

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Energy TITLE NUMBER: 48

CITE AUTHORITY Chapter 22, Article 9, Section 6, Code of West Virginia

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Rules and Regulations Governing the
Standards for Certification of Blasters for Surface Coal
Mines and Surface Areas of Underground Coal Mines.

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Roger T. Wall
Administrator

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations Governing Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Coal Mines.

Type of Rule: Legislative X Interpretive Procedural

Agency WV Department of Energy Address 1615 Washington St., East
Charleston, WV 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ 0-	\$ -0-
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.
 It is anticipated that implementation of the proposed rule can be carried out by existing staff with existing equipment and facilities without increasing any additional cost or generating any additional income to the State.

3. Objectives of these rules:
 To establish criteria for certifying blasters for surface coal mines and surface areas of underground coal mines in accordance with the requirements of the West Virginia State Program approved by the federal Office of Surface Mining Reclamation and Enforcement.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date May 12, 1987

Signature of Agency Head or Authorized Representative

Roger T. Hall

DATE: May 12, 1987

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Energy

LEGISLATIVE RULE TITLE: Rules and Regulations Governing the Certification of Blasters for Surface Mines and Surface Areas of Underground Mines.

1. Authorizing statute(s) citation Chapter 22, Article 9,

Section 6, Code of West Virginia

2. a. Date filed in State Register with Notice of Hearing:

January 7, 1987

b. What other notice, including advertising, did you give of the hearing?

See attached listing

c. Date of hearing(s): February 20, 1987

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

April 7, 1987

f. Name and phone number of agency person to contact for additional information:

Roger T. Hall 348-3500 ext. 413

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

b. Date of hearing: _____ NA _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

d. Attach findings and determinations and reasons:

Attached _____ NA _____

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: LEGISLATIVE

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: Legislative

I N D E X

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Blasting Crew	Section 48.5.9
Reciprocity With Other States	Section 48.5.10

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS 12 PM 2:48
BOARD OF MINER TRAINING, EDUCATION, AND CERTIFICATION

TITLE 48 SERIES 5
SECRETARY OF STATE

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

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 12th day of May, 1987, and become effective on the 12th day of May, 1987.

1.4 Filing Date - These rules and regulations were filed in the Office of the Secretary of State on the 12th day of May, 1987.

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 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.

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) Addiction 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 blaster's 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, Article 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.



STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
1615 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25311
TELEPHONE 348-3500

FILED
1987 APR 30 AM 11:58
OFFICE OF THE SECRETARY OF STATE

ARCH A. MOORE, JR.
GOVERNOR

April 30, 1987

KENNETH R. FAERBER
COMMISSIONER

Mr. William B. Raney
Vice-President
West Virginia Mining & Reclamation
Association
1624 Kanawha Boulevard, East
Charleston, West Virginia 25511

Dear Mr. Raney:

Thank you for your participation in the Department of Energy's February 20, 1987, public hearing on rules and regulations governing blaster certification.

Your comments have been reviewed and given careful consideration. For your information, I am enclosing a copy of the public hearing record and response to your comments. As you will note, certain amendments to the regulations have been made on the basis of your comments. These amended regulations are being filed with the Office of the Secretary of State on April 30, 1987, and with the Legislative Rule-Making Review Committee.

If I can be of further assistance to you, please feel free to advise.

Sincerely,

Roger T. Hall

RTH:cc

cc: Tony Grbac

PUBLIC NOTICE MAILING LIST

1. Clarksburg Publishing Company
Clarksburg Exponent and Telegram
324-326 Hewes Avenue
Clarksburg, West Virginia 26301
2. Inter-Mountain
Post Office Box 1339
Elkins, West Virginia 26241
3. Herald Dispatch
946 Fifth Avenue
Huntington, West Virginia 25720
4. Beckley Newspapers, Inc.
Raleigh Register and Beckley Post-Herald
Post Office Drawer P or R
Beckley, West Virginia 25801
5. The Dominion Post
Greer Building
Morgantown, West Virginia 26505
6. The Ogden Newspapers, Inc.
Wheeling News Register and Intelligencer
1500 Main Street
Wheeling, West Virginia 26003
7. The Charleston Gazette
Post Office Box 2993
Charleston, West Virginia 25330
8. Independent Oil & Gas Association
22 Capitol Street
Charleston, West Virginia 25301
9. West Virginia Oil and Natural Gas Association
Post Office Box 3231
Charleston, West Virginia 25332

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SECRETARY OF STATE

COMMENTS OF
THE WEST VIRGINIA MINING & RECLAMATION ASSOCIATION
TO THE PROPOSED EMERGENCY REGULATIONS GOVERNING THE
CERTIFICATION OF BLASTERS

DEPARTMENT OF ENERGY PUBLIC HEARING -- FEBRUARY 20, 1987

Section 38.12.3

Add a new subsection (c), to read as follows:

(c) The Commissioner may waive the requirement set forth in item 3.1 (a) (1) of this section if the applicant can verify a minimum of one year's blasting experience.

RATIONALE:

While this requirement for active blasting experience is a necessary requirement for certification, its occurrence in the "past three (3) years" is not absolutely necessary. It is preferable, but not necessary.

The Commissioner should have the authority to waive the time element of gaining experience. It is particularly important with the current status of the state's coal industry. There may be operations that reactivate after more than three (3) years of being idle. In order to utilize the employee panels for that operation, it is necessary to have a blaster take the certification exam. If the panel had been idle for an extended period, the blaster, while having the one year's experience, would not be able to take the exam because he did not get that experience in the "past three (3) years."

This requirement relates only to a person being accepted to take the exam. His knowledge and ability will be judged by his performance on the exam.

The Board of Miner Training, Education and Certification approved this concept at its meeting in February.

Section 38.12.5

For clarification of Departmental policy the following language should be added to subsection 5.3 (c) on page four:

WEST VIRGINIA MINING & RECLAMATION ASSOCIATION
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... An individual who fails to achieve a passing score on any of the three (3) parts, may apply to retake the parts not passed, or may reapply to re- *Clarify this*
take the entire examination within thirty (30) days of receipt of the examination results from the Department, and in accordance with the provisions of
of Section 6 ...

RATIONALE:

This will clarify the administrative burden of retesting for those that do not successfully pass the exam. The portions of the exam are separate and distinct and the performance on one part does not necessarily have a direct relationship on any of the other two.

This will clarify current Departmental policy regarding the examination administration.

Section 38.12.7

Delete subsection 7.2 on page five (5).

RATIONALE:

The federal office of surface mining no longer requires the retesting of individuals for recertification, if they meet the other requirements and have complied with the performance standards set forth.

An opportunity for retesting must be offered and it should be at the discretion of the Commissioner with the advice and consent of the Board of Miner Training, Education and Certification.

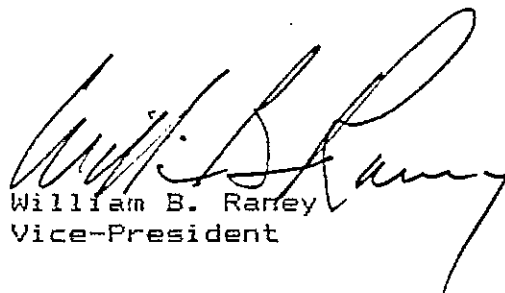
If the technology and practices of the blasting profession have not changed substantially in the six years

WEST VIRGINIA MINING & RECLAMATION ASSOCIATION
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since initial certification, there is not a need for retesting since the blaster's performance is proof of continued competence.

NEW ITEM:

The Department should consider some reciprocal agreement language relative to other states which have OSM approved programs.


William B. Raney
Vice-President



ARCH A. MOORE, JR.
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ENERGY
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KENNETH R. FAERBER
COMMISSIONER

RESPONSE TO COMMENTS

Public Hearing West Virginia Department of Energy February 20, 1987

During the public hearing on rules and regulations governing the certification of blasters, the West Virginia Mining and Reclamation Association filed written comments in four specific areas.

Section 3.01 (38.12.3)

The Association desires that new language be added to this section which would allow the Commissioner of the Department of Energy to grant a waiver to applicants for certification who do not meet the requirement of one year's active blasting experience within the past three years. The waiver would be granted on the basis that the applicant can verify that he has had at least one year of active blasting experience during any time period.

The Association contends that although one year's experience within the past three years is desirable, there may be situations where, due to long term layoffs or extended shutdowns at a mine or mines a person who has several years of experience in blasting, but who has not worked in that capacity for three years or more, would be disqualified from taking the exam. Furthermore, the person's performance on the examination should be sufficient evidence that he is qualified to handle and use explosives.

While the Department is sensitive to the current plight of the mining industry and to the fact that many qualified miners have been unable to find gainful employment in the mines over the past three years, there are a number of justifiable reasons for requiring that certified blasters have some current practical experience in the use of explosives. The basis for training, testing, and certifying blasters is to assure that the use of explosives, particularly in areas where the general health, safety and welfare of the general public is at risk, is done in a safe and responsible manner. The blasters

certification program can insure to some degree that the applicant becomes familiar with current technology and procedures, however, it is no substitute for experience. Another important consideration is that advancements in explosives technology are constantly under development making current experience necessary. The blasters certification program is designed such that persons without blasting experience will have great difficulty in passing the exam; however, it is a measure of their knowledge and not experience. Finally, the program was developed under guidelines and rules and regulations established by the Federal Office of Surface Mining as minimum national standards for programs developed by the states and contains requirements for experience as a prequalification.

Therefore, the Department is not at liberty to grant a waiver as requested by the Association; however, the experience requirement has been broadened to allow the applicant a five year period upon which to establish his one year of experience.

Section 5.03 (C) (38.12.7)

The Association requests that the language in this section be modified to allow an applicant who fails to pass any one of the three parts of the examination be required to re-take only that part for which a passing grade was not achieved.

In view of the fact that the structure of the examination is such that demonstration of the knowledge and skills tested in one part is not contingent upon such demonstration in the other two parts, the Department agrees that a requirement to re-take the entire examination upon failure of one part is not wholly justifiable.

Therefore the language will be amended as requested.

Section 7.02 (38.12.7)

The Association requests the provision that re-examination of certified blasters be required upon their second consecutive re-certification be deleted. Their request is based on the fact that the federal provisions contain no requirements for re-examination upon request for re-certification. Furthermore, it is their position that unless significant advances in explosives technology have been made, a certified blaster who meets all other qualifications for certification should not be required to demonstrate his capabilities through another examination. They maintain that such an exercise is an unjustifiable use of time for the blaster and the Departmental staff. When technological advances have been significant, the program could be modified, the examination restructured, and blasters re-examined upon their next re-certification deadline.

The Department does not accept this rationale. Under the regulations as proposed, no certified blaster would be required to re-take the examination more frequently than once every six years. This does not seem an overly burdensome requirement, and there is relative certainty that there will be significant technological advances along with improved procedures within a six year time span.

Therefore, the Department rejects the Association's proposal and will allow the regulation to stand as proposed.

New Section

The Association proposes that a new section be added to the regulations which would recognize reciprocity among other states for validating out-of-state certifications.

In view of the fact that all states have developed their blaster certification programs on the basis of federal standards, there is good assurance of national uniformity. In recognition of this fact there appears to be no valid reason for not establishing a mechanism for reciprocity.

Therefore, a new section will be added to allow for reciprocity.