

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 210 AND 211]

Handling and Use of Explosives

The Environmental Quality Board (Board) amends Chapters 210 and 211 (relating to blasters' licenses; and storage, handling and use of explosives) to read as set forth in Annex A. These amendments update the regulations based on current industry best practices and include blasting requirements related to seismic exploration.

This final-form rulemaking was adopted by the Board at its meeting of February 20, 2018.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact William Allen, Acting 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. This final-form 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 final-form 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) (Act 537) (73 P.S. §§ 157 and 161), sections 3 and 4 of the act of July 10, 1957 (P.L. 685, No. 362) (Act 362) (73 P.S. §§ 166 and 167), Reorganization Plan No. 8 of 1981 (71 P.S. § 751-35) (transferring powers and duties conferred under Act 537 and Act 362 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*

This final-form rulemaking amends regulations to address the use of explosives for seismic exploration, which is fundamentally different than most other uses of explosives. For example, with seismic exploration, it is often necessary for explosive charges to remain in the ground for extended periods of time. This final-form rulemaking specifies the security measures needed to protect the public safety under these circumstances. 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. The Department developed an interim seismic supplement to address safety issues at seismic exploration sites which provided the applicant an opportunity to provide this detailed information. The specifications for this additional information are included in this final-form rulemaking. This final-form rulemaking codifies these requirements, providing certainty to the regulated community regarding the regulatory framework for seismic exploration.

This final-form rulemaking also updates explosives use requirements to reflect current practices and eliminates outdated requirements. The updated requirements will result in more consistency between the requirements for construction blasting and blasting for mining operations.

Advisory board collaboration and outreach

The Department reviewed this final-form rulemaking with the Mining and Reclamation Advisory Board on July 21, 2016, and with the Mining Aggregate Advisory Board on November 2, 2016. Each advisory board recommended that the rulemaking move forward for Board consideration.

In addition to advisory board engagement, the Department conducted outreach through the trade groups for these industry sectors and with the Pennsylvania chapters of the International Society of Explosives Engineers. As a result of this outreach, no concerns were presented during the public comment period by seismic operators or construction contractors.

E. *Summary of Changes to the Proposed Rulemaking*

Chapter 210. Blasters' licenses

§ 210.11. Definitions

This final-form rulemaking does not include the proposed definitions of "employee possessor," "explosive materials" and "responsible person." Based on comments, the proposed definitions of "employee possessor" and "responsible person" may not cover all persons who are eligible for a blaster's license. The definition of "explosives" is added in this final-form rulemaking based upon comments that the proposed definition of "explosive materials" was inconsistent with the Federal requirements.

§ 210.13. General

Subsection (b) is revised to require present rather than past compliance with Federal requirements to obtain a blaster's license. This revision was made based on comments which pointed out that the proposed requirement could be interpreted as a permanent bar for anyone who ever had a violation. Because the Federal requirements referenced in this section include a background check requirement, this final-form rulemaking does not include the proposed separate articulation of that requirement.

Chapter 211. Storage, handling and use of explosives

Subchapter A. General provisions

§ 211.101. Definitions

This final-form rulemaking adds a definition of "at-the-hole communication" based on comments to clarify the nature of the communication required.

The definition of "blast area" is revised to delete "the potential for" (with regard to personal injury and damage to property) because the phrase is unnecessary.

The definition of “cube root scaled distance ($D_s^{1/3}$)” is revised by adding a sentence to clarify that the cube root scaled distance is used to estimate airblast levels.

This final-form rulemaking does not include the proposed definitions of “employee possessor,” “explosive materials” and “responsible person.” Based on comments, not all persons who are eligible for a blaster’s license may be included as either an employee possessor or responsible person. The definition of “explosives” is added in this final-form rulemaking based upon comments that the proposed definition of “explosives materials” was inconsistent with the Federal requirements.

The definition of “flyrock” in this final-form rulemaking does not include material that travels onto property neither owned nor leased by the permittee or its customer, as proposed. The proposed language created a problem for construction blasting because property is rarely owned or leased by the permittee or its customer on construction projects. This definition was renumbered accordingly.

The definition of “FMCSA inspection” is added in this final-form rulemaking to clarify that certain vehicle inspections by the Federal Motor Carrier Safety Administration can be used in Subchapter E (relating to transportation of explosives).

This final-form rulemaking does not include the proposed definition of “nuisance.” Commentators noted that the use of this term was ambiguous and could be subject to misinterpretation.

The definitions of “MSHA” and “OSHA” are added in this final-form rulemaking as these acronyms are used in Chapter 211.

The existing definition of “scaled distance (D_s)” is revised in this final-form rulemaking to “square root scaled distance (D_s).” The definition is also revised to clarify that square root scaled distance is used to estimate ground vibration.

This final-form rulemaking does not include the proposed definitions of “unauthorized detonation of explosives,” “unauthorized handling and use of explosives” and “unauthorized storage of explosives” based on comments that these definitions could result in unintended consequences for new employees of blasting contractors.

§ 211.103. Enforcement

This final-form rulemaking does not include proposed subsection (d)(4) that established a permit and license block for any person who did not meet the requirements to be authorized as an employee possessor or responsible person by United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The terms “employee possessor” and “responsible person” are used in Federal requirements that differ from the terms included in this final-form rulemaking. In addition, not everyone who uses or handles explosives is included as either an employee possessor or responsible person.

Subchapter B. Storage and classification of explosives

§ 211.117. Daily summary of magazine transactions

This final-form rulemaking adds a reference to an additional Federal requirement (27 CFR 555.127 (relating to daily summary of magazine transactions)) that was inadvertently omitted from the proposed rulemaking.

Subchapter C. Permits

§ 211.121. General requirements

Based on comments, this final-form rulemaking clarifies subsection (e) by revising the language regarding

compliance to be in the present tense. In addition, new subsection (f) is clarified to require compliance by “the blasting contractor” rather than “all subcontractors” consistent with other sections of this final-form rulemaking.

§ 211.124. Blasting activity permits

Final-form subsection (a)(3) is revised to clarify that the application for a blasting activity permit must include the ATF license or permit number of the applicant or the “blasting contractor” rather than the “contract blaster” to be consistent with § 211.121(f) (relating to general requirements).

Final-form subsection (a)(9) is revised to clarify that an application for a blasting activity permit must include the minimum “square root” scaled distance unless the permit is for demolition blasting operations, which require use of 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.

Former subsection (a)(17), proposed subsection (a)(20), is deleted in this final-form rulemaking. This paragraph required an applicant to provide proof that residents within 200 feet of the blasting site were informed of the proposed blasting operation. The proposed rulemaking recommended increasing the distance to 300 feet, or another distance established in the permit. Based upon comments, the Department determined that the notification requirement is less effective than other regulatory requirements in ensuring public safety. The existing requirement to clear and secure the blast area is more effective than providing notice prior to application. The requirement to clear and secure the site requires blasters to notify people in the vicinity of the blast as determined by blast design. For instance, if a blaster can only clear and secure a small area, the blast shall be designed accordingly.

Subchapter D. Records of disposition of explosives

§ 211.133. Blast reports

Final-form subsection (a)(9), former subsection (a)(7), is revised based on comments to clarify the information an applicant shall include on the sketch that accompanies the blast record.

Final-form subsection (a)(19), former subsection (a)(16), is revised to clarify that the “square root” scaled distance must be included in the blast report, except when demolition blasting occurs. In that case, the blast report must include the cube root scaled distance.

New subsection (a)(26) is revised to require a blast report to include a drill log which shows the condition of all holes that were drilled for a blast, whether they were loaded or not. Based on comments, the Department determined that limiting the drill log to other bore holes in the blast site “related to the blasting activity” was not appropriate. The condition of all drilled holes is necessary as it provides information regarding the condition and extent of the rock being blasted. This information is important for the blaster and the Department to evaluate why a blast performed the way it did.

Subchapter E. Transportation of explosives

§ 211.141. General requirements

Paragraph (13) is revised to clarify that blasting activity permittees shall only load explosives onto onroad vehicles that have passed the State safety inspection or certification “or an FMCSA inspection,” which is an

inspection required by the Federal Motor Carrier Safety Administration. Based on comments, an option of using Federal inspection specifications has been added, which particularly offers the regulated community the option of using out-of-State vehicles.

Subchapter F. Blasting activities

§ 211.151. Prevention of damage or injury

Proposed subsection (b) requiring blasting to be conducted in a manner that prevents a nuisance has been deleted from this final-form rulemaking. Based on comments, use of “nuisance” created ambiguity and would be subject to varied interpretations. The other requirements in this section adequately protect injury to others or damage to property of others. Therefore, proposed subsection (b) is not necessary. The remaining subsections have been renumbered accordingly.

Final-form subsections (e) and (f), proposed subsections (f) and (g), are revised to rely on “particle velocity” rather than “peak particle velocity,” as proposed, as the modifier “peak” is not necessary.

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

The heading of this section is revised to refer to the control of gases, rather than the control of “noxious” gases. Likewise, subsections (a) and (b) are revised to refer to gases generated by the blast, rather than the generation of “toxic” gases. Commentators objected to the use of the modifiers “noxious” and “toxic” because any gas generated by the blast that affects the health or safety of an individual is prohibited.

§ 211.154. Preparing the blast

Subsection (o), regarding the posting of signs, is added in this final-form rulemaking to ensure consistency with Federal requirements, specifically 29 CFR 1926.905(p) (relating to loading of explosives or blasting agents), 30 CFR 56.6306(a) (relating to loading, blasting, and security) or 30 CFR 77.1303(g) (relating to explosives, handling and use), as applicable. Commentators pointed out potential conflicts with Federal regulatory requirements for activities under the jurisdiction of the United States Department of Labor, Mine Safety and Health Administration (MSHA) or the United States Department of Labor, Occupational Safety and Health Administration (OSHA).

Subchapter G. Requirements for monitoring

§ 211.171. General provisions for monitoring

Subsection (a) is revised to include a reference to square root scaled distance to provide consistency throughout the regulations.

Subchapter J. Civil penalties

Proposed Subchapter J is not added in this final-form rulemaking. Civil penalties for nonmining explosives violations will be addressed in a future rulemaking package.

F. Summary of Comments and Responses on the Proposed Rulemaking

Comments were received from seven public commentators and the Independent Regulatory Review Commission (IRRC).

Several commentators suggested that additional references to the Federal regulations were appropriate to provide clarity and consistency. For example, with respect to sign requirements, MSHA has regulations for mine

sites and OSHA has regulations for construction blasting. This final-form rulemaking includes references to these requirements in § 211.154(o) (relating to preparing the blast). These requirements were proposed to be added as § 211.155(7) (relating to preblast measures). These requirements are added in this final-form rulemaking as § 211.154(o) to make clear that a blaster shall comply with them prior to loading a blast, which is consistent with Federal requirements. Section 211.117 (relating to daily summary of magazine transactions) is revised to add a reference to ATF regulations. The definition of “explosives” in § 211.101 (relating to definitions) is added in this final-form rulemaking and includes the elements of the ATF definition of “explosives” and items on the ATF “List of Explosive Materials.” The definition of “blast area” in § 211.101 was not revised to include a reference to the MSHA requirements because they are limited to onsite effects of blasting, while Commonwealth statutes also address public safety, which requires consideration of offsite effects as well.

A revision to the definition of “mine opening blasting” in § 210.11 (relating to definitions) was suggested, but not made at this time as additional review is necessary. A suggestion to delete § 210.17(a) (relating to issuance and renewal of licenses) was made. This subsection has been retained as it explains the scope of blaster’s licenses issued by the Department. A commentator suggested rescinding § 211.115 (relating to standards for classifying and storing explosives and constructing, maintaining and siting magazines) since this is covered by Federal regulations. Retention of this section is necessary to provide the Department with the authority to implement the existing explosives storage security measures.

Several commentators indicated that the proposed fee increases were excessive. The existing fees have been in place for many years and do not reflect current administrative and enforcement costs. After careful consideration, the Board did not adopt the proposed amendments to the fee schedule. The Department will further evaluate the fee schedule and will address fees separately in a subsequent rulemaking.

A commentator took exception to the proposed phrase “the potential for” in the definition of “blast area” in § 211.101. The commentator stated that it is inconsistent with Federal requirements and ambiguous. The proposed phrase has been deleted from this final-form rulemaking. A commentator stated that the proposed addition of the area of “property neither owned nor leased by the permittee or its customer” in the definition of “flyrock” in § 211.101 created a conflict of property rights without providing any additional protection. After further review, the proposed language has been deleted from this final-form rulemaking.

A commentator requested clarification of the difference between “blaster” and “blaster-in-charge” in § 211.121 and § 211.124 (relating to blasting activity permits). While “blaster” is a generic term, “blaster-in-charge” is used exclusively in relation to the detonation of a blast and the associated recordkeeping. This distinction is necessary. Multiple licensed blasters may be involved with a blast. Each blast has only one blaster-in-charge to assure accountability.

A commentator stated that the use of “scaled distance” was unclear because of the definition of “cube root scaled distance ($D_s^{1/3}$)” in § 211.101. This final-form rulemaking has been revised to include the distinction between square root scaled distance and cube root scaled distance in each instance where scaled distance is used. The

former term “scaled distance (Ds)” has been revised to “square root scaled distance (Ds)” and clarifying statements have been added.

A commentator suggested the deletion of definitions of “unauthorized detonation of explosives,” “unauthorized handling and use of explosives” and “unauthorized storage of explosives” stating that they were unreasonable and impossible to enforce. After further consideration and review, these terms and references to them are deleted in this final-form rulemaking.

A commentator requested clarification of the applicability of the permit and license block in § 211.121. This section is clarified by using the present tense.

A commentator objected to the 4-hour availability for access to explosives storage magazines in § 211.115(j). Since this final-form rulemaking allows for an alternative time frame, this subsection was not revised.

A commentator objected to the proposed addition of § 211.116 (relating to decommissioning magazines), asserting that it is not necessary due to similar Federal requirements. The Department’s inspectors provide confirmation that magazines have been emptied as part of the Commonwealth’s explosives storage magazine licensing responsibility. For this reason, the section is adopted in this final-form rulemaking.

Commentators requested clarifications about permitting requirements under § 211.124. More specifically, questions were raised about electronic submissions, dealing with multiple blasts under one permit application, specifying the types of explosives, fee payments, addresses and mapping. Specific clarifications are noted as follows. Electronic signatures are acceptable under existing electronic commerce requirements. Blasting permits routinely are designed for multiple blasts. The requirement to provide the specific types of explosives to be used is intended to capture enough detail for planning, but does not require identification of brand names. While the Board did not adopt the proposed amendments to the fee schedule, the Department will continue to collect existing fees consistent with currently accepted methods of payment. Addresses and mapping need to provide sufficient information to locate blasts and structures that may be affected by blasting.

A commentator stated that the proposed notification of residents within 300 feet of the blast site to be included as part of a permit application does not provide any benefit and is arbitrary because the 300-foot distance does not consider the scale of each blasting project. After further consideration, the notification requirement was deleted from this final-form rulemaking because the notification requirement is less effective than other regulatory requirements in ensuring public safety. The existing requirement to clear and secure the blast area is more effective than providing notice prior to application. The requirement to clear and secure the site requires blasters to notify people in the vicinity of the blast as determined by blast design. For instance, if a blaster can only clear and secure a small area, the blast shall be designed accordingly.

A commentator stated that a blaster’s license for law enforcement is no different than other uses of explosives. With the addition of the law enforcement category in § 210.17(a), the Department will be able to tailor the required certification class and exam to the law enforcement category.

Several comments were received about the blast record requirements specified in § 211.133 (relating to blast

reports). These are related to electronic signatures, the description of the ground in the area of the blasting, the amount of explosives in each hole, addresses and drill logs. This final-form rulemaking does not address electronic signatures because they are allowed under existing electronic commerce requirements. Clarity has been added to the description of the ground by providing examples. The reporting of the amount of explosives in each hole is necessary to meet the general requirement of having enough information to reconstruct the blast. For bulk products with variable densities, a density range will meet the requirements under final-form subsection (a)(14). The new requirement provides specific direction on how to comply. Addresses are needed to confirm locations. The drill logs are also necessary to meet the general requirement of having enough information to reconstruct the blast.

A commentator suggested that a definition should be added to clarify that at-the-hole communication with the driller is an effective way for the blaster-in-charge to determine the condition of the material to be blasted. A definition of “at-the-hole communication” has been added in § 211.101.

A commentator noted that out-of-State vehicles are not subject to the Commonwealth’s inspection requirements. In response, this final-form rulemaking includes a definition of “FMCSA inspection” in § 211.101 and a reference to the Federal vehicle inspection requirement in § 211.141 (relating to general requirements).

Several commentators suggested that “nuisance” is ambiguous and subject to varied interpretations. Therefore, this term has been deleted from this final-form rulemaking.

A commentator suggested that provisions be made for alternative peak particle velocity limits. This final-form rulemaking provides for alternative particle velocity levels in § 211.151(e) (relating to prevention of damage or injury).

Several commentators objected to “noxious” and “toxic” in § 211.152 (relating to control of gases, including carbon monoxide and oxides of nitrogen) in relation to the gases produced by a blast. After further review, these terms have been deleted from this final-form rulemaking, as the language included in this section prohibits the generation of any gas by a blast that affects the health or safety of an individual.

Several commentators noted potential conflicts with Federal regulatory requirements for activities under the jurisdiction of MSHA or OSHA. This final-form rulemaking includes references to the Federal requirements, when appropriate, to avoid conflicts.

A commentator suggested that a reference be added to manufacturer specifications for deploying seismographs to monitor a blast. A reference to International Society of Explosives Engineers standards is included in final-form § 211.171(e) (relating to general provisions for monitoring) and is sufficient to account for manufacturer specifications.

A commentator questioned the authority of the Board to establish a civil penalty program when it is not explicitly authorized by the explosives statutes. The Board has rulemaking authority under section 1920-A of The Administrative Code of 1929 to adopt rules and regulations for the proper performance of work by the Department, including authority to adopt rules and regulations authorized under sections 7 and 11 of Act 537 and sections 3 and 4 of Act 362. The statutory provisions authorize regulations necessary to effectuate the provisions of these

statutes that are not inconsistent with law. Upon further review, the Board determined that it would be more appropriate to implement a civil penalty program for nonmining blasting violations separately through a future rulemaking.

Several commentators provided feedback about specific requirements in the proposed civil penalty system. A commentator observed that the concept of “interference with a person’s right to the comfortable enjoyment of life or property” is subjective and cannot be consistently enforced. Commentators requested clarification about how civil penalty would be assessed under proposed § 211.204, and specifically how the cost to the Commonwealth would be determined under proposed § 211.204(b)(4), which is also an element of the existing civil penalty program for mining violations. Proposed § 211.204 was not adopted in this final-form rulemaking. These comments will be taken into account in the development of a future rulemaking to address civil penalties for nonmining explosives violations.

G. *Benefits, Costs and Compliance*

This final-form rulemaking updates the existing regulatory framework regarding blasting and explosives. The amendments will increase the cost of compliance, but provide more certainty to the regulated community with regard to operational requirements. The benefit to the public from improved public safety and documentation of blasting activities will outweigh the costs of compliance.

Benefits

This final-form rulemaking will improve public safety and provide consistency and clarity to the regulated community. The citizens of this Commonwealth will benefit through the enhancement of public safety.

This final-form rulemaking addresses blasting activities related to 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. For example, it is often necessary for explosive charges to remain in the ground for extended periods of time—this final-form rulemaking specifies the security measures needed to protect the public safety under these circumstances. This final-form rulemaking codifies requirements, increases public safety and provides certainty to the regulated community regarding the regulatory framework for seismic exploration.

This final-form rulemaking also updates explosives use requirements to reflect current practices, eliminates outdated requirements and provides a more effective enforcement mechanism. For example, former regulations required permits to purchase explosives and permits to sell explosives to provide tracking for explosives transactions. The ATF has a robust system to do the same. The State requirement was outdated and is no longer needed since it was duplicative of the ATF’s tracking. The amended requirements will result in more consistency between the requirements for construction blasting and blasting for mining operations.

Compliance costs

The proposed rulemaking was expected to result in increased costs, specifically due to new or increased fees. However, after careful consideration, the Board did not adopt the proposed fee schedule amendments. The De-

partment will re-evaluate the fees and address necessary amendments in a subsequent rulemaking.

The additional improvements and clarifications in this final-form rulemaking are not expected to significantly increase costs and should in some instances provide a cost savings to the regulated community. Removing the State permitting requirement for the sale and purchase of explosives, as well as requirements to track those transactions, will result in a cost savings for the regulated community. Additional compliance costs that may result from site-specific factors that raise public safety concerns are highly variable and difficult to predict.

Compliance assistance plan

Compliance with this final-form 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 final-form rulemaking will be provided through routine interaction with trade groups and individual applicants.

Paperwork requirements

This final-form rulemaking requires additional information as part of a permit application for blasting related to seismic exploration. The additional requirements are more focused and clarify the current requirements. Other existing forms may need updating to reflect citation changes; this change does not increase paperwork requirements on the regulated community. This final-form rulemaking also requires that the regulated community make certain Federally-required records available for Department inspection; this requirement does not add additional paperwork on the regulated community that is not otherwise required by Federal law.

H. *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 final-form rulemaking has minimal impact on pollution prevention since it is focused on public safety.

I. *Sunset Review*

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

J. *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 the notice of proposed rulemaking, published at 46 Pa.B. 996 (February 27, 2016), to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on April 18, 2018, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2018, and approved this final-form rulemaking.

K. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposed rulemaking published at 46 Pa.B. 996.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order

The Board, acting under the authorizing statutes, orders that:

(1) The regulations of the Department, 25 Pa. Code Chapters 210 and 211, are amended by adding §§ 211.116, 211.117, 211.191—211.194, deleting §§ 211.122, 211.123, 211.131 and 211.132 and amending §§ 210.11, 210.13, 210.16, 210.17, 210.19, 211.101—211.103, 211.112, 211.113, 211.115, 211.121, 211.124, 211.125, 211.133, 211.141, 211.151, 211.152, 211.154, 211.158, 211.171, 211.172 and 211.182 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(*Editor's Note:* The proposed amendments to §§ 210.15 and 211.155 and proposed §§ 210.20, 211.126 and 211.201—211.207 included in the proposed rulemaking have been withdrawn by the Board.)

(2) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(4) The Chairperson of the Board shall certify this order and Annex A, as approved for legality and form, and deposit them with the Legislative Reference Bureau, as required by law.

(5) This order shall take effect immediately.

PATRICK McDONNELL,
Chairperson

(*Editor's Note:* See 48 Pa.B. 2731 (May 5, 2018) for IRRC's approval order.)

Fiscal Note: Fiscal Note 7-522 remains valid for the final adoption of the subject regulations.

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.

Explosives—Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term includes dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters. The term includes all items in the "List of Explosive Materials" provided for in 27 CFR 555.23 (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.

§ 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 is in compliance with 18 U.S.C.A. Chapter 40 and 27 CFR Part 555 (relating to commerce in explosives).

(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.

(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.
- (e) A blaster's license is not transferable.

§ 210.16. Examinations.

(a) The Department will conduct examinations for specific types of blasting, as specified in § 210.17(a) (relating to issuance and renewal of licenses).

(b) The Department will schedule and conduct examinations as needed.

(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.

(d) Refund of the fee or admittance to a subsequent examination without a reapplication fee will be at the discretion of the Department.

§ 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, law enforcement, surface mining, underground noncoal mining, mine opening blasting, industrial, limited and demolition.

(b) A person may apply to amend the blaster's license for other classifications by meeting the requirements of § 210.14 (relating to eligibility requirements) and by submitting a complete application.

(c) A blaster's license will be issued for 3 years.

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

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

(f) A person who intends to be a blaster and whose blaster's license was not renewed within 1 year of its expiration date shall apply for a new license under §§ 210.14—210.16 (relating to eligibility requirements; license application; and examinations).

(g) A person who conducted demolition blasting under a general blaster's license may conduct demolition blasting after July 14, 2001, by applying for and receiving a demolition blaster's license. The Department may waive the examination required under § 210.14 and the application fee if the blaster demonstrates at least 3 years of experience in demolition blasting. The demonstration must be in the form of a notarized statement from the blaster's employer that describes the blaster's experience.

§ 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 opportu-

nity 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 Chapters 77, 87, 88 and 211.

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.

At-the-hole communication—Communication between the driller who drilled the blast holes to be loaded in a blast and the blaster-in-charge of that blast in which the driller describes the conditions of the boreholes that the driller drilled. At-the-hole communication may consist of cones placed in the boreholes with messages describing borehole conditions or verbal communication in which the driller describes the condition of the boreholes.

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

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

Blaster—An individual who is licensed by the Department under Chapter 210 (relating to blasters' licenses) to detonate explosives and supervise blasting activities.

Blaster-in-charge—The blaster designated to have supervision and control over all blasting activities related to a blast.

Blasting activity—The actions associated with the use of explosives from the time of delivery of explosives to a worksite until all postblast measures are taken, including priming, loading, stemming, wiring or connecting, detonating, and all necessary safety, notification and monitoring measures.

Building—A structure that is designed for human habitation, employment or assembly.

Charge weight—The weight in pounds of an explosive charge.

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

Cube root scaled distance (Ds^{1/3})—A value calculated by using the formula $Ds^{1/3} = D/(\text{cube root}) W$, where actual distance (D) in feet measured in a horizontal line from the blast site to the nearest building or structure not owned or leased by the blasting activity applicant, the permittee or their customers, is divided by the cube root

of the maximum weight of explosives (W) in pounds detonated per delay period of less than 8 milliseconds. Cube root scaled distance is used to estimate airblast levels.

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

Detonator—

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

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

Explosives—Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term includes dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters. The term includes all items in the "List of Explosive Materials" provided for in 27 CFR 555.23 (relating to list of explosive materials).

FMCSA inspection—The inspection required by the Federal Motor Carrier Safety Administration in 40 CFR 396.3 (relating to inspection, repair, and maintenance).

Flyrock—Overburden, stone, clay or other material cast from the blast 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) 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 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.

Inner perimeter security—Measures taken to increase the intrusion resistance and theft resistance of a magazine that encircles an individual or a group of magazines. These measures lie within the outer perimeter security measures.

MSHA—The United States Department of Labor, Mine Safety and Health Administration.

Magazine—A structure used for the storage of explosives.

Misfire—Incomplete detonation of explosives.

OSHA—The United States Department of Labor, Occupational Safety and Health Administration.

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

Outer perimeter security—Measures taken to increase the intrusion resistance of magazines that encircle the area where the magazines are situated.

Particle velocity—A measure of the intensity of ground vibration, specifically the time rate of change of the amplitude of ground vibration.

Peak particle velocity—The maximum intensity of particle velocity.

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.

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

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.

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

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

§ 211.102. Scope.

(a) This chapter applies to persons using or storing explosives and engaging in blasting activities in this Commonwealth. Persons 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 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 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.

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.

(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.

(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 the expiration date, the licensee may continue to operate under the current license until the Department acts on the renewal application.

(e) License fees are as follows:

(1) License:

(i) Application—\$50

(ii) Site inspection—\$50

(2) License modifications—\$50

(3) License renewals—\$50

(4) License transfers—no fee

§ 211.113. Application contents.

(a) An application to obtain, renew, modify or transfer a magazine license must be on forms approved by the Department. Before the Department issues, renews, transfers or modifies a license, the application must demonstrate that the applicant has complied with the applicable requirements of this chapter.

(b) A completed license application must include all of the following:

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

(2) A contact person, including name, title and telephone number.

(3) The types and quantities of explosives to be stored within the magazine.

(4) A map, plan or a sketch of the site location showing the nearest buildings, nearest railways, nearest highways, existing barricades, if any, and proposed barricades.

(5) A plan showing the design and specifications of the magazine to be licensed.

(6) A plan showing the design, specifications, dimensions and locations of all security measures to be installed under § 211.115(d) (relating to standards for classifying and storing explosives and constructing, maintaining and siting magazines).

(7) The latitude and longitude of outdoor magazines except for Type 3 magazines as defined in 27 CFR 555.203(c) (relating to types of magazines).

(8) The latitude and longitude of indoor magazines containing high explosives.

(c) A license renewal application must include all of the following:

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

(2) A contact person, including name, title and telephone number.

(3) The maximum amount and type of explosives for which the magazine is currently licensed.

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

* * * * *

(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).

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

frame agreed upon by the Department representative and the magazine licensee. Department requests may be verbal or written.

§ 211.116. Decommissioning magazines.

Prior to the expiration or termination of a magazine license, the licensee shall remove and properly dispose of all explosives from the magazine and submit to the Department documentation as to the disposition of these explosives. This documentation shall be provided within 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, 555.125 and 555.127 available to the Department upon request.

Subchapter C. PERMITS

§ 211.121. General requirements.

(a) Except as otherwise provided in this subchapter, a person may not engage in blasting activities 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 use of fireworks governed by the act of May 15, 1939 (P.L. 134, No. 65) (35 P.S. §§ 1271—1278) (Repealed).

(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 acts as a blasting activity permit issued under this chapter.

(d) An application for a permit to conduct blasting activities must 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 a person who either:

(1) Fails to comply with this chapter or a condition of a permit issued under this chapter or an order issued to enforce this chapter.

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

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

§ 211.122. (Reserved).

§ 211.123. (Reserved).

§ 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 must include all of the following:

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

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

(3) The ATF license or permit number of the applicant or the blasting contractor.

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

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

(6) The specific types of explosives to be used.

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

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

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

(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.

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

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

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

(14) Proof that the permittee has third-party general liability insurance in the amount of \$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.

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

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

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

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

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

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

(21) Types of stemming material.

(b) Blasting activity permits are not transferable.

(c) The blasting activity permit must specify all of the following:

(1) The blasting activity permittee.

(2) Any independent subcontractors performing work under this permit.

(3) Limits on particle velocity and airblast.

(4) The types of explosives that may be used.

(5) The duration of the permit.

(6) Other conditions necessary to ensure that the proposed blasting activity complies with the applicable statutes and this chapter.

(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 Conservation and Reclamation Act (52 P.S. §§ 3301—3326), possession of the blasting plan for that permit constitutes possession of a copy of the approved blasting activity permit authorizing the blasting activity being conducted.

§ 211.125. Blasting activity permit-by-rule.

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

(1) The blasts are designed and performed for a scaled distance of 90 or greater.

(2) No more than 15 pounds (6.81 kilograms) of explosives are detonated per delay interval of less than 8 milliseconds.

(3) The total charge weight per blast does not exceed 150 pounds (68.18 kilograms).

(4) The person notifies the Department either verbally, in writing or by other means approved by the Department prior to the initial blast. If the person gives verbal notification, a written notice shall be received by the Department within 5 working days. The notification must indicate all of the following information for all blasts that will occur under this permit:

- (i) The identity of the person.
- (ii) The location where the blasting will occur.
- (iii) The purpose of the blasting.
- (iv) The distance to the nearest building not owned or leased by the person or its customer.
- (v) The days of the week and times when blasting may occur.
- (vi) The duration of blasting activities under this permit-by-rule.
- (vii) The minimum scaled distance.
- (viii) The maximum weight of explosives detonated per delay period of less than 8 milliseconds.
- (ix) The maximum total weight of explosives per blast.
- (x) A contact person and telephone number.

(5) Blast reports are completed in accordance with § 211.133 (relating to blast reports).

(6) The other monitoring and performance standards of this chapter are met.

(b) The Department may revoke a blasting activity permit-by-rule under one of the following:

- (1) The permittee has demonstrated an unwillingness or inability to comply with the applicable regulations.
- (2) The blasting activity possesses a sufficient risk of harm to the public or the environment to warrant an individual blasting activity permit.

Subchapter D. RECORDS OF DISPOSITION OF EXPLOSIVES

§ 211.131. (Reserved).

§ 211.132. (Reserved).

§ 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 must contain, at a minimum, all of the following:

- (1) 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.
- (4) The name of the blasting activity permittee and blasting contractor, if applicable.
- (5) The blasting activity permit or appropriate mining permit number.
- (6) The date and time of the blast.
- (7) The printed name, signature and license number of the blaster-in-charge.
- (8) The type of material blasted.
- (9) A sketch showing the number of blast holes, burden, spacing, pattern dimensions, delay timing sequence, description of the conditions of the area immediately surrounding the blast site which includes identifying if the area is solid rock, a muck pile from a previous blast or an open face, and point of initiation.
- (10) The diameter and depth of each blast hole.
- (11) The height or length of stemming and deck separation for each hole.
- (12) The amount of explosives loaded in each borehole.
- (13) The types of explosives used and arrangement in blast holes.
- (14) The total weight in pounds of explosives, product density for bulk blasting agents, weight of packaged blasting agents and primer cartridges used.
- (15) The maximum weight in pounds of explosives detonated per delay period of less than 8 milliseconds.
- (16) The type of circuit, if electric detonation was used.
- (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.
- (18) A general description, including the street address and latitude and longitude, of the nearest building not owned or leased by the blasting activity permittee or its customer.
- (19) The square root scaled distance to the nearest building or other structure neither owned nor leased by the blasting activity permittee or its customer except for demolition blasting operations where the cube root scaled distance must be used.

- (20) The weather conditions.
- (21) The direction from which the wind was coming.
- (22) The measures taken to control flyrock, including whether or not mats were used.
- (23) The total quantity and type of detonators used and delays used.
- (24) The number of individuals in the blasting crew.
- (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.
- (27) The monitoring records required 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 under subsection (b), are provided. Monitoring records shall be made part of the blast report within 7 days, if requested by the Department.
- (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 must 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 permittee shall:

- (1) Immediately unload a vehicle carrying explosives upon reaching a magazine location. The unloaded vehicle shall be removed from the site. The only exception to this requirement is if the vehicle is a licensed magazine under Subchapter B (relating to storage and classification of explosives).
- (2) Load or unload explosives from a vehicle only after the engine is turned off, unless power is needed for the loading or unloading operation. The permittee shall take all precautions necessary, such as blocking the wheels, to prevent the movement of the vehicle while it is being loaded or unloaded.
- (3) Load explosives only into a vehicle that is marked in accordance with the Department of Transportation standards for placarding vehicles transporting explosives.
- (4) Prohibit smoking within 100 feet of a vehicle used for transporting explosives. "NO SMOKING" signs shall be posted when a vehicle containing explosives is parked at a blast site or magazine.
- (5) Load no more than 2,000 pounds (908 kilograms) of explosives into an open body vehicle for transporting. The ends and sides must be high enough to prevent explosives from falling off, and the load must be covered with a

fire-resistant tarpaulin, unless the explosives are transported in a magazine securely attached to the vehicle.

(6) Load explosives into a closed body vehicle if the load is more than 2,000 pounds (908 kilograms) of explosives.

(7) Only load explosives into a vehicle with a bed made of wood or other nonsparking material.

(8) Load explosives into a vehicle which is also transporting metal, metal tools, blasting machines or other articles or materials likely to damage the explosives, only if these items are separated from the explosives by substantial nonsparking bulkheads constructed to prevent damage to the explosives.

(9) Load detonators and other explosives into the same vehicle only if the detonators are in containers that conform to the current version of the Institute of Makers of Explosives' Safety Library Publication # 22 available from the Institute of Makers of Explosives, 1120 Nineteenth Street, N. W., Suite 310, Washington, DC 20036-3605.

(10) Not load explosives into the same vehicle with materials such as matches, firearms, electric storage batteries, corrosive compounds, flammable substances, acids, oxidizing agents and ammonium nitrate not in the original containers.

(11) Only load explosives into vehicles equipped with a fire extinguisher having a National Board of Underwriters Laboratories rating of 10 B:C or more. The fire extinguisher must be easily accessible and ready for immediate use.

(12) Load explosives into a vehicle so that explosives containers are not exposed to sparks or hot gases from the exhaust tailpipe. Exhaust systems that discharge upwards are recommended to avoid possible exposure of sparks or hot gases to explosives.

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

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

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

Subchapter F. BLASTING ACTIVITIES

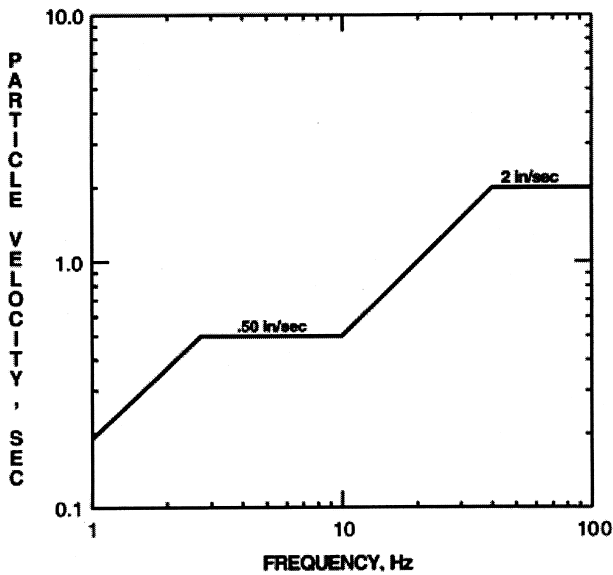
§ 211.151. Prevention of damage or injury.

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

(c) Blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 at the closest building or other structure designated by the Department or meets the allowable particle velocity as indicated by Figure 1 at any building or other structure designated by the Department. The scaled distance and allowable particle velocity does not apply at a building or other structure owned or leased by the permittee or its customer.

Figure 1.



(d) Blasts shall be designed and conducted to control airblast so that it does not exceed 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.

(e) 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 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 (c) or the airblast limit in subsection (d).

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

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

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

(a) A blast shall be conducted so that the gases generated by the blast, including carbon monoxide and oxides of nitrogen, do not affect the health or safety of individuals. 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. 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 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. A blaster-

in-charge is responsible for all effects of the blasts that the 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 determine the condition of the material to be blasted from the individual who drilled the blast holes, from the drill log or at-the-hole communication prior to loading a blast. 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:

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

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

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

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

(5) Each blast hole shall be logged throughout the 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 under § 211.133 (relating to blast reports).

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

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

(g) Before connecting one loaded blast hole to another, all activity within the blast area shall cease, and all nonessential persons shall retreat to a safe place. The blaster-in-charge shall determine the blast area.

(h) Primers shall be prepared only at the hole to be loaded, immediately prior to loading. The components of

the primer are to be kept separated at the collar of the blast hole. The primer may not be slit, dropped, deformed or carelessly handled and may not be tamped or forced into the blast hole.

(i) Immediately upon completing the loading of a blast hole, any wood, paper or other materials used to pack explosives shall be inspected for the presence of explosives and removed to an isolated area. These materials may be burned after the blast has been fired. Persons may not be within 100 feet (30.48 meters) of these burning materials.

(j) Measures shall be taken to reduce the chance of flyrock including:

(1) The use of blasting mats or other protective devices, if, in the opinion of the blaster-in-charge, the measures are necessary to prevent injuries to persons or damage to property.

(2) When blasting to an open, vertical face, checking the face for loose, hanging material or other faults prior to loading the blast holes.

(k) Explosives may not be brought to a blast site in greater quantities than are expected to be needed for that blast. Surplus explosives may not be stored in the blast area.

(l) Before a blast hole is loaded, it shall be checked to ensure that it is cool and does not contain any hot metal or smoldering material remaining from drilling the hole.

(m) The use of abrasive or sharp-edged constituents in stemming material shall be avoided if tamping is necessary and the tamping may sever blasting cap leg wires, shock tubes or detonating cords.

(n) 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.

(o) The permittee shall post signs at access points of all approaches to a blast site which clearly warn of explosive use. If there are no specific access points, a minimum of four signs shall be posted on all sides of the blast site at a distance of 100 feet from the blast site. Posting of signs shall comply with 29 CFR 1926.905(p) (relating to loading of explosives or blasting agents), 30 CFR 56.6306(a) (relating to loading, blasting, and security) or 30 CFR 77.1303(g) (relating to explosives, handling and use), as applicable.

§ 211.158. Mudcapping.

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

Subchapter G. REQUIREMENTS FOR MONITORING

§ 211.171. General provisions for monitoring.

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

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

(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 0.25 inch per second unless otherwise directed by the Department.

(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 must be attached to the blast report. This printout must 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 Engineers' Standards Committee.

§ 211.172. Monitoring instruments.

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

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

(c) A monitoring instrument shall be calibrated annually and when an instrument is repaired and the repair may affect the response of the instrument. Calibration shall be done by the manufacturer of the equipment, 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 must 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. Calibration procedures and documentation of calibration shall be made available for review by the Department.

(d) A nonalterable sticker that is clearly visible must be firmly affixed to the instrument. The sticker must 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.

(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.

(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 1/2 the horizontal distance from the closest portion of the utility line.

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

Subchapter I. SEISMIC 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 in Subchapter C (relating to permits), an application for a blasting activity permit for seismic exploration must include all of 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, all of 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), all of 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 all of 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 MSHA-required training is necessary, how and when that training will be obtained and who will

obtain the training. The permittee shall provide written documentation of the training to the Department prior to entry onto the mining permit.

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

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

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

[Pa.B. Doc. No. 18-959. Filed for public inspection June 22, 2018, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 1401]

General Sports Wagering Provisions; Temporary Regulations

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 13C02 and 13C03 (relating to regulatory authority; and temporary sports wagering regulations), promulgates regulations regarding the relevant terms associated with sports wagering implementation in this Commonwealth, as well as delineating the petition requirements for slot machine licensees seeking to offer sports wagering in this Commonwealth to read set forth in Annex A.

Purpose of this Temporary Rulemaking

This temporary rulemaking defines the relevant terms associated with sports wagering implementation in this Commonwealth, as well as delineating the petition requirements for slot machine licensees seeking to offer sports wagering in this Commonwealth.

Explanation of Chapter 1401

Chapter 1401 (relating to general sports wagering provisions—temporary regulations) provides definitions of the terms associated with sports wagering implementation in this Commonwealth, as well as delineating the petition requirements for slot machine licensees seeking to offer sports wagering in this Commonwealth.

Affected Parties

This temporary rulemaking provides interested parties information relative to who and what entities may participate in sports wagering in this Commonwealth and the petition process for slot machine licensees seeking to offer sports wagering in this Commonwealth.

Fiscal Impact

Commonwealth

The Board does not expect that this temporary rulemaking will have fiscal impact on the Board or other Commonwealth agencies. Petitions for sports wagering certificates will be reviewed by existing Board staff.

Political subdivisions

This temporary rulemaking will not have direct fiscal impact on political subdivisions of this Commonwealth. Host municipalities and counties benefit from the local share funding that is mandated by the act of January 7, 2010 (P.L. 1, No. 1).

Private sector

This temporary rulemaking defines the relevant terms associated with sports wagering implementation in this Commonwealth, as well as delineating the petition requirements for slot machine licensees seeking to offer sports wagering in this Commonwealth. It is anticipated that this temporary rulemaking will have an impact only on those individuals seeking to acquire these certificates, the impact being for licensing costs which will be recouped through proceeds from the provision of sports wagering.

General public

This temporary rulemaking will not have direct fiscal impact on the general public.

Paperwork Requirements

Individuals eligible for a sports gaming certificate will have to file a petition with the Board seeking approval to conduct this activity. The contents of a petition are set forth in Annex A.

Effective Date

This temporary rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Public Comments

While this temporary rulemaking will be effective upon publication, the Board is seeking comments from the public and affected parties as to how these temporary regulations might be improved.

Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after publication in the *Pennsylvania Bulletin* to Laura R. Burd, Senior Counsel, Pennsylvania Gaming Control Board, P.O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation # 125-216.

Contact Person

The contact person for questions about this temporary rulemaking is Laura R. Burd, Senior Counsel, (717) 346-8300.

Regulatory Review

Under 4 Pa.C.S. §§ 13C02 and 13C03, the Board has the authority to promulgate temporary regulations to facilitate the prompt implementation of sports wagering in this Commonwealth. The temporary regulations adopted by the Board are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law, the Regulatory Review Act (71 P.S. §§ 745.1—745.14) and section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)). Under 4 Pa.C.S. § 13C03, these temporary regulations expire 2 years after publication in the *Pennsylvania Bulletin*.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. §§ 13C02 and 13C03, the temporary regulations are exempt from the requirements of the Regulatory Review Act, sections 201—205 of the Com-

monwealth Documents Law and sections 204(b) of the Commonwealth Attorneys Act.

(2) The adoption of the temporary regulations is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(1) The temporary regulations of the Board, 58 Pa. Code, are amended by adding §§ 1401.1—1401.4 to read as set forth in Annex A.

(2) The temporary regulations will be posted on the Board’s web site.

(3) The temporary regulations are subject to amendment as deemed necessary by the Board.

(4) The Chairperson of the Board has certified this order and Annex A and shall deposit them with the Legislative Reference Bureau as required by law.

(5) These temporary regulations are effective upon publication in the *Pennsylvania Bulletin* and expire on June 23, 2020.

DAVID M. BARASCH,
Chairperson

Fiscal Note: 125-216. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART VII. GAMING CONTROL BOARD
Subpart Q. SPORTS WAGERING

Chap. 1401. GENERAL SPORTS WAGERING PROVISIONS—TEMPORARY REGULATIONS

CHAPTER 1401. GENERAL SPORTS WAGERING PROVISIONS—TEMPORARY REGULATIONS

- Sec. 1401.1. Scope.
- 1401.2. Definitions.
- 1401.3. Initial and renewal authorization and license fees.
- 1401.4. Sports wagering certificate petition and standards.

§ 1401.1. Scope.

The purpose of this subpart is to govern the operation of sports wagering in this Commonwealth. The purpose of this chapter is to establish definitions for this subpart and create the process by which a slot machine licensee can seek approval to conduct sports wagering. The act and the Board’s regulations promulgated thereunder shall otherwise apply when not in conflict with this subpart.

§ 1401.2. Definitions.

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

Associated equipment—Any equipment or mechanical, electromechanical or electronic contrivance, component or machine used in connection with sports wagering, including equipment which affects the proper reporting and counting of gross sports wagering revenue and computerized systems for controlling and monitoring sports wagering.

Cash equivalent—An asset that is readily convertible to cash, including any of the following:

- (i) Chips or tokens.
- (ii) Travelers checks.

- (iii) Foreign currency and coin.
- (iv) Certified checks, cashier’s checks and money orders.
- (v) Personal checks or drafts.
- (vi) A negotiable instrument applied against credit extended by a certificate holder, an interactive gaming operator, sports wagering operator or a financial institution.
- (vii) A prepaid access instrument.
- (viii) Any other instrument or representation of value that the Board deems a cash equivalent.

Certificate holder—A slot machine licensee granted a certificate by the Board to conduct sports wagering in this Commonwealth.

Gaming employee—An employee of any of the following who the Board determines, after a review of the work to be performed, requires a gaming employee permit for the protection of the integrity of sports wagering within this Commonwealth:

- (i) A certificate holder, interactive gaming operator licensee or sports wagering operator licensee.
- (ii) A sports wagering manufacturer.
- (iii) A sports wagering supplier
- (iv) A sports wagering gaming service provider.
- (v) Any other person as determined by the Board.

Gaming school—Any educational institution approved by the Department of Education as an accredited college or university, community college, Pennsylvania private licensed school or its equivalent and whose curriculum guidelines are approved by the Department of Labor and Industry to provide education and job training related to employment opportunities associated with sports wagering, including sports wagering devices and associated equipment maintenance and repair.

Gross sports wagering revenue—

(i) The total of cash or cash equivalents received from sports wagering minus the total of:

- (A) Cash or cash equivalents paid to players as a result of sports wagering.
- (B) Cash or cash equivalents paid to purchase annuities to fund prizes payable to players over a period of time as a result of sports wagering.

(C) The actual cost paid by the sports wagering certificate holder for any personal property distributed to a player as a result of sports wagering. This clause does not include travel expenses, food, refreshments, lodging or services.

(ii) The term does not include any of the following:

- (A) Counterfeit cash or chips.
- (B) Coins or currency of other countries received as a result of sports wagering, except to the extent that the coins or currency are readily convertible to cash.
- (C) Cash taken in a fraudulent act perpetrated against a sports wagering certificate holder for which the sports wagering certificate holder is not reimbursed.

Key employee—Any individual who is employed in a director or department head capacity and who is empowered to make discretionary decisions that regulate sports wagering operations or systems, including the director of sports wagering, director of sports wagering system pro-

grams or other similar job classifications associated with sports wagering and any employee who is not otherwise designated as a gaming employee and who supervises the operations or systems of the sports wagering department or to whom the sports wagering department directors or sports wagering department heads report and other positions not otherwise designated or defined under this part which the Board determines based on detailed analyses of job descriptions as provided in the internal controls of the sports wagering certificate holder or sports wagering operator licensee as approved by the Board. All other gaming employees unless otherwise designated by the Board shall be classified as nonkey employees.

Player—An individual wagering cash, a cash equivalent or other thing of value in the play or operation of sports wagering, including during a contest or tournament, the act of which may deliver or entitle the individual to receive cash, a cash equivalent or other thing of value from another player or sports wagering certificate holder, interactive gaming operator or sports wagering operator.

Registered player—An individual who has entered into a sports wagering account agreement with a sports wagering certificate holder, interactive gaming operator or sports wagering operator.

Sporting event—A professional or collegiate sports or athletic event, a motor race event or other similar event as determined by the Board.

Sports wagering—

(i) The business of accepting wagers on sporting events or on the individual performance statistics of athletes in a sporting event or combination of sporting events by any system or method of wagering, including over the Internet through web sites and mobile applications when authorized by the Board. The term includes exchange wagering, parlays, over-under, moneyline, pools and straight bets.

(ii) The term does not include:

(A) Pari-mutuel betting on the outcome of thoroughbred or harness horse racing as authorized under 3 Pa.C.S. Chapter 93 (relating to race horse industry reform).

(B) Lottery games of the Pennsylvania State Lottery as authorized under the State Lottery Law (72 P.S. §§ 3761-101—3761-2103).

(C) Bingo as authorized under the Bingo Law (10 P.S. §§ 301—308.1).

(D) Small games of chance as authorized under the Local Option Small Games of Chance Act (10 P.S. §§ 328.101—328.3101).

(E) Slot machine gaming and progressive slot machine gaming as defined and authorized under this part.

(F) Table games.

(G) Keno.

(H) Fantasy contests.

(I) iLottery under 4 Pa.C.S. Chapter 5 (relating to lottery).

Sports wagering area—

(i) The physical land-based location at which a certificate holder is authorized, under sections 13C01—13C71

of the act (relating to sports wagering), to conduct non-Internet-based sports wagering. The area must be:

(A) A designated area within the certificate holder's slot machine licensed facility, as approved by the Board.

(B) A Board-approved temporary facility that is physically connected to, attached to or adjacent to the certificate holder's slot machine licensed facility for a period not to exceed 18 months.

(C) A nonprimary location of a Category 1 slot machine licensee under 3 Pa.C.S. Chapter 93 upon Board approval in consultation with the State Horse Racing Commission.

(ii) The term does not include a redundancy facility or an interactive gaming or interactive sports wagering restricted area which is not located on the premises of a licensed facility as approved by the Board and which is maintained and operated by a certificate holder, interactive gaming operator or sports wagering operator in connection with sports wagering.

Sports wagering certificate—A certificate awarded by the Board under this subpart that authorizes a slot machine licensee to conduct sports wagering in accordance with this subpart.

Sports wagering certificate holder—A slot machine licensee to whom the Board has awarded a sports wagering certificate.

Sports wagering device—Any mechanical, electrical or computerized contrivance, terminal, machine or other device, apparatus, equipment or supplies approved by the Board and used to conduct sports wagering.

Sports wagering gaming service provider—A person that is not required to be licensed as a sports wagering operator, interactive gaming operator, sports wagering manufacturer, sports wagering supplier, interactive gaming manufacturer or interactive gaming supplier and:

(i) Provides goods or services to a sports wagering certificate holder, interactive gaming operator or sports wagering operator for the operation of sports wagering.

(ii) Is determined to be a sports wagering gaming service provider by the Board.

Sports wagering interactive system—All hardware, software and communications that comprise a type of server-based sports wagering system for the purpose of offering authorized sports wagering, mobile sports wagering or interactive sports wagering in this Commonwealth when authorized by the Board.

Sports wagering interactive web site—The interactive gaming skin through which a sports wagering certificate holder, or interactive gaming operator or sports wagering operator on behalf of a sports wagering certificate holder, makes authorized sports wagering, mobile sports wagering or interactive sports wagering available for play when authorized by the Board.

Sports wagering manufacturer—A person who manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs, sells, leases, offers or otherwise makes modifications to any authorized sports wagering device or associated equipment for use or operation in this Commonwealth for sports wagering purposes.

Sports wagering manufacturer license—A license issued by the Board authorizing a sports wagering manufacturer to manufacture, build, rebuild, fabricate, assemble, produce, program, design, sell, lease, offer or otherwise make

modifications to any authorized sports wagering device or associated equipment for use or operation in this Commonwealth for sports wagering purposes.

Sports wagering operator—A person licensed by the Board to operate sports wagering, a mobile sports wagering system or an interactive sports wagering system, through the provision of an interactive gaming or sports wagering platform, on behalf of sports wagering certificate holder. The term includes an interactive gaming operator applicant or licensee that seeks to operate sports wagering, mobile sports wagering or an interactive sports wagering system on behalf of sports wagering certificate holder.

Sports wagering platform—The combination of hardware and software or other technology designed and used to manage, conduct and record mobile sports wagering or interactive sports wagering activity as approved by the Board. The term includes any emerging or new technology deployed to advance the conduct and operation of sports wagering, mobile sports wagering or interactive sports wagering activity as approved through regulation by the Board.

Sports wagering restricted area—Any room or area, as approved by the Board, used by a sports wagering certificate holder, interactive gaming operator or sports wagering operator to manage, control and operate sports wagering, including, when approved by the Board, redundancy facilities and remote gaming server locations.

Sports wagering supplier—

(i) A person who provides, distributes or services any authorized sports wagering device or associated equipment for use or operation in this Commonwealth for sports wagering purposes that is not otherwise required to be licensed as a sports wagering manufacturer.

(ii) The term includes a person that provides risk management services, integrity services or odds to a sports wagering certificate holder or sports wagering operator licensee.

(iii) The term does not include a person that provides raw data to a sports wagering certificate holder or sports wagering operator licensee.

Sports wagering supplier license—A license issued by the Board authorizing a sports wagering supplier to provide products or services related to any authorized sports wagering device or associated equipment or that provides risk management services, integrity services or odds to a sports wagering certificate holder or sports wagering operator licensee for use or operation in this Commonwealth for sports wagering purposes.

§ 1401.3. Initial and renewal authorization and license fees.

(a) Prior to the Board issuing a sports wagering certificate, an interactive gaming operator license, sports wagering operator license or renewal thereof, the sports wagering certificate holder, interactive gaming operator licensee or sports wagering operator licensee shall pay the authorization or license fee.

(b) If an interactive gaming operator licensee has already remitted the required licensing fee, the Board will not assess an additional fee for the interactive gaming operator licensee to acquire a sports wagering operator license.

§ 1401.4. Sports wagering certificate petition and standards.

(a) A slot machine licensee seeking to offer sports wagering in this Commonwealth may petition the Board for a sports wagering certificate.

(b) A petitioner for a sports wagering certificate shall submit all of the following to the Board:

(1) The name, business address and contact information of the slot machine licensee petitioning for a sports wagering certificate.

(2) The name, business address and contact information of any affiliate, sports wagering operator or other person that will be a party to an agreement with the sports wagering certificate petitioner related to the operation of sports wagering on behalf of the sports wagering certificate petitioner and a description of the services to be provided.

(3) The name and business address, job title and a photograph of each principal and key employee of the sports wagering petitioner who will be involved in the conduct of sports wagering and whether or not the principal or key employee is currently licensed by the Board.

(4) A statement identifying what types of sports wagering, including the sporting events, the sports wagering certificate petitioner intends to offer.

(5) A statement identifying whether the sports wagering petitioner intends to offer land-based sports wagering, mobile sports wagering, interactive sports wagering or a combination thereof.

(6) A statement identifying whether the sports wagering petitioner intends to utilize a temporary facility for its land-based sports wagering operations or system.

(7) If the petitioner is a Category 1 slot machine licensee, a statement identifying whether the sports wagering petitioner intends to offer land-based sports wagering in a nonprimary location.

(8) The estimated number of full-time and part-time employment positions that will be created as a result of sports wagering if a sports wagering certificate is issued.

(9) An updated hiring plan under section 1510(a) of the act (relating to labor hiring preferences) which outlines the sports wagering certificate petitioners plan to promote the representation of diverse groups and Commonwealth residents in the employment positions.

(10) A brief description of the economic benefits expected to be realized by the Commonwealth if a sports wagering certificate is issued.

(11) The details of any financing obtained or that will be obtained to fund an expansion or modification of the sports wagering certificate petitioner's licensed facility to accommodate sports wagering and to otherwise fund the cost of commencing sports wagering.

(12) Information and documentation concerning financial background and resources to establish the financial stability, integrity and responsibility of the sports wagering certificate petitioner.

(13) Information and documentation concerning the terms of any agreement with a sports wagering operator.

(14) Information and documentation to establish that the sports wagering certificate petitioner has sufficient business ability and experience to conduct a successful sports wagering operation, including the sports wagering certificate petitioner's history in slot machine and table game operations, employment data and capital investment in casino operations.

(15) Information and documentation that the sports wagering certificate petitioner has or will have the financial ability to pay the sports wagering authorization fee.

(16) Detailed site plans identifying the proposed sports wagering area and sports wagering restricted area, including security and surveillance plans and plans relative to compliance with the Clean Indoor Air Act (35 P.S. §§ 637.1—637.11).

(17) An overview of all of the following:

(i) The sports wagering certificate petitioner's initial system of internal and accounting controls applicable to sports wagering including the areas described in paragraph (16).

(ii) The sports wagering certificate petitioner's proposed standards to protect, with a reasonable degree of certainty, the privacy and security of its registered players.

(iii) The sports wagering devices and associated equipment and mobile sports wagering or interactive sports wagering system, or both, that the sports wagering certificate petitioner plans to or will utilize to manage, administer or control its sports wagering operations or systems as well as the identity of any third parties providing these devices and associated equipment.

(18) A description of accounting systems, including accounting systems for all of the following:

(i) Sports wagering accounts.

(ii) Per wager charges, if applicable.

(iii) Transparency and reporting to the Board and the Department.

(iv) Ongoing auditing and internal control compliance reviews.

(19) A description outlining the impact that sports wagering petitioner's plans will have on the number of slot machines and table games in operation at its licensed facility.

(20) An overview of any necessary additions to the petitioner's Compulsive and Problem Gambling Plan necessitated by sports wagering.

(c) The Board will approve a sports wagering petition if the petitioner establishes all of the following by clear and convincing evidence:

(1) The petitioner's slot machine license and table game operation certificate are in good standing with the Board.

(2) The conduct of sports wagering at the petitioner's licensed facility will increase revenues and employment opportunities.

(3) The petitioner possesses adequate funds or has secured adequate financing to:

(i) Fund any necessary expansion or modification of the petitioner's licensed facility to accommodate the conduct of sports wagering.

(ii) Pay the authorization fee in accordance with section 13C61 of the act (relating to sports wagering authorization fee).

(iii) Commence sports wagering operations or system at its licensed facility.

(4) The petitioner has the financial stability, integrity and responsibility to conduct sports wagering.

(5) The petitioner has sufficient business ability and experience to create and maintain a successful sports wagering operation.

(6) The petitioner's proposed internal and external security and proposed surveillance measures within the area of the licensed facility where the petitioner seeks to conduct sports wagering are adequate.

(7) The petitioner has satisfied the petition requirements.

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