend to remain vigilant as to consumer protection and will not hesitate to bring enforcement actions against carriers that fail to maintain proper levels of insurance, fail to operate safely or lawfully, or otherwise fail to meet their fundamental duty to provide safe, reasonable, and adequate service to the public. 66 Pa.C.S. § 1501.[6]

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 10, 2016, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Consumer Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

[4] We note that ETA and TA are also available to broker and contract carriers. Our experience indicates that these provisions have not been utilized by either group in recent history. We believe that these groups can likewise avail themselves of our regulations governing emergency relief should it be required.

[5] Protests to passenger carrier applications have been limited to these criteria. 52 Pa. Code § 3.381(c). Given the limited scope of any protests, the provisions providing for restrictive amendments to applications for motor carrier authority would be no longer applicable to applications for passenger authority. See 52 Pa. Code § 5.235.

[6] We note that in addition to our regulations at 52 Pa. Code Chapter 3, the public need requirement is also referenced in our policy statement at 52 Pa. Code § 41.14. After the regulatory changes effected by this rulemaking became final, we will issue an order amending our policy statement so that it is consistent with current regulations.

Conclusion

Annex A is permitted by sections 501, 1102 and 1103 of the Public Utility Code. Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, and the Commonwealth Documents Law (45 P. S. §§ 1201 et seq.), and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we propose to amend our regulations as set forth in Annex A; *Therefore*,

It Is Ordered That:

1. The Secretary shall submit this order and Annex A to the Office of Attorney General for preliminary review as to form and legality.

2. The Secretary shall submit this order and Annex A, to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review and comment by the Independent Regulatory Review Commission.

4. The Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin.*

5. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original of any comments concerning this order should be submitted to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Alyson Zerbe, Regulatory Coordinator, Law Bureau at (717) 772-4597 or through the Pennsylvania AT&T Relay Center at (800) 654-5988. The contact person is John Herzog, Assistant Counsel, Law Bureau, (717) 783-3714.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-312. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter E. FEES

§ 1.43. Schedule of fees payable to the Commission.

(a) *Fees for services*. The fees for services rendered by the Commission are as follows:

Description *Fee (in dollars)*

* * * * *

Filing an application for a certificate of public convenience for a motor common carrier of property **or a group and party carrier of more than 15 passengers** $100

[Filing an application for emergency temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker or for an extension thereof $100

Filing an application for temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker . . . .$100]

* * * * *

CHAPTER 3. SPECIAL PROVISIONS

Subchapter E. MOTOR TRANSPORTATION PROCEEDINGS

§ 3.381. Applications for transportation of property, household goods in use and persons.

* * * * *

(b) *Notice.* Applications will be docketed by the Secretary and, with the exception of motor common carrier property **and group and party carrier of more than 15 passengers** applications, thereafter forwarded for publication in the *Pennsylvania Bulletin*. No other notice to the public or to a carrier, forwarder or broker is required, except that an applicant filing an application for the discontinuance of the transportation of persons, on a scheduled basis, shall certify to the Commission that it has done the following:

(i) Notified the local government having jurisdiction over affected areas.

(ii) Posted notice of the proposed discontinuance in a conspicuous place in vehicles engaged in service on affected routes.

(c) *Protests.*

(1) *Applications for passenger or household goods in use authority.*

(i) *Content and effect.*

(A) A person objecting to the approval of an application shall file with the Secretary and serve upon the applicant and the applicant's attorney, if any, a written protest which shall contain the following:

(I) The applicant's name and the docket number of the application.

(II) The name, business address and telephone number of the protestant.

(III) The name, business address and telephone number of the protestant's attorney or other representative.

(IV) A statement of the protestant's interest in the application**[, including a statement of any adverse impact which approval of the application can be expected to have on the protestant]**.

(V) A list of all Commission docket numbers under which the protestant operates**[, accompanied by a copy of any portion of the protestant's authority upon which its protest is predicated]**.

[(VI) A statement of any restrictions to the application which would protect the protestant's interest, including a concise statement of any amendment which would result in a withdrawal of the protest. This provision is not applicable to applications for household goods in use authority.

(VII)] (VI) A protest **[to a household goods in use application]** is limited to challenging the fitness of the applicant, including whether the applicant possesses the technical and financial ability to provide the proposed service and whether the applicant lacks a propensity to operate safely and legally.

* * * * *

(iii) *Failure to file protests.* If no protest is filed with the Commission on or before the date specified in the *Pennsylvania Bulletin* or if all protests have been withdrawn at or prior to the hearing, the Commission may take either of the following actions:

(A) Consider the application without holding an oral hearing if it deems the facts are sufficient as in the application or as determined from additional information as the Commission may require of the applicant. An application processed under this section, without oral hearing, will be determined on the basis of verified statements submitted by the applicant and other interested parties.

* * * * *

[(III) Verified statements of the supporting party or firm shall be in paragraph form and shall contain the following information, as applicable:

(-a-) The legal name and domicile of the supporting party or firm.

(-b-) The identity and qualifications of the person making the statement for supporting party or firm.

(-c-) A general description of the supporting party, organization or operations.

(-d-) The volume and frequency of intended use.

(-e-) Specific or representative origins and destinations, or both.

(-f-) The type of service required—persons, group movements, tours, call or demand, scheduled, and the like.

(-g-) Similar applications supported—pertinent docket numbers.

(-h-) Other information deemed pertinent.

(IV)] (III) There will be the following extensions of time to file verified statements. When extenuating circumstances exist, the Commission will grant up to 45 days to file verified statements. Requests for extensions of time may be granted by the Commission based upon a written request giving reasons for the extension.

[(V) Verified statements of supporting parties are not required for applications for household goods in use authority.]

(B) Schedule the unprotested application for oral hearing at a time, date and place to be set, thereafter notifying the applicant by letter of the scheduling.

(2) *Applications for motor common carrier of property* ***and group and party service for more than 15 passenger*** *authority*. No protests to applications for motor common carrier property **and group and party carrier more than 15 passenger** authority may be filed.

(d) *Hearings on protested applications and applications for motor carrier of property authority when safety issues are raised.*

(1) *Applications for passenger****, excluding group and party service more than 15 passenger,*** *or household goods in use authority.*

(i) *Scheduling hearings.*

[(A) ***Applications for passenger authority.*** **The applications to which timely protests were filed will not be acted on by the Commission for 20 days**

after the closing date for filing of protests to permit the applicant to make restrictive amendments leading to the withdrawal of protests. If all protests are withdrawn upon amendment, the Commission may dispose of the application in accordance with subsection (c). If the application is still subject to protest, then after the expiration of the 20-day waiting period, the Commission will set the application for hearing and will notify all parties thereof. Absent good cause shown, no further amendments to the application will be considered after expiration of the 20-day period or the commencement of hearings.

(B)] **(A)** *Applications for* ***passenger and*** *household goods in use authority.* Applications for **passenger and** household goods in use authority to which timely protests were filed will be set for hearing with notice to the parties.

(ii) *Requests for postponements.* If any scheduled hearing is postponed for any reason prior to the date thereof, notice of postponement and the date, time and place of the continued hearing will be given by the presiding officer of the Commission to all parties. Requests for hearing postponements shall be submitted in writing to the Secretary of the Commission and the presiding officer with copies to parties of record, no later than 5 days prior to hearing. Hearings will not be postponed absent good cause.

(iii) *Prehearing conferences.* The presiding officer may, in his discretion or at the written request of any party of record, set any protested application for prehearing conference, to simplify the issues prior to hearing.

(2) *Applications for motor common carrier of property* ***and group and party service for more than 15 passenger*** *authority.*

(i) *Scheduling hearings.* If the **[Bureau of Transportation and Safety prosecutory staff determine]** **Commission's prosecutory staff determines** that conditional or unsatisfactory safety ratings from other jurisdictions or adverse decisions in safety related proceedings before other tribunals exist, **[the Bureau of Transportation and Safety shall enter its]** **prosecutory staff shall enter an** appearance and refer the matter to the Office of Administrative Law Judge for hearing on the applicant's safety fitness. A determination by the Commission, after hearing, that the applicant possesses the necessary safety fitness will result in the application being processed as though the applicant possessed a satisfactory safety rating.

* * * * *

(f) *Compliance: conditions for approval for motor common carrier property* ***and group and party more than 15 passenger*** *authority.* If the **[Bureau of Transportation and Safety]** **Commission's prosecutory staff** determines that a hearing is not required, as provided in subsection (d)(2), the Commission will act on applications as follows:

(1) A compliance letter will be issued directing that the applicant file a Form E Uniform Motor Carrier Bodily Injury and Property Liability Certificate of Insurance and a Form H Uniform Cargo Insurance Certificate**, if applicable**. Temporary evidence of insurance may be filed in the form of an insurance identification card for vehicles registered in this Commonwealth, a copy of the declaration page of the insurance policy, a copy of a valid binder of insurance or a copy of a valid application for insurance to the Pennsylvania Automobile Insurance Plan. The temporary evidence of insurance shall be replaced by the required certificates within 60 days. A carrier may begin operations upon filing acceptable evidence of insurance.

(2) Once acceptable Form E and Form H certificates of insurance have been filed, a certificate of public convenience will be issued authorizing the transportation of property, not including household goods in use **or group and party more than 15 passenger authority**, between points in this Commonwealth.

* * * * *

§ 3.382. Evidentiary guidelines for applications for passenger**, excluding group and party more than 15 passenger,** and household goods in use authority.

[(a) ***Service request evidence.*** **Evidence of requests received by an applicant for passenger service may be offered by the applicant in a transportation application proceeding relevant to the existence of public necessity for the proposed service. The credibility and demeanor of a witness offering evidence will be considered in evaluating the evidence. The weight which will be attributed to the evidence will depend upon the extent to which the alleged requests are substantiated by evidence such as the following:**

(1) The date of each request.

(2) The name, address and phone number of the person or company requesting service.

(3) The nature of the service requested on each occasion, including the commodities or persons to be transported, and the origin and destination of the requested transportation.

(4) The disposition of the request, that is, whether the applicant provided the service or, if not, whether the requesting shipper was referred to another carrier and, if there was a referral, to which carrier was the shipper referred.

(b) ***Prospective rate evidence.*** **]** An applicant for a motor carrier certificate or permit for the transportation of passengers or household goods in use, though not required to offer testimony as to the rates proposed to be charged, may do so if it is otherwise competent. The weight to be attributed to the evidence will depend upon the extent to which it is accompanied by cost evidence demonstrating that the prospective rates would be compensatory, that is, that the prospective rates would be adequate to enable the applicant to recover its costs and realize a reasonable return either on investment or under operating ratio standards. The demeanor and credibility of a witness offering the evidence will also be considered in evaluating the weight to be attributed to the evidence.

§ 3.383. **[Applications for temporary authority and emergency temporary authority]** **(Reserved)**.

[(a) ***Controlling legislation.*** **The provisions of 66 Pa.C.S. §§ 1103(d) and 2509 (relating to procedure to obtain certificates of public convenience and temporary permits and licenses) are as follows:**

"§ 1103(d) Temporary authority—Except during the threat or existence of a labor dispute, the commission under such regulations as it shall prescribe may, without hearing, in proper cases, consider and approve applications for certificates of public convenience, and in emergencies grant temporary cer-

tificates under this chapter, pending action on permanent certificates; but no applications shall be denied without right of hearing thereon being tendered to the applicant."

"§ 2509 Temporary permits and licenses—The commission, under such regulations as it shall prescribe, may, without hearing, in proper cases, consider and approve applications for permits and licenses, and in emergencies grant temporary permits and licenses under this chapter, pending action on permanent permits or licenses; but no application shall be denied without right of hearing thereon being tendered the applicant."

(b) *Definitions and applicability.*

(1) The following words and terms, when used in relation to applications for temporary authority and emergency temporary authority, have the following meanings:

***Carrier*—Includes motor common carriers of passengers and motor contract carriers of passengers, brokers and forwarders.**

***ETA—Emergency temporary authority*—Limited duration operating authority issued under 66 Pa.C.S. §§ 1103(d) and 2509 to authorize the transportation of passengers to meet an emergency situation and when time or circumstances do not reasonably permit the filing and processing of an application for TA.**

***TA—Temporary authority*—Limited duration operating authority issued under 66 Pa.C.S. §§ 1103(d) and 2509 to authorize the transportation of passengers to meet an emergency situation.**

(2) ETA and TA are not available to motor common carriers of property and household goods in use.

(c) *Filing of applications.* An application shall be filed as follows:

(1) *How and where filed.* An original of each application for TA or ETA (Form C) is to be filed with the Secretary, Pennsylvania Public Utility Commission, Harrisburg, Pennsylvania 17105-3265. The envelope containing the application shall be clearly marked: "TA" APPLICATION or "ETA" APPLICATION.

(2) *Filing fees.* An application for TA, ETA and extensions of ETA shall be accompanied by a filing fee, as prescribed under the fee schedule in § 1.43 (relating to schedule of fees payable to the Commission).

(3) *Supporting statements.* An application shall be accompanied by supporting statements of the applicant and shippers or other witnesses which establish an immediate need for service. A statement shall contain a certification of its accuracy and shall be signed by the person submitting the statement.

(i) *Applicant's statement.* The applicant's statement, which shall be prepared by the applicant or an authorized representative of the applicant, shall contain the following information:

(A) A description of the equipment which will be used to render service, including a statement of whether it is specialized equipment.

(B) A description of the applicant's terminal facilities and personnel.

(C) A statement of whether the filing of the application resulted from a warning, road check or investigation by the Commission.

(D) A telephone number at which the applicant or an authorized representative of the applicant may be contacted.

(E) A statement of the proposed rates, fares or charges and schedule provisions.

(F) A statement of whether there are under suspension rates, fares or charges published for its account or whether an application for special permission to file its rates, fares or charges on less than 30 days' notice in connection with another ETA, TA or permanent authority application covering the same territory has been granted or denied.

(G) Proof of ability to comply with the Commission's insurance requirements, or in the case of an authorized carrier, a statement indicating that it currently has evidence of insurance on file with the Commission.

(H) Names and addresses of labor unions which represent, or which within the past 12 months have represented, or which have filed a petition to represent the employes of the applicant with the National Labor Relations Board or the Pennsylvania Labor Relations Board. If the application seeks the temporary approval of a transfer of rights under a certificate of public convenience, this information shall be supplied for the transferor and the transferee.

(ii) *Statements of supporting shippers or witnesses.* The statement of a supporting shipper or witness, which shall be prepared by the shipper or witness, or an authorized representative of the shipper or witness, shall contain the following information:

(A) Points or areas to, from or between which the transportation will be provided.

(B) A statement of the shipper's current and recent needs concerning volume of traffic, frequency of movement and manner of transportation.

(C) A statement indicating when the service shall be provided.

(D) A statement indicating how long the need for service will continue and whether the supporting shipper or witness will support the permanent authority application.

(E) An explanation of the consequences of not having the service made available.

(F) A description of the circumstances which created an immediate need for the requested service.

(G) A statement of whether efforts have been made to obtain the service from existing carriers, including the data and results of these efforts.

(H) Names and addresses of existing carriers who have failed or refused to provide the service and the reasons given for the failure or refusal.

(I) A statement of whether the supporting shipper or witness has supported a recent application for permanent, temporary or ETA covering all or part of the requested service, the carrier's name,

address and docket numbers, if known, and whether the application was granted or denied and the date of the action, if known.

(J) Names and addresses of labor unions which represent, or which within the past 12 months have represented, or which have filed a petition to represent the employes of the supporting shipper with the National Labor Relations Board or the Pennsylvania Labor Relations Board.

(4) *Procedures for filing ETA application.* Procedures for filing ETA applications are as follows:

(i) An ETA application may normally be filed only when a corresponding application for permanent authority has been filed and emergency conditions exist which do not permit sufficient time to afford the notice required by paragraph (5)(i). If the application demonstrates the existence of emergency conditions, the Bureau of Transportation will make a reasonable effort to identify and communicate with those carriers who may hold the authority to provide the emergency service being sought by the applicant and those unions described in paragraph (3)(i)(H) and (ii)(K). An ETA application will be granted for an initial period not to exceed 60 days.

(ii) If the urgency of the situation warrants, the supporting statement of those having the immediate need for service may be furnished by telegram. The telegram shall contain substantially the factual information described in paragraph (3). The telegram shall be sent to the Director, Bureau of Transportation and Safety.

(iii) The filing of ETA applications by telegram or telephone shall be acceptable in exigent circumstances. Confirmation shall be made by filing written application—Form C—with the supporting statements, within 5 working days from the filing by telephone or telegram.

(iv) If an emergency continues beyond the initial 60-day period, the ETA may be extended pending disposition of the TA application. Extensions of ETA may be obtained in the following ways:

(A) *Filing the ETA application simultaneously with the corresponding applications for TA and permanent authority.* The simultaneous filing of ETA, TA and permanent authority applications automatically extends the grant of ETA pending disposition of the TA application. No filing fee for ETA extension is required under these circumstances.

(B) *Filing corresponding TA and permanent authority applications within 15 days of the date of filing the ETA application.* The filing of corresponding TA and permanent authority applications within 15 days of the filing of the ETA application automatically extends the grant of ETA pending disposition of the TA application, if the applicant states the following on the ETA application: "Applicant certifies that, within 15 days of the date of filing this application, corresponding TA and permanent authority applications will be filed, and hereby requests that an automatic extension be granted of the ETA." No filing fee for ETA extension is required under these circumstances.

(C) *If the corresponding TA and permanent authority applications are neither filed simultaneously with nor within 15 days of the date of filing the ETA application.* A request for an extension of ETA which does not comply with subparagraph (iv)(A) or (B) shall be accompanied by corresponding applications for TA and permanent authority and a filing fee, as prescribed under the fee schedule in § 1.43 in addition to the appropriate filing fees for TA and permanent authority applications, and shall be filed with the Bureau of Transportation, prior to the expiration date of the ETA.

(5) *Procedures for filing TA applications.* An application for TA shall be accompanied by a corresponding application for permanent authority. Unless otherwise specified in the TA application, it will be considered as proposing service pending disposition of the permanent authority application.

(i) *Notice to interested persons.*

(A) *Publication in Pennsylvania Bulletin.* Notice of the filing of a TA application and an application for permanent authority will be given by simultaneous publication in the *Pennsylvania Bulletin.*

(B) *Service on unions.* Service of temporary authority applications shall be made by certified mail upon the unions described in paragraph (3)(i)(H) and (ii)(J).

(ii) *Filing of protests.*

(A) A person who can and will provide all or part of the proposed service may file a protest to the TA application. Protests shall be consistent with § 3.381 (relating to applications for transportation of property and persons). The protest shall indicate whether it protests the application for TA or for permanent authority, or both.

(B) A union which represents the employes of a motor carrier or supporting shipper, which may be affected by the approval of an application for TA, may file a protest to the application. The protest shall be limited to the issue of whether a threatened or existing labor dispute precludes Commission consideration and approval of the TA application.

(C) Protests shall be filed with the Secretary of the Public Utility Commission.

(iii) *Revocation of ETA upon approval of TA applications.* Approval of a TA application is effective upon compliance with the Commission order, which results in the automatic revocation of corresponding ETA.]

§ 3.384. **[Disposition of applications for ETA and TA] (Reserved)**.

[(a) *General.* Initial determination of ETA and TA applications will be made by the Bureau of Technical Utility Services with the approval of the Commission.

(b) *Standards for determination of need.*

(1) *General.* Grants of TA or ETA shall be made upon the establishment of an immediate need for the transportation of passengers. Requests involving service to cities, counties, townships or other defined areas warrant approval when supported by evidence that there is a need for service to or from a representative number of points in each city,

county, township or areas and that there is a reasonable certainty that the service will be used.

(2) ***Immediate need.*** **A grant of TA or ETA will be made when it is established that there is or soon will be an immediate transportation need. A showing of immediate need may involve passenger service to a new or relocated plant, an origin or destination not presently served by carriers, a discontinuance of existing service, failure of existing carriers to provide service or comparable situations which require new carrier service before an application for permanent authority can be filed and processed. An immediate need will not normally be found to exist when there are other carriers capable of rendering the service unless it is determined that there is a substantial benefit to be derived from the initiation of a competitive service.**

(3) ***Failure to provide equipment.*** **TA or ETA may be granted when existing authorized carriers are unable or refuse to furnish equipment necessary to move passengers to meet an immediate transportation need.**

(4) ***General bases for disapproval.*** **Applications for TA or ETA may be denied for the following reasons:**

(i) Failure to meet statutory standards and this title.

(ii) Unfitness of the applicant.

(c) ***Determination of fitness issues in motor carrier applications.*** **The following standards shall be used in the initial or appellate determination of fitness issues in applications by motor carriers for TA or ETA:**

(1) Unless there is a particularly urgent transportation need, an application will normally be denied when the applicant has been found unfit or in substantial noncompliance with Chapter 37 (relating to safety code for transportation of property and passengers) or 67 Pa. Code Part I (relating to Department of Transportation). An application may, however, be approved if the carrier has reestablished compliance or if the application contains sufficient evidence to establish that the carrier has taken significant steps to remedy its deficiencies and is now in substantial compliance.

(2) Alleged violations of statute or regulations or a pending fitness investigation when no formal proceeding has been instituted may not be used as grounds for denial unless the Commission has evidence that the carrier applicant has a history of willful or flagrant violation of the statute or regulations. If authority is denied for lack of fitness on this basis, the decision will state the basis for denial.

(3) The granting of ETA or TA will not give rise to a presumption regarding the applicant's fitness.

(4) A grant of authority may be later revoked by the Commission if it determines that the applicant is unfit under this subsection. The Commission may revoke a carrier's ETA or ETA extension. The denial of a TA application will have the effect of automatically revoking the corresponding ETA or ETA extension.

(5) Allegations of unfitness in these proceedings will be considered in light of the urgency of the shipper's needs.]

§ 3.385. **[Rates, fares and charges for TA and ETA authorities]** (Reserved).

[(a) ***Rates requirements of motor carriers—publish on less than 30 days' notice.*** **Under § 23.42 (relating to establishment of new rates), rates, fares, charges and related provisions may be established by motor carriers upon not less than 1 day's notice to apply on shipments transported under TA.**

(b) ***Insurance—motor carriers.*** **A carrier may not render transportation services until it has complied with the provisions concerning the filing of evidence of insurance.**

(c) ***Publication of rates and charges.*** **A motor carrier who has been granted ETA or TA may not render transportation services until it has complied with the rate filing requirements as stated in the Commission order.]**

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter B. HEARINGS

SETTLEMENT AND STIPULATIONS

§ 5.235. **[Restrictive amendments to applications for motor carrier of passenger authority]** (Reserved).

[(a) Parties to motor carrier applications for passenger authority may stipulate as to restrictions or modifications to proposed motor carrier rights. Stipulations in the form of restrictive amendments or modifications must:

(1) Be in writing.

(2) Explain why the stipulation is in the public interest.

(3) Be signed by each party to the stipulation.

(4) Be submitted to the Secretary for insertion into the document folder.

(b) Restrictive amendments shall be binding on the parties but not on the Commission if it is determined they are not in the public interest. If a restrictive amendment is not accepted by the Commission, it may remand the matter for appropriate proceedings.]

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 23. TARIFFS FOR COMMON CARRIERS

GENERAL PROVISIONS

§ 23.1. Definitions and applicability.

(a) *Definitions.* The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Common carrier or *carrier*—A person or corporation holding out, offering or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or household goods in use, or both, or any class of passengers or household goods in use, between points within this Commonwealth by, through, over, above or under land, water or air, including forwarders, but not motor common carriers of property, **group and party carriers of more than 15 passengers,**

contract carriers, brokers or any bona fide cooperative association transporting property exclusively for the members of the association on a nonprofit basis.

* * * * *

(b) *Applicability.* This chapter applies to motor carriers except common carriers of property **and group and party carriers of more than 15 passengers**.

NOTICE OF TARIFF CHANGES

§ 23.41. Notice requirements for filing changes in rates.

(a) **[In order to] To** establish uniformity in the rules, regulations**[,]** and practices of common carriers subject both to the jurisdiction of the Interstate Commerce Commission and the Commission, and so that common carriers subject to the exclusive jurisdiction of the Commission may not be unreasonably prejudiced or burdened, all common carriers, except as specified in subsection (c), are, unless otherwise directed, permitted to file changes in existing and duly established rates upon 30 days' notice to the Commission and the public. **This subsection is not applicable to group and party carriers of 11 to 15 passengers and limousine carriers, which carriers are permitted to change rates on 1 day's notice to the Commission.**

(b) Except by specific authority of the Commission, no change shall be made in any existing and duly established rate, except as specified in subsection (c), unless **[such] the** rate has been in operation and effect for at least 30 days. This limitation **[shall] does** not, however, apply to tariffs on schedules containing rates for excursions limited to certain designated periods under authority of § 23.43 (relating to excursion fares). **This subsection is not applicable to group and party carriers of 11 to 15 passengers and limousine carriers.**

(c) Railroads and their agents operating in Pennsylvania intrastate transportation are permitted to file decreased rates on 10 days' notice and increased rates on 20 days' notice.

NOTICE OF CHANGES IN FARES

§ 23.61. Posting of changes in passenger fares.

* * * * *

(c) Carriers, except railroads and aircraft, shall also post in every car or other means of conveyance employed by them for the transportation of passengers, over the line affected, a notice similar to that prescribed in subsection (a) for the period indicated, the notice to be of a size and type appropriate to the vehicle involved.

(d) Subsections (a)—(c) are not applicable to group and party carriers of 11 to 15 passengers and limousine carriers.

§ 23.62. Notification to the Commission of proposed rate changes.

In order that the Commission may be concurrently advised of the net effect of a proposed change in rates upon the patrons and the revenues of common carriers of passengers other than railroad and aircraft, as well as the prima facie reasonableness of the proposed rate changes, the data called for in §§ 23.63 and 23.64 (relating to data required in filing proposed rate changes; and data required in filing increases in operating revenues), as appropriate, shall accompany the filing of the proposed rates, and shall be submitted in triplicate, and under oath of a responsible officer. Tariffs or tariff supplements not accompanied by the data, but required to be so accompanied, will be returned to the sender as not acceptable for filing. **This section is not applicable to group and party carriers of 11 to 15 passengers and limousine carriers.**

§ 23.63. Data required in filing proposed rate changes.

(a) If a common carrier of passengers, other than railroad and aircraft, files a tariff or tariff supplement which will increase or decrease fares to any of its patrons, it shall submit to the Commission, with the tariff or tariff supplement, statements showing all of the following:

(1) The changes in rates proposed, stating the effective and proposed fares.

(2) The specific reasons for each increase or decrease.

(3) The estimated effect of each rate increase or decrease on the carrier's annual revenues.

(4) The calculations by which the estimates in paragraph (3) were determined.

(b) Subsection (a) is not applicable to group and party carriers of 11 to 15 passengers and limousine carriers.

§ 23.64. **[Data required in filing increases in operating revenues] (Reserved)**.

[If a common carrier of passengers, other than railroad or aircraft, files a tariff or tariff supplement which will increase the operating revenues of the carrier for the latest 12-month period, it shall submit to the Commission with the tariff or tariff supplement, in addition to the statements required in § 23.63 (relating to data required in filing proposed rate changes), the following information in the detail required to be maintained in the records under the system of accounts applicable to the operation of the carrier:

(1) A detailed balance sheet of the carrier at the end of a month not more than 45 days prior to such filing.

(2) A summary, by primary accounts, of the book value of the property of the carrier devoted to passenger transportation at the date of the balance sheet required by paragraph (1).

(3) A statement showing the amount of the depreciation reserve, at the date of the balance sheet required by paragraph (1), applicable to the property referred to in that paragraph.

(4) A statement showing passenger motor vehicles owned at the date of the balance sheet required by paragraph (1), setting forth the make, date of purchase, the cost of each vehicle, the depreciation accrued on each vehicle and the basis for allocation of depreciation to interstate or intrastate operations, or both, if applicable.

(5) A statement of operating income derived from passenger transportation, setting forth the operating revenues and expenses by detailed accounts, by months, for the 12-month period which ended on the date of the balance sheet referred to in paragraph (1). Expenses claimed to be variable costs shall be designated as such.

(6) A statement of the salaries paid to and the duties performed by the owners and officers of the carrier.

(7) A statement to the effect that in the event of any proceedings before the Commission with respect to the proposed rates it is agreed that the tariff and the financial data submitted therewith will be offered in evidence by the utility respondent as an exhibit.

(8) A map or sketch of the operation indicating zones, if any.

(9) An income and expense statement for Commonwealth operations for the 12 months preceding the tariff filing. Expenses claimed to be variable costs shall be designated as such. If expenses are allocated between interstate and intrastate operations, include a description of the method of allocation.

(10) Total passenger miles systemwide and total passenger miles intrastate in this Commonwealth for the 12 months preceding the tariff filing.

(11) Costs of capital improvements within this Commonwealth for the 3 years previous to the tariff filing with a detailed explanation of how the costs were allocated between interstate and intrastate operations, whether the costs were included in justifications for previous tariff filings and allocation of depreciation—if any—taken on the capital improvements.

(12) A statement of revenues derived from terminals and similar facilities—not actual passenger fares—in this Commonwealth for the 12-month period preceding the tariff filing with a detailed explanation of how the revenues are allocated between intrastate and interstate operations or why such an allocation is not performed.

(13) An explanation of the methodology used to determine the rates attributed to interstate and intrastate routes provided in a passenger fare comparison.

(14) A statement of rate reductions filed with the Interstate Commerce Commission concerning points in this Commonwealth for the 6-month period preceding the tariff filing.

(15) A statement of the last approved rate increase from the Interstate Commerce Commission, including the corresponding document filing and the order approving the increase.]

§ 23.68. Filing requirements for **[small]** passenger carriers.

[Small passenger carriers with gross annual intrastate revenue of less than $500,000 do not need to file the substantiating data required under § 23.64 (relating to data required in filing increases in operating revenues) when requesting an increase in rates. Small passenger carriers shall submit a statement with the tariff or tariff supplement stating the following:]

(a) Passenger carriers shall submit a statement with the tariff or tariff supplement stating the following:

(1) The information required under § 23.63 (relating to data required in filing proposed rate changes).

(2) The total gross annual intrastate revenue for the most recent fiscal year.

(3) The dollar amount of increased annual revenue that the rate increase is expected to produce.

(4) The total projected operating revenue after the revenue increase.

(5) The total projected operating expenses.

(6) The projected operating ratio.

(b) Subsection (a) is not applicable to group and party carriers of 11 to 15 passengers and limousine carriers.

CHAPTER 29. MOTOR CARRIERS OF PASSENGERS

Subchapter B. COMMON CARRIERS

PRELIMINARY PROVISIONS

§ 29.13. Scheme of classification.

The following standard classification of types of service furnished by common carriers of passengers is adopted, and the following is hereby recognized as a standard class of common carrier service. The rights and conditions pertaining to a standard class of service are specified in Subchapter D (relating to supplemental regulations). A certificated service which does not completely correspond to a standard class may be governed, where practicable, by the regulations for the standard class to which it most nearly corresponds:

* * * * *

(3) *Group and party service.* Common carrier service for passengers, rendered on an exclusive basis as charter service for groups or rendered on a nonexclusive basis for tour or sightseeing service and special excursion service. **There are 2 classes of group and party service, group and party carriers of 11 to 15 passengers, including the driver, and group and party carriers of more than 15 passengers, including the driver.**

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Subchapter D. SUPPLEMENTAL REGULATIONS

GROUP AND PARTY SERVICE

§ 29.323. Vehicle and equipment requirements.

A group and party service may be operated only in vehicles with seating capacities of ten passengers or greater, excluding the driver. **There are 2 classes of group and party service, group and party carriers of 11 to 15 passengers, including the driver, and group and party carriers of more than 15 passengers, including the driver.**

§ 29.324. Tariff requirements.

The rates charged and collected shall be contained in the tariff filed, posted and published under the statute and this title. **This section is not applicable to group and party carriers of more than 15 passengers, including the driver.**

[Pa.B. Doc. No. 16-322. Filed for public inspection February 26, 2016, 9:00 a.m.]