

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

Division of Environmental Protection/Office of
AGENCY: Mining & Reclamation TITLE NUMBER: 38

CITE AUTHORITY West Virginia 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 X

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Roger J. Hall
Roger J. Hall
Special Assistant to Director



BUREAU OF ENVIRONMENT
10 McJUNKIN ROAD
NITRO, WV 25143-2506

GASTON CAPERTON
GOVERNOR

DAVID C. CALLAGHAN
COMMISSIONER

April 26, 1995

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

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

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule as a final filing and adoption of a legislative rule authorized by the West Virginia Legislature.

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 dark ink, appearing to read "D. Callaghan", written over the typed name and title.

David C. Callaghan
Commissioner
Bureau of Environment

DCC;RTH:cc

Attachment



DIVISION OF ENVIRONMENTAL PROTECTION

GASTON CAPERTON
GOVERNOR

10 McJunkin Road
Nitro, WV 25143-2506

DAVID C. CALLAGHAN
DIRECTOR

August 10, 1994

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

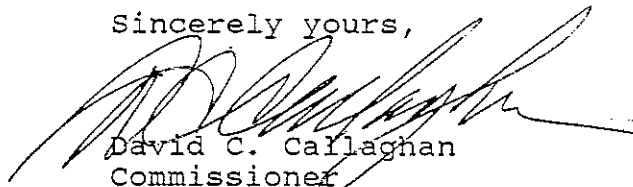
RE: CSR-38-2C - Standards for Certification of
Blasters - Surface Mine Operations

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 with Legislative Rule-Making Review Committee as modification of a proposed 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,



David C. Callaghan
Commissioner
Bureau of Environment

DCC;RTH:cc

Attachment

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ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Environmental Protection/Office of Mining & Reclamation 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: _____

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

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Robert Nell

Authorized Signature

178 mental protection to meet the objections of the legislative
179 rule-making review committee and refiled in the state
180 register on the twenty-eighth day of July, one thousand
181 nine hundred ninety-four, relating to the division of envi-
182 ronmental protection (state water pollution control revolv-
183 ing fund program, 47 CSR 31), are authorized.

47-36 184 (o) The legislative rules filed in the state register on
185 the fifteenth day of August, one thousand nine hundred
186 ninety-four, relating to the division of environmental pro-
187 tection (underground storage tanks, 47 CSR 36), are au-
188 thorized.

47-35 189 (p) The legislative rules filed in the state register on
190 the fifteenth day of August, one thousand nine hundred
191 ninety-four, modified by the division of environmental
192 protection to meet the objections of the legislative
193 rule-making review committee and refiled in the state
194 register on the thirteenth day of January, one thousand
195 nine hundred ninety-five, relating to the division of envi-
196 ronmental protection (hazardous waste management regu-
197 lations, 47 CSR 35), are authorized.

38-2C 198 (q) The legislative rules filed in the state register on
199 the twenty-second day of July, one thousand nine hundred
Amend. 200 ninety-four, modified by the division of environmental
201 protection to meet the objections of the legislative
202 rule-making review committee and refiled in the state
203 register on the twenty-ninth day of August, one thousand
204 nine hundred ninety-four, relating to the division of envi-
205 ronmental protection (standards for certification of envi-
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208 On page 4, section 38.2C.4, after the words "Form
209 MR-30-TR." by inserting a second paragraph to read as
210 follows:

211 "In lieu of completing the training program, the appli-
212 cant for certification or re-certification may complete a
213 self-study course using the study guide and other materi-

214 als available from the Division of Environmental Protec-
215 tion."

216 On page 8, subsection 8.2, after the words "refresher
217 training course" by inserting the phrase "or complete the
218 self-study course."

219 On page 8 at subsection 10.1 by striking out the
220 phrase "a cessation order and/or take other action as pro-
221 vided in West Virginia Code 22-3-16 and 17" and the
222 phrase "the provisions of West Virginia Code 22-3-1 et
223 seq., rules promulgated under that article, or".

224 On page 9, subsection 11.1, by striking out the subsec-
225 tion and inserting in lieu thereof a new subsection to read
226 as follows: "11.1. **Suspension** - Upon service of a written
227 notice of violation by the Director to a certified blaster, the
228 Director may suspend his or her certification. Prior to the
229 issuance of such an order, the certified blaster shall be
230 granted a hearing before the Director to show cause why
231 his or her certification should not be suspended."

232 On page 9, subsection 11.2, by striking out the phrase
233 "or cessation order" in the first sentence.

234 On page 9, Section 12, by striking out the phrase
235 "cessation order".

38-2d 236 (r) The legislative rules filed in the state register on the
237 fifteenth day of August, one thousand nine hundred
238 ninety-four, modified by the division of environmental
239 protection to meet the objections of the legislative
240 rule-making review committee and refiled in the state
241 register on the sixth day of January, one thousand nine
242 hundred ninety-five, relating to the division of environ-
243 mental protection (rules and regulations relating to aban-
244 doned mine lands and reclamation, 38 CSR 2D), are au-
245 thorized.

45-2
Amend. 246 (s) The Legislature hereby authorizes and directs the
247 division of environmental protection to promulgate the
248 legislative rules filed in the state register on February,



DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

DAVID C. CALLAGHAN
DIRECTOR

August 26, 1994

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

RE: CSR-38-2C - Standards for Certification of
Blasters - Surface Mine Operations

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 with Legislative Rule-Making Review Committee as modification of a proposed 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

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 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 -

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, 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 Section 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 recertification 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, 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 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:

5.1.1. 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 shall include information presented in the Study Guide for West Virginia Surface Mine Blasters, and shall 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 simulation examination 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 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. 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 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 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 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, a cessation order and/or take other action as provided in West Virginia Code 22-3-16 and 17 against a certified blaster who is in violation of the provisions of West Virginia Code 22-3-1 et seq, rules promulgated under that article, 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; or

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 or 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. 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 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 3 22-3-17.

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 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.

