

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 ½ 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