

DIVISION OF ENVIRONMENTAL PROTECTION

RULE TECHNICAL CLEAN UP

38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"

Filed January, 1997, with Judy Cooper, Secretary of State's Office and Brenda Thompson, Counsel, Legislative Rule-Making

Division of Environmental Protection

“On page 1, in the title, by inserting ‘Bureau of Environment’ in the third line of the title’, and by striking ‘Water Resources - Waste Management’ in the fourth line and inserting in lieu thereof ‘Office of Mining and Reclamation’;

Beginning on page 1, in the title, and continuing throughout the text of the rule, where applicable to this rule, by striking the words ‘regulation’ or ‘regulations’ and inserting in lieu thereof ‘rule’ or ‘rules’;

Beginning on page 1, and continuing throughout the text of the rule where applicable, by striking ‘W. Va. Code 20-1-7’ and inserting in lieu thereof ‘W. Va. Code 22-1-3’;

Beginning on page 1, and continuing throughout the text of the rule where applicable, by striking ‘W. Va. Code 20-6D’ and inserting in lieu thereof ‘W. Va. Code 22-4’;

Beginning on page 2, definition 2.16, and continuing throughout the text of the rule where applicable, by striking ‘Department of Natural Resources’ and inserting in lieu thereof ‘Division of Environmental Protection’, and by striking the words ‘Division of Reclamation’ and inserting in lieu thereof, ‘Office of Mining and Reclamation’;

On page 3, definition 2.45, by inserting ‘the current edition of’ before the word ‘Standard’, by striking ‘Thirteenth Edition’ after the word “Methods” and inserting in lieu thereof ‘for the Examination of Water and Wastewater’, and by striking ‘Water Resources’ after the words ‘Division of’ and inserting in lieu thereof ‘Environmental Protection’;

Beginning on page 4, subdivision 3.2.a, and continuing throughout the text of the rule, by renumbering text breakdown to conform with the Secretary of State's Legislative Rule - 153CSR6;

On page 4, subsection 4.1 by deleting 'Section eleven A (11a), Article six d (6d), Chapter twenty (20) of the Code of West Virginia' and inserting in lieu thereof 'W. Va. Code §22-4-11';

On page 6, subdivision 5.5.a., by striking 'Reclamation Division' and inserting in lieu thereof 'Office of Mining and Reclamation';

On page 8, subsection 6A.2., and continuing through the text of the rule where applicable, by striking the word 'Division' and inserting in lieu thereof the word 'Office';

On page 9, subsection 6A.3, by inserting after 'State Department of Health' the words 'and Human Resources';

On page 9, subsection 6B.2, by striking the words 'section six D (6d) or six E (6e)' and inserting in lieu thereof 'subsection 6D or 6E';

On page 15, subparagraph 7.5.a.2.B, by deleting 'section '7B.1(a)(2)' and inserting in lieu thereof ' paragraph 7B.1.a.2';

On page 17, subsection 8.6 in the first sentence, by striking "Article six (D) (6d), Chapter twenty (20), Section nine (9), Code of West Virginia", and inserting in lieu thereof, 'W. Va. Code 22-4-9';

On page 17, subdivision 9.2.c, by striking 'Section sixteen (16), Article six D (6d), Chapter twenty (20), Code of West Virginia, by inserting in lieu thereof 'W. Va. Code §22-4-16';

On page 17, subsection 9.3, by striking the phrase 'and in Section eight (8) and nine (9) of the regulations of the Reclamation Commission';

AND

On page 17, section 10, by striking the phrase 'with the approval of the commission' after the word 'discretion'."

TITLE 38
LEGISLATIVE RULE
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF MINING AND RECLAMATION

SERIES 2C
RULES FOR STANDARDS FOR CERTIFICATION OF
BLASTERS - SURFACE COAL MINES

§38-2C-1. General.

1.1. Scope. -- This rule establishes criteria for training and examination procedures for the certification and recertification of persons storing, handling, transporting, or using explosives on surface mining operations in the state, and provides for administrative, civil, and criminal penalties for persons violating the blasting requirements of West Virginia Code §22-3-1 et seq. and the rules promulgated under that article.

1.2. Authority. -- West Virginia Code §22-1-3, 22-1-3a, 22-3-4(b)(1), 22-3-13(b)(15)(D).

1.3. Filing Date - ~~April 26, 1995~~

1.4. Effective Date - ~~May 1, 1995~~

1.5. Incorporation by Reference - Federal Counterpart Regulations. -- The federal counterpart regulation is found at 30-CFR-850. Subparts 1 - 15 give general guidance for developing state programs for the training, examination, and certification of blasters, and lists specific criteria for program elements. The regulation leaves the development of procedural criteria to the state.

The Director has determined that the federal counterpart regulation does not provide sufficient criteria in adequate detail to give necessary guidance to the agency, the public, or the regulated industry to justify its incorporation by reference.

Since the Environmental Protection Advisory Council was not yet established at the time of filing this proposed rule, it was not possible to consult with the Council.

1.6. Determination of Stringency - Federal Counterpart Regulations. -- The general nature of the federal counterpart regulation as discussed in subsection 1.5 of this section does not lend itself well to a direct item by item comparison of content. This rule contains the required criteria set forth in the federal counterpart regulation. However, this rule expands upon the procedural implementation of the required criteria in a way which is consistent with the federal programmatic requirements. Therefore: the Director has determined that this rule is not construed to be more stringent or less stringent than the federal counterpart regulation.

1.7. Constitutional Takings Determination. -- The Director has determined, and does state, that this rule does not constitute a constitutional taking of real property.

1.8. Repeal of Former Rule. -- This rule repeals an existing rule, Standards for Certification of Blasters for Surface Coal Mines and Surface Areas of Underground Mines (56-CSR-5), which was promulgated by the Board of Miners' Health, Safety, and Training and which contains similar provisions. Authority under the existing rule was transferred to the Division of Environmental Protection by executive order under the authority of West Virginia Code §22-1-9.

1.9. Consultation with the Board of Miner Training, Education, and Certification. -- The Director will consult with the Board of Miner Training, Education, and Certification (Board) in establishing criteria and standards for a program of education, training, examination, and certification of blasters on surface mining operations and surface areas of underground mines.

The Board may, from time to time, conduct hearings and other oversight activities as may be required to ensure full implementation of the blaster certification program, or exercise other powers and duties granted pursuant to West Virginia Code §22A-7-5.

§38-2C-2. Definitions.

2.1. **"Active Blasting Experience"** means experience gained by a person who has worked on a blasting crew, supervised a blasting crew, or worked on a drilling crew which performed blasting operations. Two hundred forty working days constitutes one year of experience.

Experience may only be gained by "first-hand" participation in activities associated with the storing, handling, transportation and use of explosives or the immediate supervision of those activities within surface coal mines, and the surface areas of underground coal mines. Experience should be related to surface mine blasting; **Provided** that other related blasting experience (quarrying operations, etc.,) may be accepted by the Director on a case-by-case basis as qualifying experience.

2.2. **"Blast"** means any detonation(s) of an explosive(s) being initiated simultaneously by a single energy source.

2.3. **"Certified Blaster"** means a person who has taken and passed the examination described in subsection 5.2 of this rule, and has been issued a certification card by the Division of Environmental Protection.

2.4. **"Certified Examiner/Inspector"** means a person employed by the Division of Environmental Protection who administers training or examinations to applicants for certification as

certified blasters, or who inspects surface mining operations and who has taken and passed the examination described in subsection 5.1 of this rule.

2.5. "Detonation" means a chemical reaction resulting in rapid release of energy.

2.6. "Explosive(s)" means 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.

2.7. "Supervised a Blasting Crew" means that a person assumed responsibility for the conduct of a blasting crew(s) and that the crew(s) reported directly to that person.

2.8. "Surface Mine and Surface Area of Underground Mines" means all areas except underground workings surface mined or being surface mined, including adjacent areas ancillary to the operations, i.e., preparation and processing plants, storage areas, shops, haulageways, roads, and trails, which are covered by the provisions of West Virginia Code §22-3-1 et seq and rules promulgated under that article.

2.9. "Worked on a Drilling Crew" means that a person has directly participated in the loading, connecting, and preparation of blast holes and has detonated blasts.

2.10. "Worked on a Blasting Crew" means that a person has first-hand experience in storing, handling, transporting, and using explosives.

§38-2C-3. Certification of Blasters.

3.1. Requirements for Certification. ---In every surface mine and surface area of underground mine when blasting operations are being conducted, a certified blaster shall be responsible for the storage, handling, transportation, and use of explosives for each and every blast and for conducting the blasting operations in accordance with the blasting plans approved in a permit issued pursuant to West Virginia Code §22-3-1 et seq and rules promulgated under that article.

3.2. Qualifications for Certification. ---Each applicant for certification shall have had at least one year active blasting experience within the past five (5) years, and have demonstrated a working knowledge of and skills in the storage, handling, transportation, and use of explosives, and a knowledge of all state and federal laws pertaining thereto, by successfully taking and passing the examination for certification required by subsection 5.2 of this rule.

3.3. Application for Certification. -- Prior to taking the examination for certification, a person must submit an application to the Division of Environmental Protection to take the examination on forms prescribed by the Director. Upon receipt of an application for examination, the Director shall, after determining that the applicant meets the experience requirements of subsection 3.2 of this rule, notify the applicant of the date, time, and location of the scheduled examination.

§38-2C-4. Training. -- The Division of Environmental Protection will administer a training program to assist applicants for blaster certification or re-certification in acquiring the knowledge and skills required for certification. The training requirements shall include, at a minimum, those subject areas set forth in ~~subparagraph a k, paragraph 1~~ subdivision 5.1.a through 5.1.k of subsection 5.1 of this rule, subparagraph a k, paragraph 1 ~~subparagraphs 5.2.a.1 through 5.2.a.11 of subsection 5.2 of this rule,~~ and the requirements of Division of Environmental Protection Form MR-30-TR.

In lieu of completing the training program, the applicant for certification or re-certification may complete a self-study course using the study guide and other materials available from the Division of Environmental Protection.

38-2C-5. Examination for Certification of Examiner/Inspector and Certified Blaster.

5.1. Examinations for Certified Blaster Examiners/Inspectors. -- All persons employed by the Division of Environmental Protection, whose duties include, training, examining and certification of blasters and/or inspecting blasting operations shall be a certified examiner/inspector. Certification under the provisions of this subsection does not constitute certification under the provisions of subsection 5.2 of this rule; however, certification under subsection 5.2 of this rule is sufficient for certification under this subsection. The examination for certified examiner/inspector shall at a minimum test the applicant's knowledge of the information presented in the Study Guide for West Virginia Surface Mine Blasters, and shall consist of three parts:

5.1. Part 1: A written multiple choice examination covering:

5.1.a. Types of explosives and their properties, to include selection of appropriate explosives;

5.1.b. Blasting equipment and accessories, to include blasting machines;

5.1.c. Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;

5.1.d. Delay systems, to include pattern design, field layout, and initiation systems;

5.1.e. Timing;

5.1.f. Blast vibration and vibration control, to include airblast, monitoring techniques, and use of preblast surveys;

5.1.g. Loading and detonating, to include priming, scheduling, site control, warning signals, and unpredictable hazards;

5.1.h. Storage and transportation of explosives;

5.1.i. Record keeping and reporting;

5.1.j. Current state and federal laws and regulations relating to the storage, handling, transportation, and use of explosives; the training and certification of blasting personnel, and blasting signs; and

5.1.k. Responsibilities of a certified blaster.

5.1.b. Part 2: A written simulation whereby the applicant must correctly and properly complete a blasting log.

5.1.c. Part 3: A hands-on simulation whereby the applicant must demonstrate the ability to properly connect a blast, simulate a selected initiation system, and simulate detonating a blast.

5.1.d. 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 discretion of the Director.

5.2. Examination for Certified Blaster. -- The 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:

5.2.a. Part 1: A written multiple choice examination covering:

5.2.a.1. Types of explosives and their properties, to include selection of appropriate explosive(s);

5.2.a.2. Blasting equipment and accessories, to include blasting machines;

5.2.a.3. Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;

5.2.a.4. Delay systems, to include pattern design, field layout, and initiation systems;

5.2.a.5. Timing;

5.2.a.6. Blast vibration and vibration control, to include airblast, monitoring techniques, and use of preblast surveys;

5.2.a.7. Loading and detonating, to include priming, scheduling, site control, warning signals, and unpredictable hazards;

5.2.a.8. Storage and transportation of explosives;

5.2.a.9. Record keeping and reporting;

5.2.a.10. Current state and federal laws and regulations relating to the handling, storage, transportation, and use of explosives; the training and certification of blasting personnel, and blasting signs; and

5.2.a.11. Responsibilities of a certified blaster.

5.2.b. Part 2: A simulation examination whereby the applicant must correctly and properly complete a blasting log.

5.2.c. Part 3: A hands-on simulation whereby the applicant must demonstrate the ability to properly connect a blast, simulate a selected initiation system, and simulate detonating a blast.

5.2.d. 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.

5.3. Notification of Scores. -- The Division of Environmental Protection will notify all persons of their scores within 30 days of completing the examination. A person who fails to achieve a passing score of any of the three (3) parts of the examination, may apply after thirty (30) days of receipt of his or her examination results to retake the entire examination or any portions that the individual failed to pass.

Any person who fails to pass the exam on the second attempt must certify that he/she has taken or retaken the training course described in section 4 of this rule prior to applying for another examination.

§38-2C-6. Approval of Certification. -- Upon determination that an applicant for certification has satisfactorily passed the examination, the Director shall, within 30 days of the examination date, issue a certification card to the applicant.

§38-2C-7. Conditions or Practices Prohibiting Certification.
The Director shall not issue a blaster certification to persons who:

7.1. Are currently addicted to alcohol, narcotics or other dangerous drugs;

7.2. Have exhibited a pattern of conduct inconsistent with the acceptance of responsibility for blasting operations; or

7.3. Are convicted felons.

§38-2C-8. Re-certification Requirements for Certified Blaster.

8.1. Re-certification of Blasters. A certified blaster must be re-certified every three (3) years. Each applicant for re-certification must be currently certified and must document that he or she satisfactorily meets the experience requirements of subsection 3.2 of this rule and has retaken the training course described in section 4 of this rule within the past twelve (12) months prior to application. The application for re-certification must be submitted on forms prescribed by the Director.

8.2. Refresher Training Course/Self-Study Course. An applicant who does not meet the experience requirements of subsection 3.2 of this rule must take the refresher training course or complete the self-study course described in section 4 of this rule and must take and pass the examination required in subsection 5.2 of this rule.

§38-2C-9. Presentation of Certificate; Transfer; and Delegation of Authority.

9.1. Upon request by the Director, a certified blaster shall exhibit his or her blaster certification card.

9.2. The certified blaster shall take all reasonable care to protect his or her certification card from loss or unauthorized duplication, and shall immediately report any such loss or duplication to the Division of Environmental Protection.

9.3. Blaster's certifications may not be transferred or assigned.

9.4. Certified blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster.

§38-2C-10. Violations by a Certified Blaster.

10.1. The Director may issue a notice of violation against a certified blaster who is in violation of any of the following:

10.1.a. Failure to comply with any order issued by the Director;

10.1.b. Illegal use of drugs or narcotics, or any use of alcohol in the work place;

10.1.c. Violations of federal laws or regulations governing the purchase, use, handling, transportation, storage, or detonation of explosives;

10.1.d. False swearing in order to obtain a blaster's certification card; or

10.1.e. Any illegal or improper action taken by a certified blaster which may or has led to injury or death at a blast site.

§38-2C-11. Penalties.

11.1. Suspension. -- Upon service of a written notice of violation by the Director to a certified blaster, the Director may also, based on clear and convincing evidence of a violation, issue an order suspending his or her certification. Prior to the issuance of such an order, the certified blaster shall be granted a hearing before the Director to show cause why his or her certification should not be suspended.

The period of suspension will be conditioned upon the time period for completion of remedial measures to abate the violation as specified in the notice of violation. The Director may also require retraining or reexamination as a condition for reinstatement of certification.

11.2. Revocation. -- If the remedial action required to abate a notice of violation issued by the Director to a certified blaster is not taken within the specified time period for abatement, the Director may revoke the blaster's certification and require the blaster to relinquish his or her certification card. Revocation will occur if the certified blaster fails to retrain or fails to take and pass reexamination as a requirement for remedial action as described in subsection 11.1 of this section.

11.3. Civil and Criminal Penalties. -- Any certified blaster is subject to the individual civil and criminal penalties provided for in West Virginia Code §22-3-17.

§38-2C-12. Hearings and Appeals. -- Any certified blaster who is served a notice of violation, suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in West Virginia Code §22-3-16 and 17.

§38-2C-13. Blasting Crew. -- 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.

§38-2C-14. Reciprocity With Other States. -- The Director 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 Director, be certified without undergoing the training or examination requirements set forth in this rule.

DIVISION OF ENVIRONMENTAL PROTECTION

RULE TECHNICAL CLEAN UP

38CSR2C - "RULES FOR STANDARDS FOR CERTIFICATION OF BLASTERS -
SURFACE COAL MINES"

Filed January 22, 1997 with Judy Cooper, Secretary of State's
Office and Brenda Thompson, Counsel, Legislative Rule-Making

38 CFR 2C

Division of Environmental Protection

“On page 1, in the title, by inserting ‘Bureau of Environment’ on line after ‘Legislative Rule’, by inserting ‘Office of Mining and Reclamation’ on line after ‘Division of Environmental Protection’, and by inserting the words ‘Rules for’ before the word ‘Standards’ in the last line of title;

On page 3, section 4, in second sentence by deleting ‘subparagraph a-k, paragraph 1’ and inserting in lieu thereof ‘subdivision 5.1.a through 5.1.k of’, and by deleting in same sentence ‘subparagraph a-k, paragraph 1’ and inserting in lieu thereof ‘subparagraphs 5.2.a.1 through 5.2.a.11 of’

AND,

Beginning on page 3, subsection 5.1, and continuing throughout the rule, renumbering text breakdown to conform with Secretary of States’ Legislative Rules - 153CSR6.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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(Plus all the volunteer
help we can get)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 19 2 47 PM '97

FILED

TO: CARRIE CHAMBERS

AGENCY: DEP - OFFICE OF MINING AND RECLAMATION

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 7, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 2C TITLE: 38 DEP - OFFICE OF MINING AND RECLAMATION

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Carrie J. Chambers

TITLE OF PERSON SIGNING: _____

DATE: 8/19/97

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.