

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In this Box

**FILED**

JUN 13 1 43 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: mining + Reclamation  
WV Division of Environmental Protection TITLE NUMBER: 38

RULE TYPE: Legislative; CITE AUTHORITY WV Code 22-1-3

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: N/A

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2C

TITLE OF RULE BEING PROPOSED: Standards for Certification of  
Blasters - Surface Coal Mines

DATE OF PUBLIC HEARING: July 18, 1994 TIME: 9 a.m.

LOCATION OF PUBLIC HEARING: Director's Conference Room  
WV Division of Environmental Protection  
10 McJunkin Road  
Nitro, WV 25143

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Roger T. Hall

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Div. Environmental Protection  
10 McJunkin Road  
Nitro, WV 25143

Roger T. Hall  
Roger T. Hall



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

OFFICE OF THE SECRETARY  
State Capitol, Room M-146  
Charleston, West Virginia 25305-0310  
Telephone: (304) 558-0400  
Fax No.: (304) 558-4983

GASTON CAPERTON  
Governor

THOMAS J. GILLOOLY  
Acting Cabinet Secretary

June 9, 1994

David C. Callaghan  
Division of Environmental Protection  
#10 McJunkin Road  
Nitro, West Virginia

Re: Proposed Exempt Legislative Rule, Title 38, Series 2C,  
Blasters' Certification

Dear Dave:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby  
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the  
Secretary of State as evidence of my consent.

Sincerely yours,

Thomas J. Gillooly  
General Counsel and  
Acting Secretary

TJG/ss

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

JUN 13 1 43 PM '94

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DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road  
Nitro, WV 25143-2506

Gaston Caperton  
Governor

John M. Fanson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

## MEMORANDUM

TO: Thomas J. Gillooly  
Acting Cabinet Secretary  
CLER

FROM: Roger T. Hall *RTH*  
Special Assistant to Director  
DEP

DATE: June 1, 1994

SUBJECT: Draft Rule - Blaster's Certification

Pursuant to Chapter 5F of the West Virginia Code, any new agency rules to be filed with the Secretary of State's Office for public comment and review require the approval of the Secretary of CLER. In that regard, submitted herewith is a draft rule for Blaster Certification (38-CSR-2C).

You will note that there are several amendments in the draft rule relating to violations, penalties, and appeals. This is necessary because it has come to our attention that there are no provisions under DEP to revoke or suspend certification or otherwise penalize certified blasters who are in violation of the Code or rules. In the past several months we have encountered cases where illegal blasting has endangered life and property. In that regard, we propose to file this rule as an emergency rule. The rule will be simultaneously filed as a Legislative Rule for processing in accordance with Chapter 29A.

If you have any questions regarding this matter, please feel free to contact me.

RTH:cc

Attachment

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Standards for Certification of Blasters - Surface Coal Mines

**Type of Rule:**  Legislative     Interpretive     Procedural

**Agency** Division of Environmental Protection

**Address** 10 McJunkin Road

Nitro, West Virginia 25143

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-
CURRENT EXPENSE	-0-	-0-	-0-	-0-	-0-
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

**2. Explanation of above estimates:**

This proposed rule will not result in an increase or decrease in revenue to the State.

**3. Objectives of these rules:** 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 Chapter 22, Article 3 of the Code of West Virginia and the rules promulgated thereunder.

**Rule Title:** Standards for Certification of Blasters - Surface Coal Mines

**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:** June 10, 1994

**Signature of Agency Head or Authorized Representative**

Roger V. Hall

Roger V. Hall  
Special Assistant to  
Director

## **SUMMARY**

**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 Chapter 22, Article 3, of the code of West Virginia and the rules promulgated thereunder.**

FILED

TITLE 38  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION

JUN 13 1 43 PM '94

SERIES 2C  
STANDARDS FOR CERTIFICATION OF BLASTERS - SURFACE

OFFICE OF WEST VIRGINIA  
COMPTROLLER OF STATE

**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 Chapter 22, Article 3 of the Code of West Virginia and the rules promulgated thereunder.

**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** -

**1.4. Effective Date** -

**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 (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.

### **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 examination 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.

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

**2.10. "Worked on a Blasting Crew"** means that a person has first-hand experience in storing, hauling, 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 will be responsible for the storage, handling, transportation, and use of explosives for each and every blast and for conducting such 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 thereunder.

**3.2. Qualifications for Certification.** Each applicant for certification will 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 an examination for certification required by Section 5.2 of this rule.

**3.3. Application for Certification.** Prior to taking an examination for certification, a person must submit an application to take such examination on forms prescribed by the Director. Upon receipt of an application for examination, the Director will, 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 recertification in acquiring the knowledge and skills required for certification. The training requirements will include, at a minimum, those subject areas set forth in subparagraph a-k, paragraph 1, subsection 5.1 of this rule, subparagraph a-k, paragraph 1, subsection 5.2 of this rule, and the requirements of Division of Environmental Protection MR-30-TR.

**38.2C.5. Examination for Certification of Examiners/Inspectors and Blasters.**

**5.1. Examinations for Certified Blaster Examiners/Inspectors -** All persons employed by the Division of Environmental Protection, whose duties will include, training, examining and certifying blasters and/or inspecting blasting operations will be certified examiners/inspectors. 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 would suffice for certification under this subsection. The examination for certified examiner/inspector will at a minimum test the applicant's knowledge of the information presented in the Study Guide for West Virginia Surface Mine Blasters, and will consist of three parts:

**5.1.1. Part 1:** A written multiple choice examination covering:

- 5.1.1.a.** Types of explosives and their properties, to include selection of appropriate explosives;
- 5.1.1.b.** Blasting equipment and accessories, to include blasting machines;

- 5.1.1.c. Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;
- 5.1.1.d. Delay systems, to include pattern design, field layout, and initiation systems;
- 5.1.1.e. Timing;
- 5.1.1.f. Blast vibration and vibration control, to include airblast, monitoring techniques, and use of preblast surveys;
- 5.1.1.g. Loading and detonating, to include priming, scheduling, site control, warning signals, and unpredictable hazards;
- 5.1.1.h. Storage and transportation of explosives;
- 5.1.1.i. Record keeping and reporting;
- 5.1.1.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
- 5.1.1.k. Responsibilities of a certified blaster.

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

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

5.1.4. A score of 70 percent (70%) for part 1, and satisfactorily 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 will include information presented in the Study Guide for West Virginia Surface Mine Blasters, and will consist of three (3) parts:

**5.2.1. Part 1:** A written multiple choice examination covering:

- 5.2.1.a. Types of explosives and their properties, to include selection of appropriate explosive(s);
- 5.2.1.b. Blasting equipment and accessories, to include blasting machines;
- 5.2.1.c. Blast dimensions and calculations, to include geologic and topographic considerations, blast hole design, flyrock control, secondary blasting, and blast plans;
- 5.2.1.d. Delay systems, to include pattern design, field layout, and initiation systems;
- 5.2.1.e. Timing;
- 5.2.1.f. Blast vibration and vibration control, to include airblast, monitoring techniques, and use of preblast surveys;
- 5.2.1.g. Loading and detonating, to include priming, scheduling, site control, warning signals, and unpredictable hazards;
- 5.2.1.h. Storage and transportation of explosives;
- 5.2.1.i. Record keeping and reporting;
- 5.2.1.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
- 5.2.1.k. Responsibilities of a certified blaster.

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

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

**5.2.4.** 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. 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 subsection 3.4 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 will, within 30 days of the examination date, issue a certification card to the applicant.

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

- 7.1. Are currently addicted to alcohol, narcotics or other dangerous drugs; or
- 7.2. Have exhibited a pattern of conduct inconsistent with the acceptance of responsibility for blasting operations.

**38.2C.8. Recertification Requirements for Certified Blaster.** -

8.1. A certified blaster must be recertified every three (3) years. Each applicant for recertification must be currently certified and must document that the applicant satisfactorily meets the experience requirements of subsection 3.2 of this rule and has completed the refresher training course as described in subsection 3.4 of this rule within the past twelve (12) months prior to application. The application for recertification must be submitted on forms prescribed by the Director.

8.2. An applicant who does not meet the experience requirements of subsection 3.2 of this rule must take the refresher training course described in subsection 3.4 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 will exhibit his or her certification card.

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

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

9.4. Certified blasters will not delegate their authority or responsibility to any individual who is not a certified blaster in accordance with this rule.

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

10.1. The Director may issue a notice of violation, a cessation order and/or take other action against a certified blaster who is in violation of the provisions of Chapter 22, Article 3, of the Code of West Virginia, rules promulgated thereunder, or any of the following:

10.1.1. Failure to comply with any order issued by the Director.

10.1.2. Illegal use of drugs or narcotics, or any use of alcohol in the workplace.

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

10.1.4. False swearing in order to obtain a blaster's certification card.

10.1.5. 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 or a cessation order by the Director to a certified blaster, the Director may also suspend certification. 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 or cessation order, provided, That 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 or a cessation order 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 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 will be subject to the individual civil and criminal penalties provided for in Section 17, Article 3, Chapter 22 of the Code of West Virginia.

**38.2C.12. Hearings and Appeals** - Any certified blaster who is served a notice of violation, cessation order, suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in Sections 16 and 17, Article 3, Chapter 22 of the Code of West Virginia.

**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, will receive directions and on-the-job training from a certified blaster.

**38.2C.14. Reciprocity With Other States** - Upon a recommendation by the Division of Environmental Protection, the Director may enter into a reciprocal agreement with other states wherein persons holding a valid certification in the 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.