

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

Mining & Reclamation

AGENCY: Division of Environmental Protection TITLE NUMBER: 38

CITE AUTHORITY WV Code 22-1-3, 22-1-3a, 22-3-4(b)(1) and 22-3-13(b)(15)(D)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 20

TITLE OF RULE BEING PROPOSED: Standards for Certification of
Blasters - Surface Mine Operations

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. Hall

Roger T. Hall
Special Assistant to Director

5-60



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

10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Laidley Eli McCoy
Deputy Director

July 21, 1994

Ms. Judy Cooper
Director, Administration Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

RE: CSR 38-2-2C - Standards for Certification
of Blasters - Surface Coal Mines

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule with your Office and the Legislative Rule-Making Review Committee as an approved agency rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "D. Callaghan".

David C. Callaghan
Commissioner
Bureau of Environment

DCC;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 McDunkin Road
Nitro, West Virginia 25143

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ -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

DATE: July 20, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Environmental Protection Mining & Reclamation

LEGISLATIVE RULE TITLE: Standards for Certification of Blasters -
Surface Coal Mines

1. Authorizing statute(s) citation WV Code 22-13, 22-1-3a
22-3-4(b)(1) and 22-3-13(b)(15)(D)

2. a. Date filed in State Register with Notice of Hearing
June 13, 1994

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

General Distribution - News Release (Approximately
100 News Sources)

c. Date of Hearing(s) July 18, 1994

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)

July 22, 1994

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

Roger T. Hall (304) 759-0515

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.

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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.

TITLE 38
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION

SERIES 2C
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 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.

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 Chapter 22A, Article 7, Section 5 of the Code of West Virginia.

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 thereunder.

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 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 the Division of Environmental Protection 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 Form MR-30-TR.

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 will include, training, examining and certification of blasters and/or inspecting blasting operations will 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 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 storage, handling, transportation, and use 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 initiation 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 handling,

storage, transportation, and use 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 initiation 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 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 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;
- 7.2.** Have exhibited a pattern of conduct inconsistent with the acceptance of responsibility for blasting operations; or

7.3. Is a convicted felon.

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 Section 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 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 will exhibit his or her blaster certification card used by the Division of Environmental Protection.

9.2. The certified blaster will take all reasonable care 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.

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 as provided in Sections 16 and 17, Article 3, Chapter 22 of the Code of West Virginia 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 his/her 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 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.

PUBLIC COMMENTARY RECORD

PROPOSED LEGISLATIVE RULE

DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF ENVIRONMENT

CSR 38-2C
STANDARDS FOR CERTIFICATION OF BLASTERS
SURFACE COAL MINES

The Division of Environmental Protection (DEP) filed a proposed legislative rule with the Secretary of State on June 13, 1994, announcing a thirty- (30) day public comment period. Pursuant to West Virginia Code §22-1-3, a public hearing was scheduled for July 18, 1994 at 9:00 a.m. at the DEP Headquarters Office in Nitro, West Virginia.

The public comment period and public hearing yielded no comments on the proposed rule. During the comment period, DEP met with the members of the Board of Miner Training, Education, and Certification at one of their regularly-scheduled meetings. The Board expressed a desire to be given input to the blasters certification program and to be provided an opportunity to consult with DEP on the program. General authority for such action is found in West Virginia §22A-7-5 (Board of Powers and Duties). Therefore, the DEP has agreed to amend the rule by adding a new subsection (subsection 1.9) to Section 1.

PUBLIC HEARING ATTENDEES:

Tony Grbac - Division of Environmental Protection

Roger T. Hall - Division of Environmental Protection

Brian Farkas - Division of Environmental Protection