

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #8

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ADMINISTRATIVE LAW DIVISION

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: West Virginia Department of Energy TITLE NUMBER: 48

DATE EMERGENCY RULE WAS ORIGINALLY FILED: January 7, 1987

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

NA

DATE OF FIRST EMERGENCY AMENDMENT: NA

SERIES NUMBER OF RULE: 5 TITLE OF RULE Rules and Regulations
Governing the Standards for Certification of Blasters for Surface
Coal Mines and Surface Areas of Underground Coal Mines

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE UPON FILING.

Roger T. Hall
Roger T. Hall
Administrator

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OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF MINER TRAINING, EDUCATION, AND CERTIFICATION
TITLE 48 SERIES 5

TITLE: RULES AND REGULATIONS GOVERNING THE STANDARDS FOR
CERTIFICATION OF BLASTERS FOR SURFACE COAL MINES AND
SURFACE AREAS OF UNDERGROUND COAL MINES

TYPE OF RULE: EMERGENCY

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF MINER TRAINING, EDUCATION, AND CERTIFICATION
TITLE 48 SERIES 5

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SECRETARY OF STATE

TITLE: Rules and Regulations Governing the Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Coal Mines

TYPE OF RULE: Emergency

I N D E X

General	Section 48.5.1
Scope	1.1
Authority	1.2
Effective Date	1.3
Filing Date	1.4
Certification	1.5
Definitions	Section 48.5.2
Criteria for Certification of Blasters	Section 48.5.3
Certified Blaster Examiners/Inspectors	Section 48.5.4
Examinations	Section 48.5.5
Certification Procedures	Section 48.5.6
Recertification Requirements for Certified Blaster	Section 48.5.7
Presentation of Certificate; Transfer; and, Delegation of Authority	Section 48.5.8
Blasting Crew	Section 48.5.9
Reciprocity With Other States	Section 48.5.10

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
BOARD OF MINER TRAINING, EDUCATION, AND CERTIFICATION

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1987 APR 30 AM 11:58

TITLE 48 SERIES 5

TITLE: Rules and Regulations Governing the Standards for
Certification of Blasters for Surface Coal Mines and Surface
Areas of Underground Coal Mines

Section 48.5.1 General

1.1 Scope - These rules and regulations pertain to the certification of blasters for surface coal mines and surface areas of underground coal mines by the Department of Energy, for the Department of Energy.

1.2 Authority - These rules and regulations are issued under authority of West Virginia Code Chapter 22, Article 9, Section 6, as amended, in accordance with the provisions of Chapter 29A, Article 3 of the West Virginia Code, and in accordance with the Resolution of Understanding by the Board of Miner Training, Education, and Certification, dated December 4, 1979.

1.3 Effective Date - These rules and regulations meet the requirements of Chapter 29A, Code of West Virginia, as amended, are promulgated on the _____ day of _____, 198 __, and become effective on the _____ day of _____, 198 __.

1.4 Filing Date - These rules and regulations were filed in the Office of the Secretary of State on the _____ day of _____, 198 __.

1.5 Certification - These rules and regulations are certified authentic by the Commissioner of the Department of Energy for those portions under his jurisdiction.

Section 48.5.2 Definitions

2.1 Blast - Any and all detonator(s), explosive(s), and/or blasting agent(s) being initiated simultaneously by a single energy source.

2.2 Detonation - Any explosive reaction, also called a detonation wave, that moves through the material at a velocity greater than the speed of sound in the material.

2.3 Certified - Shall mean a person who has successfully completed an examination in accordance with Section 5.3 of these rules and regulations, and is considered certified on record by the Department of Energy per Section 3.1 of these rules and regulations.

2.4 Explosive(s) - Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; including, but not limited to, water gel, slurries, emulsions, dynamites, permissibles, pellet powder, blasting caps, cast primers and boosters, detonating cord, detonating cord delay connectors, and blasting agents.

2.5 Surface Mine and Surface Area of Underground Mines - Shall mean all areas surface mined or being surface mined, as well as adjacent areas ancillary to the operations, together with preparation and processing plants, storage areas and haulageways, roads, shops and trails, which are covered by the provisions of Chapter 22a, Article 3 of the Code of West Virginia, as amended.

Section 48.5.3 Criteria for Certification of Blasters

3.1 Certified Blaster. (a) In every surface coal mine or surface area of any underground coal mine when blasting operations are being conducted one year after the effective date of these regulations, a certified blaster will be responsible for the handling and use of explosives for each and every blast in accordance with the blasting plans approved for the permit. Each applicant for certification as a blaster shall:

- (1) Have had at least one year active blasting experience within the past ~~three~~ five (5) years;
- (2) Hold a current permit issued by the State Fire Marshall's office; and
- (3) Have demonstrated his knowledge and skill of the use, handling, and storage of explosives, and all State and Federal laws pertaining thereto by completing such training and certification examinations as may be required by these regulations.

(b) Training requirements shall include, but are not limited to, those subject areas set forth in Section 5.2(a)(1) and Section 5.3(a)(1) of these regulations, and the requirements of 30 CFR Part 48 for initial and annual refresher training. One year of active blasting experience, with on-the-job training, shall be required prior to certification.

Section 48.5.4 Certified Blaster Examiners/Inspectors

4.1 All persons employed by the Department of Energy, whose duties will include examining and certifying blasting personnel and/or inspecting blasting operations shall be certified blaster examiners/inspectors.

Section 48.5.5 Examinations

5.1 Certification under the provisions of 5.2 does not constitute certification under the provisions of Section 3.1; however, certification under Section 5.3 would suffice for certification under Section 4.

5.2 Examinations for Certified Blaster Examiners/Inspectors. (a) Examination for certified blaster examiner/inspector shall include information presented in the STUDY GUIDE FOR WEST VIRGINIA SURFACE MINE BLASTERS, and shall consist of three parts:

- (1) Written multiple choice examination covering:
 - (a) Types of explosives and their properties, to include selection;
 - (b) Blasting equipment and accessories, to include blasting machines;
 - (c) Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;
 - (d) Delay systems, to include pattern design, field layout, and initiation systems;
 - (e) Timing;
 - (f) Blast vibration and vibration control, to include airblast, monitoring techniques, and use of pre-blast surveys;
 - (g) Loading and shooting, to include priming, scheduling, site control, warning signals and unpredictable hazards;
 - (h) Storage and transportation of explosives;
 - (i) Record keeping and reporting;
 - (j) Current State and Federal laws and regulations relating to the use, storage and transportation of explosives, the training and certification of blasting personnel, and blasting signs; and
 - (k) Responsibilities of a certified blaster.
- (2) Written simulation. Correctly and properly completing a blasting log.
- (3) Hands-on simulation. Wiring, checking, and shooting a blast.

(b) A score of 70 percent (70%) for part (1), and satisfactory completion of parts (2) and (3) are required for successful passage of the examination. An individual who fails to achieve a passing score may retake the examination subject to the Department of Energy's direction.

5.3 Examination for Certified Blaster. (a) Examination for certified blaster shall include information presented in the STUDY GUIDE FOR WEST VIRGINIA SURFACE MINE BLASTERS and shall consist of three (3) parts:

- (1) Written multiple choice examination covering:
 - (a) Types of explosives and their properties, to include selections;
 - (b) Blasting equipment and accessories, to include blasting machines;
 - (c) Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;
 - (d) Delay systems, to include pattern design, field layout, and initiation systems;
 - (e) Timing;
 - (f) Blast vibration and vibration control, to include airblast, monitoring techniques, and use of pre-blast surveys;
 - (g) Loading and shooting, to include priming, scheduling, site control, warning signals, and unpredictable hazards;
 - (h) Storage and transportation of explosives;
 - (i) Record keeping and reporting;
 - (j) Current State and Federal laws and regulations relating to the use, storage, and transportation of explosives; the training and certification of blasting personnel, and blasting signs; and
 - (k) Responsibilities of a certified blaster.
- (2) Written simulation. Correctly and properly completing a blasting log.
- (3) Hands-on simulation. Wiring, checking, and shooting a blast.

(b) A score of 80 percent (80%) for part (1), and a "passing grade" on parts (2) and (3), which are graded on a pass/fail basis, are required for successful passage of the examination.

(c) All individuals shall be notified of their scores within 30 days of completing the examination. An individual who fails to achieve a passing score on any of the three (3) parts of the examination, may apply within thirty (30) days of the receipt of his examination results from the Department to retake the entire examination or any portions the individual failed to pass. filing an application for examination in accordance with the provisions of Section 6 of these rules and regulations after receiving notification of their score.

Section 48.5.6 Certification Procedures

6.1 Conditions or Practices Prohibiting Certification. (a) Certification as a certified blaster shall not be issued to persons who:

- (1) Are currently addicted to alcohol, narcotics, or other dangerous drugs; or
- (2) Have exhibited a pattern of conduct inconsistent with acceptance of responsibility for blasting operations.

(b) Addition to, or unlawful use of, alcohol, narcotics, or other dangerous drugs in the work place shall cause any blaster's certification already in force to be suspended or revoked.

(c) A pattern of conduct which is not consistent with acceptance of responsibility for blasting operations, (i.e., repeated or willful violations of State or Federal laws pertaining to explosives), shall be grounds for suspension or revocation of a blasters certification.

6.2 Application for Certification as a Certified Blaster. Prior to taking an examination for certification, an individual must submit an application to take such examination on a form prescribed by the Commissioner of the Department of Energy. Upon receipt of an application for examination, the Department shall, after determining compliance with the provisions of Section 3 of these regulations, notify the applicant of the date, time, and location of the scheduled examination. Prior to the effective date as shown in Section 1.3 of these rules and regulations, examinations will be scheduled based upon facility and manpower availability at the various division locations. Following the effective date as shown in Section 1.3 of these rules and regulations, examinations will be regularly scheduled on a monthly basis.

6.3 Certification. Upon determination that an applicant for certification has satisfactorily passed the examination, the Department shall, within 30 days of the examination date, issue to such individual a certificate indicating that he is a Certified Blaster.

Section 48.5.7 Recertification Requirements for Certified Blaster

7.1 Recertification. (a) Recertification of all certified blasters is required every three (3) years. Each applicant for recertification must be currently certified and submit validated documentation to the Department of Energy of conformance with the requirements of Section 3.1 of these rules and regulations on forms to be prescribed by the Commissioner.

(b) Validated proof of one shift of refresher training, as provided for in Section 3.1(b), within the previous 12 calendar months, must be submitted along with the other validation required by this section unless the applicant's one year of active blasting experience was completed any time during the previous 12 calendar months.

(c) Compliance with 6.1 of these rules and regulations shall be required for recertification in the same manner as for certification.

7.2 Re-examination. No certified blaster shall be recertified two consecutive times unless, upon the second application, the applicant also successfully passes the examination as required in Section 5.3 of these rules and regulations.

Section 48.5.8 Presentation of Certificate; Transfer; and, Delegation of Authority

8.1 (a) Upon certification, each blaster shall comply with Section 6 of the West Virginia Department of Energy's Administrative Regulations, Chapter 22-4, Title 36, Series 24, formerly Series 37.

(b) Upon request of an authorized representative of the Commissioner, of the West Virginia Department of Energy; or, Director, Office of Surface Mining, U. S. Department of the Interior, a certified blaster shall exhibit his or her certificate to the requesting representative.

(c) The certified blaster shall take all reasonable means to protect his certificate from loss or unauthorized duplication, and shall immediately report any such loss or duplication to the Department of Energy.

8.2 Transfer. Blaster's certifications shall not be transferred or assigned.

8.3 Delegation of Authority. Certified blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster in accordance with these rules and regulations.

8.4 Withdrawal of Certification. Pursuant to Chapter 22A, Article 1A, Section 29, the Commissioner of the Department of Energy may initiate proceedings charging a person certified in accordance with Chapter 22A, Article 3, Section 31, with neglect or failure to perform duties mandated by Chapter 22A, Articles 1A and 2, and regulations promulgated thereto; Chapter 22A, Article 3, and regulations promulgated thereto; or, these rules and regulations.

Section 48.5.9 Blasting Crew

9.1 Persons who are not certified and who are assigned to a blasting crew, or assist in the use of explosives, shall receive directions and on-the-job training from a certified blaster.

Section 48.5.10 Reciprocity With Other States

10.1 Upon a recommendation by the Board of Miner Training, Education, and Certification, the Commissioner may enter into a reciprocal agreement with other states wherein persons holding a valid certification in that state may apply for certification in West Virginia, and upon approval by the Board, be certified without undergoing the training or examination requirements set forth in these regulations.

KEN HECHLER
Secretary of State

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Deputy Secretary of State

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Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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(Plus all the volunteer
help we can get)

NOTICE OF THE EXPIRATION OF AN EMERGENCY RULE

AGENCY: MINER TRAINING, EDUCATION AND CERTIFICATION BOARD
RULE: STANDARDS FOR CERTIFICATION OF BLASTERS
DATE FILED AS AN EMERGENCY RULE: JANUARY 7, 1987

THE ABOVE EMERGENCY RULE EXPIRES ON APRIL 7, 1988 WITH THE EXPIRATION OF THE FIFTEENTH MONTH AS REQUIRED BY WEST VIRGINIA CODE 29A-3-15. THIS EMERGENCY RULE WAS IN EFFECT FROM JANUARY 7, 1987 UNTIL APRIL 7, 1988.

A handwritten signature in cursive script, appearing to read "Rich O. Hartman", written over a horizontal line.

Rich O. Hartman, Dir.

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1988 APR 12 AM 10:57
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE



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help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

February 18, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Energy

RULE: Admendment to Series 2, Surface Mine Reclamation and a new series, titled Standards for Certification of Blasters

DATE FILED AS AN EMERGENCY RULE: January 7, 1987

DECISION NO. 4-87

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Feb. 18, 1987
ADMINISTRATIVE LAW DIVISION


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DECISION

Emergency Rule Decision (ERD 4-87)

AGENCY: Department of Energy (DOE)
RULE: Amendment to Series 2, Surface Mine Reclamation and a new series, titled Standards for Certification for Blasters

DATE FILED AS AN EMERGENCY RULE: January 7, 1987

- par. 1 The DOE has filed these two rules relating to Blasting. Since they relate to the same topic and utilize the same conditions to justify emergency filing, this ERD will cover both emergency filings.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope if its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The DOE has filed this emergency rule with supporting documents with the Secretary of State on January 7, 1987.

par. 7 It is the determination of the Secretary of State that the DOE has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §22-9-6 reads in part:

§22-9-6. Duties of the commissioner and department.

The commissioner shall be empowered to promulgate, pursuant to chapter twenty-nine-a (§29A-1-1 et seq.) of this code, such reasonable rules and regulations as are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to, implementation of a program of instruction in each of the minor occupational specialities and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction which he is required to have prior to the training and instruction which he is required to have prior to the receipt of a certificate.

par. 9 It is the determination of the Secretary of State that the DOE has not exceeded its statutory authority by adopting this rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The Department of Energy claims this rule is necessary to "comply with a time limitation established by . . . a federal . . . statute."

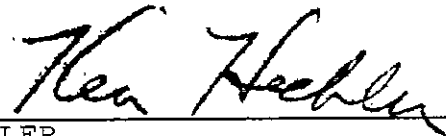
par. 13 The DOE cites the following facts and circumstances:

The Federal Surface Mining Act (PL 95-87) requires each state to develop a Blaster's Certification Program as part of its overall state reclamation plan to receive primacy delegation from the Federal Office of Surface Mining (OSM). West Virginia submitted a plan in a timely fashion on September 20, 1984.

Certain regulatory deficiencies were identified by OSM and on November 20, 1984 West Virginia submitted proposed regulations to correct these deficiencies. OSM conditionally approved these regulations on April 23, 1985 requiring further amendments to satisfy these conditions to be submitted by June 24, 1985. West Virginia has been unable to satisfy the conditions and has been granted a number of time extensions to OSM to seek resolution. Although resolution has been achieved, West Virginia has exhausted all allowable time extensions and is required to implement the Blaster's Certification Program under penalty of withdrawal of federal funds which support the overall reclamation program. This constitutes a need to file these regulations as emergency in accordance with the State Administrative Procedures Act.

par. 14 It is the decision of the Secretary of State that this proposal by the DOE is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the DOE; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 15 This decision shall be cited as Emergency Rule Decision 4-87 or ERD 4-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the DOE, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____ THIS DATE Feb. 18, 1987
ADMINISTRATIVE LAW DIVISION

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