

been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (i.e., the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II-A, II-B, and II-C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables

establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I-08 with Table I-09 in order to provide an updated correlation, appropriate for calendar year 2009, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I-09 will be used to value benefits in plans with valuation dates during calendar year 2009.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2009, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to

estimate the value of plan benefits with the proper table for plans with valuation dates in early 2009.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. Appendix D to part 4044 is amended by removing Table I-08 and adding in its place Table I-09 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I-09—SELECTION OF RETIREMENT RATE CATEGORY
[For Plans with valuation dates after December 31, 2008, and before January 1, 2010]

Participant reaches URA in year—	Participant's retirement rate category is—	Low ¹ if monthly benefit at URA is less than—	Medium ² if monthly benefit at URA is—	High ³ if monthly benefit at URA is greater than— From To
2010	552	552	2,332	2,332
2011	565	565	2,385	2,385
2012	578	578	2,440	2,440
2013	591	591	2,496	2,496
2014	605	605	2,554	2,554
2015	619	619	2,612	2,612
2016	633	633	2,673	2,673
2017	647	647	2,734	2,734
2018	662	662	2,797	2,797
2019 or later	677	677	2,861	2,861

¹ Table II-A.

² Table II-B.

³ Table II-C.

* * * * *

Issued in Washington, DC, this 21st day of November, 2008.

Vincent K. Snowbarger,

Deputy Director for Operations, Pension Benefit Guaranty Corporation.

[FR Doc. E8-28413 Filed 11-28-08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA-148-FOR; OSM-2008-0014]

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 regulatory program (the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The revisions relate to blasting for the development of shafts for underground mines and to blasting regulations in 25 Pa. Code Chapters 87, 88, 89, and 210.

DATES: *Effective Date:* December 1, 2008.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Submission of the 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, 938.13, 938.15, and 938.16.

II. Submission of the Amendment

By letter dated June 8, 2006 (Administrative Record No. PA 887.00), the Pennsylvania Department of Environmental Protection (PADEP) sent OSM a program amendment to address blasting for the development of shafts for underground mines and to make administrative changes to regulations relating to blasting in 25 Pa. Code Chapters 77, 87, 88, 89 and 210. However, by letter dated July 5, 2006 (Administrative Record No. PA 887.02), PADEP withdrew the provisions pertaining to industrial mineral underground mining provisions at Chapter 77 because they are not coal related. Therefore, only those changes in 25 Pa. Code 87, Surface Mining of Coal; 25 Pa. Code 88, Anthracite Coal; 25 Pa. Code 89, Underground Mining of Coal and Coal Preparation Facilities; and 25 Pa. Code 210, Blasters license will be addressed in this rule.

We announced receipt of the State's letters and the proposed regulatory

changes in the July 31, 2006 **Federal Register** (71 FR 43087). In the same notice, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments. We received a request from the public to hold a public hearing and subsequently we re-opened the public comment period and announced the public hearing in the September 11, 2006, **Federal Register** (71 FR 53351). We held a public hearing on September 21, 2006. The public comment period ended on September 28, 2006.

PADEP sent us a revised version of the amendment on April 4, 2008. The revisions are minor and non-substantive in nature, but some warrant noting because they involve wording changes. These changes are as follows: Definitions of the terms “blast” and “blasting” are added to sections 87.1 and 88.1; “vibrations” are further clarified to mean “ground or airblast” vibrations in sections 87.127(a) and (b), and in sections 88.135(a) and (b); “noise” is changed to “airblast” in section 87.127(e) (1); the term “sound pressure” is changed to “airblast” in sections 88.135(h) and (i); and the words “identification of and the” are added to section 88.137(4). We did not reopen the comment period when we received these revisions because, as noted above, we believe they do not change the substance of any of the amended provisions.

We received comments from the Mountain Watershed Association, Citizens Coal Council, Tri-State Citizens Mining Network's Center for Coalfield Justice, Ten Mile Protection Network, Concerned Citizens of Ligonier, Youghiogheny Riverkeeper, and the Kentucky Resources Council, Inc. dated September 21, 2006, (Administrative Record No. PA 887.08 and 887.09).

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. In some cases, Pennsylvania made the same modifications to regulations in several different chapters. In those cases, we discussed all the similar regulations together. Any revisions we do not specifically discuss below concern non-substantive wording or editorial changes and are approved herein without discussion. Our discussion of the amendment appears below by the applicable sections of the Pennsylvania Code.

1. 25 Pa. Code 87.1, 88.1, 89.5, and 210.11. Definitions

PADEP added a definition for the term “mine opening blasting” to 25 Pa. Code 87.1, 88.1, 89.5, and 210.11 as follows:

“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.”

While this provision has no direct Federal counterpart, its meaning is consistent with current mining practices; it is also consistent with SMCRA and the Federal regulations. Therefore, we are approving it.

2. 25 Pa. Code 87.1 and 88.1. Definitions

PADEP added definitions for the following words: “Blast” and “Blasting.” While these provisions have no direct Federal counterparts, their meanings are consistent with current mining practices and are also consistent with SMCRA and the Federal regulations. Therefore, we are approving them. They read as follows:

“Blast—A detonation of explosives.”
“Blasting—The detonation of explosives.”

3. 25 Pa. Code 87.124. Use of Explosives: General Requirements

PADEP is changing subsection (b) to correct a reference error from “87.125” to “87.126 (relating to use of explosives: preblasting survey).”

As revised, subsection (b) provides as follows:

“Blasts that use more than 5 pounds of explosive or blasting agents shall be conducted according to the schedule required by section 87.126 (relating to use of explosives: public notice of blasting schedules).”

This provision corrects a reference error. We find that the provision does not render the Pennsylvania program less stringent than SMCRA or less effective than the Federal regulations, and are approving it.

4. 25 Pa. Code 87.126. Use of Explosives: Public Notice of Blasting Schedule

PADEP is changing “shall” to “must” in (b)(2) after “schedule” and deleting the phrase “Each period may not exceed 4 hours” at subsection (b)(2)(ii).

As amended, subsection (b)(2)(ii) provides as follows:

(b)(2) The blasting schedule must contain at a minimum the following:

* * * * *

(b)(2)(ii) Dates and time periods when explosives are to be detonated.

The changes made in this provision render 25 Pa. Code 87.126(b)(2) and (b)(2)(ii) substantively identical to and therefore no less effective than the Federal regulations at 30 CFR 816.64(c) and (c)(3) and are therefore approved.

5. 25 Pa. Code 87.127. Use of Explosives: Surface Blasting Requirements

PADEP is changing subsection (a) by adding the following after "schedule":

* * * except that mine opening blasting conducted after the second blast, for that mine opening, may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve ground or airblast vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in subsection (e) or (m) if consented to, in writing, by the structure owner and lessee, if leased to another party.

As amended, subsection (a) provides as follows:

Blasting shall be conducted between sunrise and sunset, at times announced in the blasting schedule, except that mine opening blasting conducted after the second blast, for that mine opening, may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve ground or airblast vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsections (e) or (m) if consented to, in writing, by the structure owner and lessee, if leased to another party.

The Federal regulations at 30 CFR 817.61 require that "[s]ections 817.61–68 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts." Since the Federal regulations do not define the terms "incident to underground coal mining" or "initial rounds of slopes and shafts", PADEP has the discretion to apply a reasonable cut-off point with respect to underground blasting, beyond which the regulations need not be applied. PADEP has determined that mine opening blasting conducted after the second blast is not subject to all of Pennsylvania's blasting regulations, because it is not blasting conducted pursuant to a surface coal mining operation, but rather is underground mine blasting; as such, any exceptions to regulatory applicability, including those exceptions set forth in section

87.127(a), are permissible, according to PADEP. We find that mine opening blasting after the second blast is indeed a reasonable point to terminate full regulatory coverage pursuant to 30 CFR 817.61–68. Therefore, the exceptions proposed in section 87.127(a) are no less effective than the Federal regulations at 30 CFR 817.61, and are approved.

PADEP is revising subsection (b) by adding new language "airblast or ground vibration limits," after "or" and by deleting the term "excessive noise" at the end of the sentence and replacing existing language with "the adverse affects of ground vibration, airblast, or safety hazards."

As amended, subsection (b) provides as follows:

The Department may specify more restrictive time periods, airblast or ground vibration limits, based on public requests or other relevant information, according to the need to adequately protect the public from the adverse affects of ground vibration, airblast, or safety hazards.

We find that the provision as provided does not render the Pennsylvania program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 816.67(b)(1)(ii) and 816.67(d)(5), which allow the regulatory authority to set more stringent airblast limits or ground vibration limits if necessary to prevent damage due to blasting. Therefore, we are approving it.

PADEP is revising subsection (e) by deleting the following language, "unless the structure is owned by the person who conducts the surface mining activities and is not leased to another person. The lessee may sign a waiver", and replacing that language with the following language "unless the structure is located on the permit area when the structure owner and lessee, if leased to another party, have each signed a* * *

As amended, subsection (e) provides as follows:

Airblast shall be controlled so that it does not exceed the noise level specified in this subsection at a dwelling, public building, school, church or commercial or institutional structure, unless the structure is located on the permit area when the structure owner and lessee, if leased to another party, have each signed a waiver relieving the operator from meeting the airblast limitations of this subsection.

The Federal regulations at 30 CFR 816.67(b) set airblast limits only at structures outside the permit area, whereas Pennsylvania has chosen to also set airblast limits at structures inside the permit area. Since there is no Federal requirement to set airblast limits at structures within the permit area, any waiver Pennsylvania proposes to its

airblast limits for such structures cannot be less effective than the Federal regulations at 30 CFR 816.67(b). Therefore, we are approving it.

PADEP is deleting existing language in section 87.127(e)(1) and revising the maximum allowable noise level to 133 dBL.

As amended, subsection (e)(1) provides as follows:

The maximum allowable airblast level is 133 dBL.

While the current Federal regulations at 30 CFR 816.67(b)(1)(i) provide for a range of the maximum allowable airblast depending on the lower frequency limit of the measuring system used, a maximum airblast vibration of 133 dBL is appropriate when the lower frequency limit of the measuring system is 2 hertz (Hz) or lower.

All blasting seismographs manufactured today have 2 hertz microphones based on a standard developed with the International Society of Explosives Engineers Standards Committee. In addition, the Pennsylvania regulations, at 25 Pa. Code 87.54, require submission of a blasting plan, "explaining how the applicant intends to comply with sections 87.124–129. * * *" With respect to the 133 dBL maximum airblast level, the applicant must describe the type of monitoring system that will ensure compliance with that level. Since the measuring system (i.e., seismograph microphone) with the lower frequency response of 2 hertz or lower is the only one for which the 133 dBL limit is appropriate, we expect that the PADEP will only approve the use of this system. Based upon this, OSM finds that this revision is no less effective than the Federal regulations at 30 CFR 816.67(b)(1)(i) since all operators who measure airblasts with blasting seismographs will be required to use a measuring system with a lower frequency response of 2 hertz or lower, (+/– 3dB). Therefore, we are approving this revised maximum decibel level.

PADEP is revising subsection (f)(1) to lower the distance from a blasting area where an operator must barricade and guard public highways and entrances to the operation from 1,000 feet to 800 feet. PADEP is also adding new language concerning alternative measures following the existing language.

As amended, subsection (f)(1) provides as follows:

The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department's satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

(i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.

(ii) Using mats to suppress fly rock.

(iii) 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:

(A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.

(B) Adjusting blast design parameters including:

(I) The diameter of holes.

(II) The number of rows.

(III) The number of holes.

(IV) The amount and type of explosive.

(V) The amount and type of stemming.

(VII) The powder factor.

While this provision has no direct Federal counterpart, we find that it is consistent with the Federal regulations at 30 CFR 816.66(c), pertaining to access control, since any alternative measure chosen must be shown to be at least as effective at protecting persons and property as are barricades. Therefore, we are approving it.

PADEP is revising subsection (j) by deleting the cross-reference to subsection (n) and changing it to (m). This change was proposed because the proposed deletion of subsection (l), which is discussed below, will result in the relettering of the subsequent subsections of section 87.127. Thus, subsection (n) will become subsection (m) if the deletion of subsection (l) is approved. Since we are approving the deletion of subsection (l), we are also approving this cross-referencing change.

PADEP is deleting subsection (l) in its entirety. Subsection (l) previously provided as follows:

The use of a formula to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the Department if the peak particle velocity of 1 inch per second required in 87.126 (relating to use of explosives: Public notice of blasting schedule) would not be exceeded.

While the Federal regulations at 30 CFR 816.67(d)(3) allow an operator to use a scale distance equation to determine the maximum weight of explosives allowable to be detonated in any 8-millisecond period without seismic monitoring, regulatory authorities are not required to provide the operators with this option. Therefore, we find that the deletion of the option to use a formula to determine maximum weight of explosives is no less effective than the Federal regulations at 30 CFR 816.67(d), and we are approving it.

6. 25 Pa. Code 87.129. Use of Explosives: Records of Blasting Operations

PADEP is changing subdivision (4) by adding the phrase: "identification of and the" after "The" at the beginning of the paragraph.

As amended subdivision (4) provides as follows:

The identification of and the direction and distance, in feet, to the nearest dwelling, public building, school, church, commercial or institutional building or other structure.

We find that the provision as provided does not render the Pennsylvania program less effective than the Federal regulations at 30 CFR 816.68(d). Therefore, we are approving it.

7. 25 Pa. Code 88.135. Blasting: Surface Blasting Requirements

Before discussing the several changes PADEP has proposed to this section of its anthracite mining regulations, it is appropriate to offer a summary of our standards for the review of proposed revisions to Pennsylvania's anthracite mining performance standards.

The Federal regulations at 30 CFR 820.11, pertaining to performance standards for anthracite mining in Pennsylvania, provide as follows:

Anthracite mines in Pennsylvania, as specified in section 529 of the Act, shall comply with its approved State program, including Commonwealth of Pennsylvania statutes and regulations, and revisions thereto that are approved by OSM pursuant to part 732 of this chapter.

In 1979, we explained in the preamble to the previous version of 30 CFR 820.11 how we would decide, pursuant to 30 CFR part 732, whether changes to Pennsylvania's anthracite mining performance standards could be approved:

If the [anthracite performance standard] regulations existing as of August 3, 1977 are made less stringent in any manner, the Secretary must elect to develop specific Federal performance standards to supplement the amended State regulation or, of [sic] considered desirable, the Secretary may apply the performance standards for surface mining and underground coal mining of Parts 816 and 817.

44 FR 14902, 15281 (March 13, 1979)

We interpret the standard above to mean that if we find a proposed anthracite performance standard provision to be no less stringent than the performance standard existing as of August 3, 1977, we will approve it under Section 529(a) of SMCRA, which required that the Federal regulations adopt the original (August 3, 1977) Pennsylvania anthracite regulations,

and apply them to anthracite mining in lieu of SMCRA's own performance standards. If, however, we find the provision to be less stringent than its August 3, 1977 predecessor, we may still approve it, if we determine that it is no less effective than its Federal regulatory counterpart in 30 CFR part 816 or part 817. We will not approve any provision that is less stringent than its August 3, 1977, predecessor, and that is also less effective than its Federal regulatory counterpart.

PADEP added the following language to subsection (a) after "sunset":

* * * except that mine opening blasting conducted after the second blast for that mine opening may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve ground or airblast vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsection (h) if consented to, in writing, by the structure owner and lessee, if leased to another party.

As amended, subsection (a) provides as follows:

Blasting shall be conducted between sunrise and sunset, except that mine opening blasting conducted after the second blast for that mine opening may be conducted at any time of day or night as necessary to maintain stability of the mine opening to protect the health and safety of mineworkers. For mine opening blasting conducted after the second blast, for that mine opening, the Department may approve ground or airblast vibration limits at a dwelling, public building, school, church or commercial or institutional structure, that are less stringent than those specified in Subsection (h) if consented to, in writing, by the structure owner and lessee, if leased to another party.

While the allowance of exceptions to the requirement that blasting be conducted in daylight would render Pennsylvania's regulation less stringent than the current Pennsylvania provision, the proposed changes are no less effective than the Federal regulations at 30 CFR 817.61, for the reasons more fully discussed above in the finding for section 87.127(a). Therefore, in accordance with Section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, we are approving this revision to the special permanent program performance standards for anthracite mines in Pennsylvania.

PADEP changed subsection (b) by adding the following phrases: "airblast or ground vibration limits," after "periods" and "from the adverse affects

of ground vibration, airblast, or safety hazards” after “public.”

As amended, subsection (b) provides as follows:

The Department may specify more restrictive time periods, airblast or ground vibration limits, based on other relevant information, according to the need to adequately protect the public from the adverse affects of ground vibration, airblast, or safety hazards.

Pennsylvania’s proposal to allow the PADEP to specify more restrictive airblast or ground vibration limits adds potential protections from blasting that are not in the current version of this provision. In addition, Pennsylvania has proposed to make clear what it is protecting the public from: The adverse effects of ground vibration, airblast, or safety hazards. These proposed changes would not render section 88.135(b) less effective than the current Pennsylvania provision. Therefore, in accordance with Section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, we are approving this revision to the special permanent program performance standards for anthracite mines in Pennsylvania.

PADEP amended subsection (f)(1) by adding new language concerning alternative measures following the existing language.

As amended, subsection (f)(1) provides as follows:

Public highways and entrances to the operation shall be barricaded and guarded by the operator if the highways and entrances to the operations are located within 800 feet of a point where a blast is about to be fired. The operator may use an alternative measure to this requirement if the operator demonstrates, to the Department’s satisfaction, that the alternative measure is at least as effective at protecting persons and property from the adverse affects of a blast. Alternative measures are measures such as:

- (i) Slowing or stopping traffic in coordination with appropriate state or local authorities, including local police.
- (ii) Using mats to suppress fly rock.
- (iii) 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:
 - (A) Orienting the blast so that the direction of relief is away from public highways or operation entrances.
 - (B) Adjusting blast design parameters including:
 - (I) The diameter of holes.
 - (II) The number of rows.
 - (III) The number of holes.
 - (IV) The amount and type of explosive.
 - (V) The burden and spacing.
 - (VI) The amount and type of stemming.
 - (VII) The powder factor.

Since any alternative measure chosen must be shown to be at least as effective at protecting persons and property as

are barricades, the proposed changes would not render section 87.127(f)(1) less stringent than the current Pennsylvania provision. Therefore, in accordance with Section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, we are approving this revision to the special permanent program performance standards for anthracite mines in Pennsylvania.

PADEP is revising subsection (h) to delete the existing language, “the maximum peak particle velocity may not exceed 2 inches per second” and adding the following new language after “operations,” “* * * the blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 or meets the maximum allowable peak particle velocity as indicated by Figure 1 * * *” PADEP further changed the last sentence of this subsection by replacing “sound pressure” with “airblast” and by removing the phrase, “130 DB linear at a frequency 6Hz or lower” and replacing it with “133 dBL.”

As amended, subsection (h) provides as follows:

In all blasting operations, the blasts shall be designed and conducted in a manner that achieves either a scaled distance of 90 or meets the maximum allowable peak particle velocity as indicated by Figure 1 at the location of any dwelling, public building, school, church or commercial or institutional building. Peak particle velocities shall be recorded in three mutually perpendicular directions; longitudinal, transverse and vertical. The maximum peak particle velocity shall be the largest of any of three measurements. The Department may reduce the maximum peak particle velocity allowed, if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors. The airblast level may not exceed 133 dBL.

These proposed changes to section 88.135(h) would not render the provision less stringent than the current Pennsylvania regulation. More specifically, we conclude that the proposed uniform maximum airblast level of 133 dBL is no less stringent than the current Pennsylvania regulation, for the same reasons that we concluded that the same revision to 25 Pa. Code 87.127 (e)(1) did not render that provision less effective than the corresponding Federal regulation. Therefore, in accordance with Section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, we are approving these changes to the special permanent program performance standards for anthracite mines in Pennsylvania.

PADEP is revising subsection (i) by deleting the word “limitation” and by

adding the phrase “and airblast limitations.”

As amended subsection (i) provides as follows:

The maximum peak particle velocity and airblast limitations of this section do not apply at the following locations:

- (1) At structures owned by the person conducting the mining activity, and not leased to another party.
- (2) At structures owned by the person conducting the mining activity, and leased to another party, if a written waiver by the lessee is submitted to the Department prior to the blasting.

While the proposed change exempts certain structures from airblast limitations as well as peak particle velocity limitations, and is less stringent than the current Pennsylvania regulation, it is substantively identical to the Federal regulations at 30 CFR 816.67(e).

Therefore, in accordance with Section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, we are approving this revision to the special permanent program performance standards for anthracite mines in Pennsylvania.

PADEP is removing subsection (l) in its entirety. This subsection previously provided as follows:

The use of a formula to determine maximum weight of explosives per delay for blasting operations at a particular site may be approved by the Department if the peak particle velocity of 2 inches per second would not be exceeded.

This proposed deletion would not render section 88.135 less stringent than the current Pennsylvania regulation. Therefore, in accordance with Section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, we are approving this revision to the special permanent program performance standards for anthracite mines in Pennsylvania.

8. 25 Pa. Code 88.137. Use of Explosives: Records of Blasting Operations

PADEP is revising subdivision (4) by adding the phrase: “identification of and the” after “The” at the beginning of the paragraph.

As amended subdivision (4) provides as follows:

The identification of and the direction and distance, in feet, to the nearest dwelling, public building, school, church, commercial or institutional building or other structure.

Since the proposed change requires that additional data be provided in the records of blasting regulations, it would not render section 88.137 less stringent than the current Pennsylvania

regulation. Therefore, in accordance with Section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, we are approving this revision to the special permanent program performance standards for anthracite mines in Pennsylvania.

9. 25 Pa. Code 88.493. Minimum Environmental Protection Performance Standards

PADEP is revising subdivision (7)(i) by replacing the existing language “initial rounds of slopes, shafts and tunnels” with new language “mine opening blasting.”

As amended, subdivision (7)(i) provides as follows:

A person who conducts surface blasting activities incident to underground mining activities, including, but not limited to, mine opening blasting shall conduct the activities in compliance with sections 88.45 and 88.134–88.137.

Since the proposed change adds mine opening blasting to the list of activities to be subject to the referenced permitting requirement (88.45) and performance standards (88.134–137), and since mine opening blasting includes initial rounds of slope, shafts, and tunnels, it would not render section 88.493 less stringent than the current version of the regulation. Therefore, in accordance with Section 529(a) of SMCRA and the Federal regulations at 30 CFR 820.11, we are approving this revision to the special permanent program performance standards for anthracite mines in Pennsylvania.

10. 25 Pa. Code 89.62. Use of Explosives

PADEP is revising this section to replace the existing language “initial rounds of slopes, shafts and tunnels” with “mine opening blasting.”

As amended, 25 Pa. Code 89.62 provides as follows:

Each person who conducts surface blasting activities incident to underground mining activities, including, but not limited to, mine opening blasting, shall conduct the activities in compliance with Chapter 87 (relating to surface mining of coal).

As noted above in finding no. 5, the Federal regulations do not define the term “initial rounds of slopes and shafts”. However, the PADEP’s definition of mine opening blasting includes “blasting for the purpose of constructing a shaft, slope, drift or tunnel mine opening”, which naturally would include blasting for the initial rounds of slopes and shafts. Therefore, this revision is no less effective than the Federal regulations at 30 CFR 817.61(a) and (c)(1) and is hereby approved.

11. 25 Pa. Code 210.12. Scope

PADEP is revising this section to add new language after “Commonwealth”, “Except for persons engaging in mine opening blasting.”

As amended, 25 Pa. Code 210.12 provides as follows:

This chapter applies to persons engaging in the detonation of explosives within this Commonwealth. Except for persons engaging in mine opening blasting, this chapter does not apply to persons authorized to detonate explosives or to supervise blasting activities under: * * *

The provisions that follow, but that are omitted from the provision, are references to the Pennsylvania Anthracite Coal Mine Act (52 P.S. 70.101–70.1405) and the Pennsylvania Bituminous Coal Mine Act (52 P.S. 701–101–701–706). These statutes regulate underground anthracite and bituminous mining, respectively, and include separate requirements for blasters and blasting activities. However, PADEP regulates mine opening blasting as surface blasting incident to underground mining, in accordance with the Federal regulations. This provision clarifies that distinction, in that it requires blasters to obtain licenses to conduct surface blasting. While the provision has no direct Federal requirement, we find it to be no less effective than the Federal regulations at 30 CFR part 850, and hereby approve it.

12. 25 Pa. Code 210.17. Issuance and Renewal of Licenses

PADEP is revising subsection (a) to add the following new language “mine opening blasting” after “demolition,” and after “mining.”

As amended, section 210.17 provides as follows:

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

The proposed change makes clear that mine opening blasting is not general blasting, but rather is a specific classification of blasting to which all requirements of Chapter 210 apply. While the provision has no direct Federal counterpart, we are approving it because it is consistent with the Federal regulations at 30 CFR part 850, which require certification of blasters engaged in the use of explosives in surface coal mining operations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in the July 31, 2006 **Federal Register** (71 FR 43087) and then extended the comment in the September 11, 2006, **Federal Register** (71 FR 53351).

We held a public hearing on the rulemaking on September 21, 2006 (Administrative Record No. 887.11) and received responses from three different commenters representing Mountain Watershed Association.

1. Commenters expressed concern regarding 25 Pa. Code 87.127(a), which would allow mine opening blasting after the second blast to be conducted at any time, rather than from just sunrise to sunset. The commenters assert that the criteria for exempting mine opening blasting after the second blast from the sunrise to sunset period appear to be inconsistent with exemption criteria in the Federal regulations at 30 CFR 816.64(a). While the Federal regulations allow an exemption where the operator can demonstrate that the public will be protected from adverse noise and other impacts, the proposed State revision allows exemptions to protect the health and safety of mineworkers. The regulation also fails to consider the health of adjacent landowners, according to the commenters. In addition, the commenters contend that the regulation is less effective than the Federal regulations at 30 CFR 816.67(e), in that it would allow Pennsylvania to approve lower vibration limits for mine opening blasting after the second blast at a structure owned by a person other than the permittee. One commenter asked how a homeowner could possess the knowledge to execute an informed waiver of the airblast or ground vibration limits.

Response: We are approving the changes applicable to mine opening blasting after the second blast, in section 87.127(a), because, as explained in finding no. 5, such blasting is not regulated under 30 CFR 817.61–68.

2. Commenters objected to the change in language to “the adverse effect of vibration or safety hazards” in section 87.127(b) when the Federal rules require protection of the public from “adverse noise and other impacts.”

Response: The Federal counterpart regulations at 30 CFR 816.67(b)(1)(ii) and 816.67(d)(5) allow the regulatory authority to establish lower airblast or ground vibration limits where necessary to prevent damage. The commenters’ reference to protecting the public from “adverse noise and other impacts” is

found in 30 CFR 816.64(a)(2), which pertains to exceptions to the requirement to conduct blasting between sunrise and sunset, but does not pertain to the establishment of lower airblast or ground vibration limits. By requiring stricter limits to protect the public from “the adverse effects of ground vibration, airblast, or safety hazards, Pennsylvania’s revised regulation will provide at least the same, if not greater, protection than its Federal counterparts.

3. Commenters expressed concern regarding the allowance of weaker vibration limits and air blast limits in section 87.127(e). This amendment, according to the commenters, is less effective than the Federal regulations at 30 CFR 816.67(e), in that it would allow Pennsylvania to approve lower vibration limits at a structure owned by a person other than the permittee.

Response: We disagree with the commenters. As noted in finding no. 5, above, we are approving this revision to 25 Pa. Code 87.127(e) because Federal regulations include no airblast limits for structures located within the permit area.

4. A commenter expressed concern that the proposed maximum airblast as proposed in section 87.127(e)(1) exceeds the Federal counterpart in 30 CFR 816.67(b)(1).

Response: We acknowledge the commenter’s concern; however, as noted in finding no. 5, above, we are approving this revision to 25 Pa. Code 87.127(e)(1). Our approval is based on the fact all blasting seismographs manufactured today have 2 hertz microphones based on a standard developed with the International Society of Explosives Engineers Standards Committee, and based on our conclusion that the State’s blasting plan regulation, in concert with revised subdivision (e)(1), will preclude the PADEP from approving the use of any blasting seismograph that uses a different type of microphone. Therefore only the 133 dBL limit is applicable.

5. Commenters express concern about the 1000’ to 800’ change for blocking roads and the option of alternative access control in section 88.135(f)(1). Commenters are concerned that OSM is allowing the Pennsylvania State Program to eliminate access control in lieu of alternative measures.

Response: The Federal regulations at 30 CFR 816.66 merely require access control to the blast area. They do not specifically require that public highways and entrances to the operation be barricaded and guarded by the operator.

6. A commenter asserted that the distance measured should be clarified to include an object for measurement (from the blast hole) and outside the permit area in section 87.129.

Response: We disagree with the commenter. The introductory paragraph of 25 Pa. Code 87.129 requires a record to be kept for each “blast,” and should, therefore, be interpreted to mean that the object of measurement is the nearest blast hole. We also note that the Pennsylvania regulations are more effective because it requires maintaining information for the regulating of blasts that occur near buildings located both inside the permit area as well as outside the permit area.

7. In reference to the proposed deletion of section 87.127(l), one commenter questioned the validity of the Siskind theory of peak particle velocity of one inch per second, when, according to the commenter, this theory “was condemned back in 1980 by [Siskind’s] peers * * *, [is] based on data and a methodology that has never been fully tested, and * * * violates common sense.”

Response: Since subsection (l) is being deleted in its entirety, and since the one inch per second peak particle velocity standard is not otherwise at issue in this revision, the comment is beyond the scope of this rulemaking.

8. A commenter opposed the use of the peak particle velocity measure as a measure of safety or blasting damage, but rather advocated consideration of the actual damage caused by blasting. This same commenter stated that the pre-blast survey should be used by the PADEP for comparing the condition of the structure before and after blasting; if the structure is more damaged after blasting, the burden should be on the operator to prove that the damage was not caused by blasting.

Response: The use of peak particle velocity as a blasting threshold is authorized by the Federal regulations, at 30 CFR 816.67 and 817.67. Pre-blast surveys and presumptions of liability are not subjects of this revision.

9. Commenters expressed numerous concerns about the amendments to section 88.135 (25 Pa. Code 88.135 is in the Pennsylvania Code for Anthracite Coal Mining), namely that of the peak particle velocity and maximum allowable noise levels.

Response: As discussed in the findings above, where proposed revisions to anthracite performance standards are no less effective than those currently in the Pennsylvania program, we are approving them pursuant to the Federal regulations at 30 CFR 820.11. We are approving the

changes to 88.135(b), (f)(1), and (l) and one change to 88.135(h). Where proposed changes would be less effective than the current versions of the Pennsylvania regulations, but are no less effective than their Federal counterparts, we are also approving them pursuant to the Federal regulations at 30 CFR 820.11. We are approving the revisions to 88.135(a) and (i). Finally, we are approving the proposed change to 88.135(h), which would allow a higher maximum airblast level of 133 dBL. Our approval is based on the fact all blasting seismographs manufactured today have 2 hertz microphones based on a standard developed with the International Society of Explosives Engineers Standards Committee, and based on our conclusion that the State’s blasting plan regulation, in concert with revised subdivision (e)(1), will preclude the PADEP from approving the use of any blasting seismograph that uses a different type of microphone. Therefore only the 133 dBL limit is applicable.

10. A commenter stated that OSM’s summary of the amendment should be written in plain language, and include portions of the regulations immediately preceding and following the amended provisions, so that people may more readily understand the changes.

Response: OSM will take this comment under consideration when writing subsequent **Federal Register** notices announcing receipt of program amendments.

11. A commenter disputed OSM’s statement in the proposed rule that the amendment “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.*” To the contrary, the commenter stated, “[b]lasting damages have a significant economic effect on private homeowners.”

Response: Under the Regulatory Flexibility Act, the term “small entity” means the same thing as the terms “small business”, “small organization” and “small governmental jurisdiction”. 5 U.S.C. § 601(6) Thus, the provision cited does not apply to individuals, including private homeowners.

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 887.01). No comments were received.

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 887.00). The EPA reviewed the amendment and did not identify any inconsistencies with the Clean Water Act or other statutes or regulations under EPA's jurisdiction (Administrative Record Number PA 887.04). Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). Because the provisions of this amendment do not relate to air or water quality standards, we did not request EPA's concurrence.

V. OSM's Decision

Based on the above findings, we are approving the Pennsylvania program amendment sent to us on June 8, 2006, as revised on July 5, 2006, and on April 4, 2008 (Administrative Record No. PA 887.00, 887.02, and 887.12, respectively). To implement this decision, we are amending the Federal regulations at 30 CFR 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.

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 Government

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. The basis for this determination is that our decision is on a State Regulatory program and does not involve a Federal Regulation Involving Indian 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.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

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 upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon

counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

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 upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for

which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 2008.

Thomas D. Shope,

Regional Director, Appalachian Region.

■ 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 by adding a new entry to the table 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
*	*	*
June 8, 2006	December 1, 2008	25 Pa. Code 210.11, 87.1, 88.1, and 89.5 added definition for mine opening blasting; 87.124(b) correction of reference error; 87.126(b)(2)(ii) phrase deletion; 87.127(b), 87.127(e), 87.127(e)(1), 87.127(f)(1); 87.129(4); 88.135(a), 88.135(b), 88.135(f)(1), 88.135(h), 88.135(i); 88.493(7)(i); 89.62 (adding new language); 87.127(l) and 88.135(l) (deleted in their entirety).

[FR Doc. E8-28445 Filed 11-28-08; 8:45 am]
 BILLING CODE 4310-05-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy has determined that USS LOUISVILLE (SSN 724) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective December 1, 2008 and is applicable beginning 19 November 2008.

FOR FURTHER INFORMATION CONTACT:

Commander M. Robb Hyde, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone number: 202-685-5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS LOUISVILLE (SSN 724) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(a) pertaining to the location of the masthead lights over the fore and aft centerline of the ship. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment

for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Two by adding, in numerical order, the following entry for USS LOUISVILLE (SSN 724):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *