

Issued in Washington, DC on this 7th day of August 2003.

**Joseph H. Grant,**

*Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.*

[FR Doc. 03-20860 Filed 8-14-03; 8:45 am]

BILLING CODE 7708-01-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 938**

[PA-137-FOR]

**Pennsylvania Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Pennsylvania permanent regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposed to revise its regulations regarding licensing of blasters and the storage, handling and use of explosives. Pennsylvania intends to reorganize and clarify its blasting regulations to reflect the advances in technology and research associated with blasting.

**EFFECTIVE DATE:** August 15, 2003.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Acting Field Office Director, Harrisburg Field Office,

Telephone: (717) 782-4036, e-mail: *grieger@osmre.gov*.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Pennsylvania Program
- II. Submission of the Proposed Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

**I. Background on the Pennsylvania Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, " \* \* \* a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act \* \* \*; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

**II. Submission of the Amendment**

By letter dated February 25, 2002, Pennsylvania sent us an amendment to its program (Administrative Record No.

PA 878.02) under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment includes changes to Title 25, Part I, Subpart D, Article IV, Chapters 210 Blaster's License, and 211 Storage, Handling and Use of Explosives. We announced receipt of the proposed amendment in the April 30, 2002, **Federal Register** (67 FR 21187). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing, as one was not requested. The public comment period ended on May 30, 2002. We received comments from two Federal agencies and from one State agency. The Federal agencies were the U.S. Department of Labor, Mine Safety and Health Administration's (MSHA) New Stanton Office and the U.S. Environmental Protection Agency (EPA), Region III. The State agency was the Pennsylvania Historical and Museum Commission (PHMC).

**III. OSM's Findings**

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

*A. Minor Revisions to Pennsylvania's Rules*

Pennsylvania proposed minor wording and recodification changes to the following previously approved rules:

Previously approved section	Recodified section (These sections may include minor wording changes from the original language.)	Subject
210.1(a) .....	210.16(a) .....	Examinations for Blaster's License.
210.1(b) .....	210.16(b) .....	Frequency of Examinations.
210.1(e) .....	210.15(b) .....	License Application.
210.2(d) .....	210.14(a)(4) .....	Requirement to Pass Examination.
210.2(e) .....	210.13(c) .....	Exhibiting License.
210.2(g) .....	210.16(c) and (d) .....	Forfeiture of Fees.
210.3(b) .....	210.17(f) .....	Lapsed Licenses.
210.5(a) .....	210.13(a) and 211.154(a) .....	Blaster in Charge.
210.5(b) .....	211.154(c) .....	Another person present during blast.
210.5(c) .....	211.102(a) .....	Scope.
211.2(2) .....	211.101 .....	Definition—Magazine.
211.2(4) .....	211.101 .....	Definition—Primer.
211.2(5) .....	211.101 .....	Definition—Stemming.
211.2(6) .....	211.101 .....	Definition—Building.
211.2(12) .....	211.101 .....	Definition—Person.
211.2(18) .....	211.101 .....	Definition—Charge Weight.
211.2(20) .....	211.101 .....	Definition—Delay Interval.
211.32(1) .....	211.112(a) .....	Location of magazine.
211.36(1) .....	211.121(a) .....	Records of Disposition of explosives.
211.36(2) .....	211.101 .....	Definitions of "purchase," and "sale or sell".
211.36(6), (7) .....	211.122(b), (c) and 211.123(b), (c) .....	Permits to sell/purchase explosives.
211.42(1), (3)–(12), and (15)–17 .....	211.141 .....	Transportation of Explosives.

Previously approved section	Recodified section (These sections may include minor wording changes from the original language.)	Subject
211.46(1)–(15), (20) ..... 211.51(3) .....	211.133(a)(1), (2)–(14), (16)–(20), (22) ..... 210.13(a) and 211.153(f) .....	Blast reports. General/General requirements for handling explosives.
211.51(6) ..... 211.51(9) ..... 211.51(11) ..... 211.51(14) ..... 211.51(16) ..... 211.51(19) ..... 211.51(20) ..... 211.51(22) ..... 211.51(23) ..... 211.51(24) ..... 211.51(25) ..... 211.51(26) ..... 211.51(28) ..... 211.51(29) ..... 211.51(30) ..... 211.51(31) and (32) ..... 211.51(34) ..... 211.51(35) ..... 211.51(36) ..... 211.51(37) ..... 211.51(38) ..... 211.51(41) ..... 211.52 ..... 211.52(2) .....	211.154(e) and 211.154(b) ..... 211.159(j) ..... 211.162(c) ..... 211.154(n) and 211.161(b) ..... 211.156(b) and 211.157(b) ..... 211.154(h) ..... 211.153(d) ..... 211.161(1) ..... 211.154(k) ..... 211.154(l) ..... 211.154(f)(4) ..... 211.159(a) ..... 211.159(c) ..... 211.154(i) ..... 211.159(d) ..... 211.159(e) ..... 211.159(g) ..... 211.158 ..... 211.154(j)(2) ..... 211.54(f)(5) ..... 211.157(a) ..... 211.154(j)(1) ..... 211.181 ..... 211.182(a) and (b) .....	Preparing the blast. Electric detonation. Safety fuse. Preparing the blast/Detonating cords. Detonating the blast/Postblast measures. Preparing the blast. General requirements for handling explosives. Detonating cords. Preparing the blast. Preparing the blast. Electric detonation. Electric detonation. Preparing the blast. Electric detonation. Electric detonation. Electric detonation. Mudcapping. Preparing the blast. Preparing the blast. Postblast measures. Preparing the blast. Blasting activities near utility line. General provisions—Blasting activities near utility line.
211.61(4) .....	211.115 .....	Standards for classifying and storing explosives and constructing, maintaining and siting magazines.
211.65(7) .....	211.154(f)(3) .....	Preparing the blast.

Because these changes are minor and do not affect the meaning or the application of the previously approved rules, we find that they will not make Pennsylvania’s rules less effective than the corresponding Federal regulations.

*B. Previously Approved Pennsylvania Rules That Have Been Eliminated in This Amendment*

The following rules that we previously approved as part of the

Pennsylvania program have been eliminated in this rulemaking.

Previously approved section	Subject
210.1(c) ..... 210.1(f) ..... 210.2(h) ..... 210.5(d) ..... 211.1 ..... 211.2; the definitions for the following terms were eliminated: “establishment,” “explosive plant,” “factory building,” “railroad,” “highway,” “barricade,” “Department,” “Board,” “Secretary,” “approved,” “vehicle,” and “actual distance.” 211.36(10) ..... 211.37 ..... 211.51(5) ..... 211.51(8) ..... 211.51(12) ..... 211.51(18) ..... 211.51(21) ..... 211.51(33) ..... 211.51(39) ..... 211.51(40) ..... 211.52(1) ..... 211.61(3), (5) ..... 211.62 ..... 211.63 ..... 211.64 ..... 211.71 ..... 211.72 ..... 211.73 ..... 211.74 .....	Sealed examinations for the blaster’s license test. Notification of blaster’s license examination. Issuance and status of licenses—fees. Use of explosives in waters of the Commonwealth. Safety devices for machinery. Definitions.  Inventory records for explosives and blasting caps. Regulations for magazines used for storing explosives. Firing horizontal holes. Use of blasting machines. Clearing black powder or dynamite from around holes. Counting explosions. Back primed holes. Explosives in underground mines. Returning remaining explosives after loading. Stemming holes when loose dynamite is used. Showing utility lines on plans. Storage of ammonium nitrates. Blasting prohibited. Building, Operation and Storage Requirement. Mobile Equipment for mixing prohibited. Special precautions for storage and use of propellants. Storehouses—Distances—limitations. Protection from Fire. Storehouses.

Previously approved section	Subject
211.75 .....	Transporting of Propellants in vehicles.
211.76 .....	Smoking prohibited.
211.77 .....	Tools for opening containers.
211.78 .....	Permit to sell.
Appendix A .....	Radio Transmitters.

There are no Federal counterparts to the rules listed in the above table. Our review found that elimination of these sections does not make the Pennsylvania program less effective than the Federal regulations. We are approving their elimination.

In addition to the above sections, Pennsylvania also eliminated section 210.5(e) that we had also previously approved. This section provides that blasting operations near streams are prohibited when the effect of the blasting is liable to change the course or channel of any stream unless a permit is obtained from the Pennsylvania Department of Environmental Protection (PADEP). The Federal counterpart to this section is found in 30 CFR 816/817.67(a), which provides that blasting must be conducted to prevent, among other things, a change in the course, channel, or availability of surface water outside the permit area. Pennsylvania's approved program at 25 Pennsylvania Code (Pa. Code) 87.127(g) provides that blasting shall be prohibited in cases when the effect of the blasting is liable to change the course or channel of a stream. Because Pennsylvania's program still provides protection to streams from the effects of blasting that is no less effective than the Federal regulations, we find that elimination of section 210.5(e) is not inconsistent with the Federal regulations.

### *C. Revisions to Pennsylvania's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations*

Pennsylvania added a definition for the term "blaster" in section 210.11. Both the State and Federal definition of "blaster" as defined in 30 CFR 850.5 include in the term that the person must have a blaster's license/certification and must be responsible for the blasting. Since this definition means the same as the term "blaster" in the Federal rules, we find it no less effective and we are approving this definition.

Pennsylvania also added definitions for terms in Chapter 211 that are not specifically defined in Federal regulations, but the use of the terms in the Federal regulations indicate they mean the same as Pennsylvania's definitions. In section 211.101, Pennsylvania added a definition for the

term "air blast" which means, "An airborne shock wave resulting from an explosion, also known as air overpressure, which may or may not be audible." The Federal regulations at 30 CFR 816/817.67(b) provide specific limits for monitoring and controlling air blast including a chart indicating the maximum limit, in decibels, for air blast. This limitation indicates that air blast is air overpressure as defined by Pennsylvania. As a result, we find this definition consistent with the Federal rules and we are approving it.

Pennsylvania also added a definition for the term, "blaster," to section 211.101. The term was defined to be, "An individual who is licensed by the Department under Chapter 210 (relating to blasters' licenses) to detonate explosives and supervise blasting activities." As discussed above with the definition found at Chapter 210, this definition is no less effective than the definition of blaster in the Federal regulations at 30 CFR 850.5. We are approving it.

Pennsylvania added a definition for the term, "flyrock," to section 211.101. Pennsylvania defined flyrock as overburden, stone, clay, or other material ejected from the blast area by the force of the blast. There is no Federal definition for "flyrock." The definition is consistent with the way we use the term in 30 CFR 816/817.67(c) which indicates that flyrock traveling in the air or along the ground shall not be cast from the blasting site. Pennsylvania's definition of "flyrock" serves to clarify its use in Chapter 211 and in 25 Pa. Code 87.127(f)(5). We are approving this addition.

Pennsylvania added a definition for the term, "peak particle velocity," to section 211.101. Pennsylvania defined the term to mean, "A measure of the intensity of ground vibration, specifically the time rate of change of the amplitude of ground vibration." This definition is consistent with the way we use the term peak particle velocity in 30 CFR 816/817.67 where we indicate ground vibration cannot exceed maximum peak particle velocities. Pennsylvania's definition clarifies the use of the term in Chapter 211 and we are approving it.

Pennsylvania added a definition for the term, "utility lines," to section

211.101. Pennsylvania defined the term as, "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." The term is used in Chapter 211, Subchapter H to provide additional protections to utility lines from blasting. The use of this term is not inconsistent with the Federal regulations at 30 CFR 816/817.180 which regulate the effects of surface coal mining operations on utilities. We are approving this definition.

Pennsylvania also changed its definition of "scaled distance" that was formerly found in section 211.2(21). The definition is now found in section 211.101. The revised definition defines the actual distance portion of the scaled distance equation as the distance in feet measured in a horizontal line from the blast site to the nearest building or structure, neither owned or leased by the blasting activity permittee or customer. The former definition did not define what structures were to be included in the actual distance measurement. The revised definition is no less effective than the Federal definition at 30 CFR 816/817.67(d)(3).

Former section 211.41(24) provided that blasting must not be done in such a manner as to eject debris into the air or to constitute a hazard or danger or do harm or damage to persons or property in the area of the blasting. There is no equivalent section in the current blasting regulations in Chapter 210 or 211 for this provision. However, we previously approved 25 Pa. Code 87.127(f)(6) which contains substantively the same language as former section 211.41(24). For this reason, we are approving its deletion.

Former section 211.45 provided the requirements for monitoring blasts. Some of the information was incorporated into current section 211.171. Additionally, Pennsylvania has incorporated monitoring requirements into 25 Pa. Code 87.127 that we previously approved. We have found that the requirements of section 211.171, when coupled with the requirements of section 87.127, are no less effective than the monitoring requirements of 30 CFR 816/817.67.

Section 211.151(a) was added by this amendment. This section provides that

blasting may not damage real property except for real property under the control of the permittee. Pennsylvania has an additional provision dealing with damage at 25 Pa. Code 87.127(g) which provides that blasting shall be conducted to prevent, among other things, damage to public or private property outside the permit area. We previously approved this section. Taken together these sections provide the same level of protection to property as found in the Federal regulations at 30 CFR 816/817.67(a). As a result, we are approving this section.

Section 211.151(b) was added by this amendment. This section provides that blasting may not cause flyrock. Pennsylvania has an additional provision regarding flyrock at 25 Pa. Code 87.127(f)(5) that we previously approved. Section 87.127(f)(5) provides specific limits from which flyrock cannot be cast. These limits are the same as the Federal regulations at 30 CFR 816/817.67(c). For these reasons, we are approving this section.

Section 211.151(c) was added by this amendment. This section provides limitations on blasting using either a scaled distance of 90 or a maximum allowable peak particle velocity as indicated in a chart designated as Figure 1. The scaled distance and maximum allowable peak particle velocity do not apply at a building or other structure owned or leased by the permittee or its customer. Pennsylvania has additional provisions regarding limitations on blasting at 25 Pa. Code 87.127(h) and (p) that we previously approved. The Federal regulations at 816/817.67(e) also allow for ground vibrations to exceed the established velocity. However, the Federal rules go on to state that the ground vibration standards of 816/817.67(d) shall not apply at structures owned by the permittee and leased to another person if a written waiver by the lessee is submitted to the regulatory authority before blasting. Section 211.151(c) does not provide for written waiver by the lessee. Nonetheless, Pennsylvania has provided protections for people leasing structures from a permittee in its approved regulations at 25 Pa. Code 87.127(i) which requires a waiver from the lessee before a blast is fired that exceeds the vibrations limitations. In a July 23, 2003, conversation (Administrative Record No. PA 878.10), the Chief of the Explosives and Safety Section of PADEP clarified that the ground vibration limits cannot be lessened if the people leasing the structure from the operator do not waive the limitations. This would apply regardless of whether the operator was using scaled distance for prediction of

ground vibration or whether a seismograph was used to measure ground vibration. For these reasons, we find that this section is no less effective than the comparable regulations at 30 CFR 816/817.67(d) and (e) are we are approving it.

Section 211.151(d) was added by this amendment. This section provides that blasts must be designed and conducted to control airblast so that it does not exceed the noise levels specified in an included table at a building or other structure designated by Pennsylvania unless the building is owned or leased by the permittee. The Federal regulations at 816/817.67(b) provide an identical table listing the noise levels. However, this section provides that the airblast cannot exceed the maximum limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area. Pennsylvania's regulations are more inclusive because they are applied at any building or structure and not limited to the structures noted in the Federal regulations. While this section does not provide for a waiver of the airblast levels by a person leasing a structure from a permittee, the regulations at 25 Pa. Code 87.127(e) do provide for such a waiver. As a result, we have found that this provision is no less effective than the Federal regulations.

Section 211.151(e) was added by this amendment. This section provides that Pennsylvania may establish an alternative peak particle velocity or airblast level if it determines that an alternative standard is appropriate because of density of population, land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors. The Federal regulations at 30 CFR 816/817.67(d)(5) provides that the maximum allowable ground vibration shall be reduced if determined to be necessary to provide damage protection. Similarly 30 CFR 816/817.67(b)(1)(ii) provides that the maximum airblast levels shall be reduced if necessary to prevent damage. Pennsylvania's approved program at 25 Pa. Code 87.127(e)(2) provides that Pennsylvania will specify lower airblast levels if necessary to prevent damage. Pennsylvania's approved program at 25 Pa. Code 87.127(h) provides that it may reduce the maximum peak particle velocity allowed if it determines that a lower standard is required. Taken together we have found that Pennsylvania's regulations are no less effective than the Federal regulations in requiring alternative airblast and peak particle velocity levels when necessary to prevent damage.

Section 211.156(a) provides that a blast may only be detonated between sunrise and sunset unless Pennsylvania authorized a blast at another time of day. This is similar to Pennsylvania's approved program at 25 Pa. Code 87.127(a) which provides that blasting shall be conducted between sunrise and sunset, at times announced in the blasting schedule. The Federal regulations at 30 CFR 816.64(a)(2) and 817.64(c) provide that all blasting shall be conducted between sunrise and sunset, except that nighttime blasting can be approved under certain circumstances. The Pennsylvania regulations are no less effective than the Federal regulations in restricting the times for blasting and therefore, we are approving them.

Section 211.157(c) provides the signal to be given after a blast has been detonated. This section indicates that the signal must be of sufficient power to be heard 1,000 feet from the blast site. Pennsylvania's regulations on surface mining at 25 Pa. Code 87.127(c) indicate the all-clear signal must be capable of being heard 1/2 mile from the point of the blast. We previously approved 25 Pa. Code 87.127(c) which is similar to the Federal regulation at 30 CFR 816/817.66(b). We are approving section 211.157(c) even though the all-clear signal may not have to be audible from as great an area, because of the provision of 25 Pa. Code 211.102(b). Section 211.102(b) provides that a person will not be relieved from compliance with other applicable laws or regulations even if they are in compliance with Chapter 211. Therefore, the more strict limitation of 25 Pa. Code 87.127(c) will be in effect for blasting on surface mining operations.

#### *D. Revisions to Pennsylvania's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations*

Section 210.4 formerly required that a blaster's license could not be transferred and any attempt to transfer the license will automatically cancel the license. This section was previously approved by OSM on July 30, 1982 (47 FR 33050). In the current amendment, section 210.4 was recodified to section 210.13(d). Section 210.13(d) states that a blaster's license is not transferable. The recodified section does not contain the provision regarding attempts to transfer the license resulting in cancellation of the license. However, section 210.19 provides that Pennsylvania may suspend, modify or revoke a blaster's license for violations of chapter 210. The deletion of the provision regarding

attempts to transfer the license does not make this section less effective than the Federal regulations because of section 210.19. An attempt to transfer the license would constitute a violation of Chapter 210 and would give Pennsylvania the authority to take action on the license. Taken together these two sections are no less effective than 30 CFR 850.15(e)(2) in preventing the transfer of blaster's licenses.

Section 210.14(a)(2) of the current regulations provides that a person must have at least one year of experience as a blaster learner in preparing blasts to be eligible for a blaster's license. The Federal regulations at 30 CFR 850.14(a)(2) require the regulatory authority to ensure that candidates for blaster certification have practical field experience. The Federal requirement does not specify how much experience is needed before someone can apply for certification. Less than a year of experience could suffice under the Federal rules. Therefore, we find that Pennsylvania's regulation is no less effective than the Federal regulation and we are approving it.

Section 210.14(a)(3) provides that a person must take Pennsylvania's class on explosives to be eligible for a blaster's license. Section 30 CFR 850.13(b) of the Federal regulations requires the regulatory authority to ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations. In a rulemaking dated April 4, 1985 (50 FR 13315), we noted that Pennsylvania submitted a Blaster Training Course Outline, and Assorted Blasting Training Course Materials (among other documents) in consideration for approval of its blaster certification program. We approved the submission of these documents noting that the materials submitted were no less effective than the Federal blaster training and examination requirements at 30 CFR 850.13 and 850.14. In an e-mail dated July 15, 2003 (Administrative Record No. PA 878.08), Pennsylvania confirmed that these materials were still used in its blaster certification program. Accordingly, based on Pennsylvania's July 15 response, we find that this section is no less effective than the Federal regulations and we are approving it.

Section 210.19 of the current regulations provides that Pennsylvania may suspend, modify, or revoke a blaster's license for violations of Chapter 210 and 211. Former section 210.2(f) contained similar provisions, but it did not provide for modification of the blaster's license, only for suspension or revocation of the license.

Additionally, former section 210.2(f) provided that an appeal of a revocation of a blaster's license may be made to the Environmental Hearing Board and only allowed a suspension for due cause. The right to appeal was not stated in 210.19. The Federal regulations at 30 CFR 850.15(b) provide for suspension or revocation of a blaster's certification, but it also notes that the regulatory authority can take other necessary actions with regard to the certification. While the term "other necessary actions" was not defined in the Federal regulations, it is not unreasonable to interpret this phrase as allowing a modification of a blaster's license. The Federal rules at 30 CFR 850.15(b) require written notice and a hearing whenever a blaster's certification is suspended, revoked or other adverse action is taken. While the right to appeal a revocation, suspension, or modification was not stated in section 210.19, Pennsylvania in an e-mail dated July 15, 2003 (Administrative Record No. PA 878.08), confirmed, through copies of Notice of Suspension of Blaster's License it submitted to us, that blasters served with suspension or revocation notices are provided the right of appeal to the Environmental Hearing Board. Additionally, Pennsylvania law at 2 Pa. Consolidated Statutes (C.S.) 504 and 35 Pennsylvania Statute (P.S.) 7514, requires an opportunity for a hearing before the Environmental Hearing Board of all orders, permits, licenses or decisions of the Pennsylvania Department of Environmental Resources (now known as PADEP, pursuant 71 P.S. 1340.101). Thus, Pennsylvania provides the same level of hearing requirements as the Federal regulations. For these reasons, we are approving this provision as being no less effective than the Federal counterpart.

Section 211.133(a) provides that blasting records must be made available to Pennsylvania upon request. The section also lists the items that must be noted on the blasting report. The Federal regulations at 30 CFR 816/817.68 require that the records be made available to the public as well as the regulatory authority. Pennsylvania's approved program at 25 Pa. Code 87.129 requires that the blasting records be made available to the public. The items to be noted on blast reports are the same as in the approved program at 25 Pa. Code 87.129 except that it includes two additional items: the blasting activity permit or mining permit number and a description of the nearest building location not owned or leased by the permittee based upon local landmarks. Taken together these two sections are no

less effective than the requirements at 30 CFR 816/817.68. As a result, we are approving this section.

Section 211.155 lists the duties a blaster-in-charge must perform prior to detonating a blast. There is no Federal counterpart for the duties listed in subsections (1) through (4). These duties apply to safety in and around the blast area. The duties listed in subsections (5) and (6) apply to protecting the public on public roads and to sounding a warning signal prior to detonating a blast. These sections are similar to the Federal regulations at 30 CFR 816/817.66(b) which provide for warning signals and 30 CFR 816/817.67(a) which provides for prevention of injury to persons and property damage outside the permit area. These provisions, when taken with the provisions from 25 Pa. Code 87.127, such as subsection (c) that we already approved, are no less effective than the corresponding Federal requirements.

#### *E. Revisions to Pennsylvania's Rules With No Corresponding Federal Regulation*

Several sections of Pennsylvania's program that we previously approved and that have no Federal counterparts were modified by this amendment. Each of these sections is described below.

Former section 210.1(d) regarding examinations for a blaster's license requires a notarized application form to be mailed to Pennsylvania with a check or money order for \$10.00. This section was recodified as section 210.15(a). Section 210.15(a) dropped the requirement for the application to be notarized and increased the fee to \$50.00. This section also requires the application to be submitted at least two weeks prior to the examination. There are no corresponding Federal regulations to this section and we have found that the modification does not make Pennsylvania's program less effective than the Federal regulations.

Former section 210.2(a) regarding the issuance and status of licenses required the applicant to be at least nineteen years of age in order to apply for a blaster's license. This section was recodified as section 210.14(a)(1). Section 210.14(a)(1) increased the age requirement to twenty-one. There is no Federal counterpart to the age requirement, however this section is consistent with the Federal regulations at 30 CFR 850.14 that requires the regulatory authority to verify that applicants for blaster certification are competent and have practical field experience. This requirement is also similar to the age requirement for blaster certification in Federal program States

as found in 30 CFR 955.11(a). As a result, we are approving the change.

Former sections 210.2(b) and (c) provide the different types of blasting categories for which blasters will be examined and provide that each category requires an examination. New sections 210.17(a) and (b) slightly modified these requirements. These new sections describe the classifications for which a blaster's license is issued and allows people to amend the classifications if they meet the requirements of section 210.14. There is no direct Federal counterpart to this section, but we find that it does not make the Pennsylvania program inconsistent with the Federal regulations and we are approving it.

Former section 210.3(a) provides the procedures for the annual renewal of blaster's licenses. This section was recodified as section 210.17(e). Subsection (e) changes the term for renewal from one year to three years and the application fee was increased from \$3.50 to \$30.00. Former section 210.3(a) also provided that the renewal may be refused for due cause after notification to the applicant and a hearing. This provision was dropped from the recodified section 210.17. However, section 210.19 provides that Pennsylvania may issue orders suspending, modifying or revoking a blaster's license. This section gives Pennsylvania the authority to take action regarding the license at any time, which makes it more effective than the provision of former section 210.13(a) that provides for refusal to renew a license application. As stated earlier, we found section 210.19 to be no less effective than the Federal regulations. There is no Federal counterpart to section 210.17 and the changes do not make this less effective than the Federal regulations.

Former section 210.5(c) provides that use of explosives must be in accordance with all rules and regulations for storage, handling and use of explosives. Portions of this provision are now found in current section 211.102(a). Section 211.102(a) provides that Chapter 211 applies to persons engaging in blasting activities. However, it also exempts persons using and storing explosives at underground mines from the requirements of the chapter. The Federal regulation at 30 CFR 817.61(a) states that the performance standards of 817.61 through 817.68 apply to surface blasting activities incident to underground coal mining. We asked the Chief of the Explosives and Safety Section of PADEP if this section exempts blasting activities incident to underground mining. In an e-mail dated

June 17, 2003 (Administrative Record No. PA 878.09), he replied that this section pertains to blasting or storage within the underground mine not blasting incident to underground mining. He further replied that blasting incident to underground mining is regulated by Chapter 87. Since PADEP confirmed that this section does not apply to surface blasting activities incident to underground coal mining, we find that there is no corresponding Federal regulation to this section and it does not render the Pennsylvania program inconsistent with the Federal regulations. Therefore, we are approving it.

Former section 210.6 provides that conditions under which blaster learners may work with a licensed blaster. Portions of this provision are now found in current sections 210.11, 211.101, and 211.154(e). There is no direct Federal counterpart to these provisions; however, they are consistent with the Federal regulations at 30 CFR 850.13(a) that requires the regulatory authority to establish procedures for persons who are not certified blasters to receive direction and on-the-job training from a certified blaster.

Former section 211.2(3) provided a definition for the term, "explosives." The definition for the term was modified in current section 211.101. There is no Federal counterpart for the definition of the term, "explosive," however we find that Pennsylvania's definition of the term is not inconsistent with the Federal regulations and we are approving it.

Former section 211.31 provided for licensing and fees for storage magazines. This section was recodified as section 211.112(a) and (d), and 211.114. The recodified sections increase the fees and modify the locations at which the license must be displayed. There is no Federal counterpart to these sections and we have found that the changes do not make Pennsylvania's program less effective than the Federal regulations.

Former section 211.32(2) provides specifications for the location of, and storage of materials in, magazines. Some of these requirements were placed in current section 211.115. There are no Federal counterparts to this section and we have found that these requirements are not inconsistent with the Federal regulations.

Former section 211.33 provided construction specifications for magazines for storing explosives. Former sections 211.35 and 211.43 provided for the handling, housekeeping and storage of explosives around magazines. These sections were recodified as section 211.115. Section

211.115 shortened the provisions of former sections 211.33, 211.35, and 211.43 and incorporated Federal standards at 27 CFR Part 55, Subpart K by reference. There were no Federal counterparts to the former sections and there are no Federal counterparts in Title 30 of the Federal regulations for section 211.15. We have found that the changes do not make Pennsylvania's program inconsistent with the Federal regulations.

Former section 211.34 gives the requirements for plans for locating storage magazines on sites. Some of these requirements were placed in current section 211.115. There are no Federal counterparts to either section and we have found that these changes are not inconsistent with the Federal regulations.

Former section 211.36(3) provides requirements for selling explosives including a permit to sell. Some of these requirements were placed in current sections 211.121(a) and 211.122(a) and (d). There are no Federal counterparts to the former section or its requirements that were placed in sections 211.121 or 211.122. We have found that the changes are not inconsistent with the Federal regulations.

Former section 211.36(4) provides requirements for selling explosives including a permit to sell them. Some of these requirements were placed in current section 211.123(a). There are no Federal counterparts to the former section or its requirements that were placed in section 211.123. We have found that the changes are not inconsistent with the Federal regulations.

Former section 211.36(8) provides the circumstances under which permits for the manufacture, storage, handling, use or sale of explosives can be suspended or revoked. The permit can be suspended for due cause and may be revoked after written notice to the permit holder and a hearing before the Environmental Hearing Board. The revised regulation at section 211.103(a) provides that Pennsylvania can issue orders to modify or revoke a permit but it doesn't indicate that a permit can be suspended for due cause nor does it provide appeal of a permit revocation to the Environmental Hearing Board. Federal regulations do not require specific permits for blasting activities. Instead, there must be a permit to conduct surface coal mining operations which also includes blasting activities. Pennsylvania does require a permit for surface coal mining operations. See 25 Pa. Code 86.11 *et seq.* Additionally, surface coal mining operations must contain a blasting plan as noted in the

requirements at 30 CFR 780.13. Pennsylvania's regulations at 25 Pa. Code 87.64 also require a blasting plan for surface coal mines. As a result, we have found that the changes to this section are not inconsistent with the Federal regulations.

Former section 211.36(9) provides additional requirements for selling explosives. Some of these requirements were placed in current section 211.131. There are no Federal counterparts to this former section or its requirements that were placed in section 211.131. We have found that these changes are not inconsistent with the Federal regulations.

Former section 211.38 provided specifications for transporting blasting caps. This section was recodified as section 211.141(9). The construction specifics for the containers for transporting blasting caps were dropped and now the section requires containers to conform to the current version of Institute of Makers of Explosives Safety Library Publication # 22. There are no Federal counterparts to these provisions and we have found that the changes do not make Pennsylvania's program less effective than the Federal regulations.

Former section 211.41 provides safety precautions for physically handling explosives. Some of these requirements were placed in current section 211.153. There are no Federal counterparts to the former section or its requirements that were placed in section 211.153. We have found that these changes are not inconsistent with the Federal regulations.

Former section 211.44 provides specification for instruments to monitor explosives. The requirements were modified in current section 211.172. There are no Federal counterparts to the former section or the new section. We have found that these changes are not inconsistent with the Federal regulations.

Former section 211.51(1) provides limitations for the use of open fire and smoking around explosives. Some of these requirements were placed in current section 211.153(b). There are no Federal counterparts to the former section or its requirements that were placed in section 211.153(b). We have found that these changes are not inconsistent with the Federal regulations.

Former section 211.51(2) provides the types of tools that can be used to open containers of explosives and blasting implements. The types of tools that can be used to open containers of explosives have been modified in current section 211.153(a). There are no Federal counterparts to the former section or the

new section. We have found that these changes are not inconsistent with the Federal regulations.

Former section 211.51(4) provides for the use of wooden tamping sticks. This section was recodified to section 211.154(f) and was changed to provide for the use of non-ferrous tamping sticks. There are no Federal counterparts to the former section or the new section. We have found that these changes are not inconsistent with the Federal regulations.

Former section 211.51(7) provides the means by which explosives are to be fired. These provisions were modified in current section 211.159(h) and (k). There are no Federal counterparts to the former section or the new section. We have found that these changes are not inconsistent with the Federal regulations.

Former section 211.51(17) provides for procedures to be used in the event of a misfired hole. Some of these provisions have been placed in current sections 211.157(d) and (e). There are no Federal counterparts to the former section or the new section. We have found that these changes are not inconsistent with the Federal regulations.

Former section 211.52(3) provides specifications for blasting in the vicinity of utility lines. This section was recodified in Subchapter H. Blasting Activities Near Utility Lines. New sections 211.181 and 211.182 now contain the requirements for conducting blasting near utility lines. These sections contain information concerning the design of the blast, the type of explosives to be used, the size of holes, and the specifics of excavation for blasts. There is no direct Federal counterpart for former section or the proposed section, however our review found it to be consistent with 30 CFR 816/817.180 regarding how surface mining operations are to be conducted to minimize damage, destruction, or disruption to utilities. We are approving these changes.

Former sections 211.61(1) and (2) regarding handling and storing of ammonium nitrate were incorporated into new section 211.115. Section 211.115 provides regulations for classifying and storing explosives. There are no Federal counterparts for these regulations, however our review found that these regulations do not make Pennsylvania's program inconsistent with the Federal regulations. We are approving the change.

Pennsylvania also added definitions and new sections to its regulations. These additions are discussed below.

Pennsylvania added definitions of terms that have no Federal counterpart to Chapters 210 and 211. In section 210.11, Pennsylvania added definitions for the terms, "blaster learner," "blaster license," "demolition and demolition blasting," and "person." These definitions are used to clarify various sections of Pennsylvania's blaster license program. There are no Federal counterparts, however, these definitions do not make Pennsylvania's program inconsistent with the Federal regulations.

In section 211.101, Pennsylvania added definitions for the terms, "blast area," "blast site," "blaster-in-charge," "blasting activity," "detonator," "misfire," "purchase," "sale or sell," and "structure." These definitions are used to clarify various sections of Pennsylvania's rules on the storage, handling and use of explosives. There are no Federal counterparts to the definitions. However, these definitions do not make Pennsylvania's program inconsistent with the Federal regulations.

Section 210.13(b) was added by this amendment. This section of the regulations provides that Pennsylvania may exempt individuals from a blaster's license if the person is detonating extremely small amounts of explosives for industrial or research purposes. The Federal regulations do not provide an exemption for quantity. It was unclear if surface coal mining operations were included in this provision. We asked Pennsylvania if individuals conducting blasting on surface coal mining operations could be exempt. In an e-mail dated July 15, 2003 (Administrative Record No. PA 878.08), the Chief of the Explosives and Safety Section of PADEP indicated that this exemption does not pertain to mining. It pertains to non-excavation activities such as industrial applications or research. We find this provision is not inconsistent with the Federal regulations and we are approving it with the understanding that Pennsylvania will not exempt blasters on surface coal mining operations from the licensing requirements.

Section 210.14(b) was added by this amendment. This section of the regulations provides that Pennsylvania will not issue or renew a license if the applicant has or had violations or demonstrated a lack of ability or intention to comply with the blasting regulations. There is no direct Federal counterpart. However, this provision is consistent with the Federal rules at 30 CFR 850.14(a)(2) which require that the blaster candidate "exhibit a pattern of conduct consistent with the acceptance

of responsibility for blasting operations' and 30 CFR 850.15 which requires the suspension and revocation of blaster certification for specified violations.

Section 210.17(d) was added by this amendment. This section provides that a blaster's license is renewable if the blaster can demonstrate that he has had 8 hours of continuing education in Department-approved courses related to blasting and safety within the 3 year period. There is no direct Federal counterpart to this section, but it is consistent with the goals of the Federal regulations at 30 CFR 850.13 regarding continuing blaster competency. We find that this requirement does not make the Pennsylvania program inconsistent with the Federal regulations and we are approving it.

Section 210.17(g) was added by this amendment. This section provides for demolition blasting. There is no Federal counterpart for this definition, as we do not regulate demolition blasting. We are approving this definition.

Section 210.18 was added by this amendment. This section provides for recognition of out-of-state blaster's licenses. Pennsylvania may license a person who holds a blaster's license in another State if Pennsylvania determines that State has an equivalent licensing and training program. There is no counterpart to this provision in 30 CFR Subchapter M, Part 850 of the Federal regulations. However, there is nothing in Part 850 that prevents Pennsylvania from accepting a certification from another State. We are approving this provision with the understanding that blasters from other States seeking a license in Pennsylvania must be certified or licensed under that State's equivalent to 30 CFR Part 850 of the Federal regulations.

Section 211.103(b) was added by this amendment. This section provides that before Pennsylvania issues an order modifying peak particle velocity or airblast limits in a blasting activity permit, it will provide the permittee an opportunity to meet and discuss the modifications. There is no direct Federal counterpart to this provision, however 30 CFR 816/817.67(b)(1)(ii) and (d)(5) give the State regulatory authority discretion to specify lower levels for airblast and ground vibrations than set forth in the regulations. We have found that that the opportunity to discuss required revisions with the permittee does not make this provision less effective than the Federal regulations requiring the regulatory authority to specify lowered levels if necessary to prevent damage. Therefore, we have found that this provision is not

inconsistent with the Federal regulations.

Section 211.111 was added by this amendment. This section defines the scope of Subchapter B. Storage and Classification of Explosives. There is no Federal counterpart to this provision. We are approving it because it is not inconsistent with the Federal regulations.

Section 211.113 was added by this amendment. This section requires a magazine license and the contents of such a magazine license application. There is no Federal counterpart to this provision. We are approving it because it is not inconsistent with the Federal regulations.

Section 211.121(c) was added by this amendment. This section provides an exception to subsection (d), which requires a blasting activity permit to conduct blasting activities. The exception provided by subsection (c) is that blasting activities authorized under a permit issued under Pennsylvania's coal mining program serves to act as a blasting activity permit. There is no provision in the Federal regulations requiring a blasting activity permit separate from that required as part of a permit for mining activities. As a result, we are approving this section because it does not make Pennsylvania's program inconsistent with the Federal regulations. Accordingly, we are also approving subsections (d) and (e) as not inconsistent with the Federal rules as these sections are intended to apply to blasting activities other than those conducted on surface coal mining operations and therefore, there is no Federal counterpart.

Section 211.152 was added by this amendment. This section provides for control of gases generated by blasts. There is no Federal counterpart to this provision. We are approving this section because it is not inconsistent with the Federal regulations.

Section 211.157(g) was added by this amendment. This section requires a blaster-in-charge to notify Pennsylvania of the occurrence of a misfire within 24 hours. There is no Federal counterpart to this provision. We are approving this section because it is not inconsistent with the Federal regulations.

Sections 211.162(a) and (b) were added by this amendment. These sections provide for the use of safety fuses in blasting. There is no Federal counterpart to this provision. We are approving this section because it is not inconsistent with the Federal regulations.

Section 211.173(a) was added by this amendment. This section provides that, "Anyone using a monitoring instrument

shall be trained on the proper use of that instrument by a representative of the manufacturer or distributor, or other competent individual. A record of that training is to be maintained and available for review by the Department." There is no Federal counterpart to this provision. We are approving this section because it is not inconsistent with the Federal regulations.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

We asked for public comments on the amendment (Administrative Record No. PA 878.03), but did not receive any.

##### *Federal Agency Comments*

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 878.03). In a letter dated April 5, 2002 (Administrative Record No. PA 878.06), the United States Department of Labor, Mining Safety and Health Administration's District 2 New Stanton Office found the changes were not in conflict with 30 CFR, Part 77, Subpart N—Explosives and Blasting.

##### *Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. PA 878.03). EPA responded on March 26, 2002, that there were no apparent inconsistencies with the Clean Water Act or other statutes under its jurisdiction (Administrative Record No. PA 878.04).

##### *State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 1, 2002, we requested comments on Pennsylvania's amendment (Administrative Record No. PA 878.03) from the Pennsylvania Historical and Museum Commission (PHMC). The PHMC responded on March 26, 2002 (Administrative Record No. PA 878.05) that it had no comment on the amendment.

#### **V. OSM's Decision**

Based on the above findings, we approve the amendment Pennsylvania sent to us on February 25, 2002, as clarified on July 15, 2003, and July 23, 2003.



To implement this decision, we are amending the Federal regulations at 30 CFR part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

### *Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation. Similarly there are no takings implications for the portions of the amendment that have no Federal counterpart because the provisions are administrative and procedural in nature and are not expected to have an economical or substantive effect on the regulated industry. The amendment concerns only the regulation of blasting operations and does not imply the taking of private property by the Federal government.

### *Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

### *Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

### *Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Pennsylvania does not regulate any Native Tribal lands.

### *Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

### *National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the deletions, revisions, and additions by the Pennsylvania Department of Environmental Protection listed in Chapters 210 and 211 are administrative and procedural in nature and are not expected to have an economical or substantive effect on the regulated industry.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on the fact that the deletions, revisions, and additions by the Pennsylvania Department of Environmental Protection listed in Chapters 210 and 211 are administrative and procedural in nature and are not expected to have an economical or substantive effect on the regulated industry.

### *Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based on the fact that the deletions, revisions, and additions by the Pennsylvania Department of Environmental Protection listed in Chapters 210 and 211 are administrative and procedural in nature and are not expected to have an economical or substantive effect on the regulated industry.

### **List of Subjects in 30 CFR Part 938**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 24, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

**PART 938—PENNSYLVANIA**

■ 1. The authority citation for part 938 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 938.15 is amended in the table by adding a new entry in

chronological order by “*Date of final publication*” to read as follows:

**§ 938.15 Approval of Pennsylvania regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
February 25, 2002	August 15, 2003	25 Pa. Code 210.11; 210.13–210.19; 211.101–211.103; 211.111–211.115; 211.121–211.125; 211.131–211.133; 211.141; 211.151–211.162; 211.171–211.173; 211.181–211.182

[FR Doc. 03–20916 Filed 8–14–03; 8:45 am]  
BILLING CODE 4310–05–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[CGD01–02–104]

RIN 1625–AA00, AA11

**Regulated Navigation Areas, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area (RNA) and two safety and security zones. The rule regulates the circumstances under which certain vessels may enter, transit or operate within the RNA and excludes all vessels from operating within the prescribed safety and security zones without first obtaining authorization from the Captain of the Port. This action is necessary to ensure public safety and prevent sabotage or other subversive acts.

**DATES:** This rule is effective August 16, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–02–104, and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays

**FOR FURTHER INFORMATION CONTACT:** Lieutenant A. Logman, Waterways

Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled “Regulated Navigation Areas, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone” in the **Federal Register** (68 FR 13643). We received two (2) letters commenting on the proposed rule. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective on August 16, 2003, in less than 30 days after **Federal Register** publication. Delaying publication is unnecessary for the following reasons: Several of the permanent regulations described herein have been in effect as temporary regulations since December 10, 2001 with no adverse impact; the public has had significant and adequate advanced knowledge of the intent to implement these as permanent regulations through the notice and comment rulemaking process, as well as through outreach to the maritime community by the Captain of the Port (COTP) Long Island Sound; and the NPRM stated this regulation was designed to replace temporary security measures expiring on August 15, 2003. Thus the public has had significant advanced knowledge of these regulations and that it was necessary that they be effective by August 16, 2003. Any delay encountered in this regulation’s effective date would also be contrary to public interest. As discussed in the *Background and Purpose* section below, these regulations are necessary to address potential terrorist threats in the Long Island Sound Marine Inspection and Captain of the Port Zone on a permanent basis. If the temporary regulations were to expire on August 15,

2003 without permanent regulations being implemented, vessels, waterfront facilities, the maritime community, public infrastructure, and the public in general in the Long Island Sound Marine Inspection and Captain of the Port Zone would be left vulnerable to possible sabotage or other subversive acts, accidents or other causes of a similar nature.

**Background and Purpose**

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, NY inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon with a plane launched from Newark, NJ on the same day. National security and intelligence officials warn that future terrorist attacks are likely.

Vessels operating within the Long Island Sound Marine Inspection and Captain of the Port (COTP) Zone present potential targets of terrorist attack or platforms from which terrorist attacks may be launched upon other vessels, waterfront facilities and adjacent population centers. Following the September 11 attacks, we published a temporary rule (67 FR 517–520, January 4, 2002), which was effective December 10, 2001, that established a temporary regulated navigation area (RNA) and safety and security zones in the Long Island Sound Marine Inspection and COTP Zone. We revised the temporary rule three times (67 FR 40859–40861, June 14, 2002, 67 FR 69132, November 15, 2002, and 68 FR 12304, March 14, 2003) to extend its effective period to August 15, 2003. These temporary measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts while we assessed the security environment within the area and determined the need for and