

FEDERAL REGISTER: 44 FR 38318 (June 29, 1979)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM)

30 CFR Ch. VII

Training Programs for Blasters and Members of Blasting Crews and Certification Programs for Blasters.

ACTION: Reproposed rules for Subchapter M.

SUMMARY: The Office of Surface Mining -- Reclamation and Enforcement is seeking comments on reproposed rules which would implement Sections 515(b)(15)(D) and 719 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Section 515(b)(15)(D) requires that all blasting operations be conducted by trained and competent persons as certified by the regulatory authority. Section 719 requires the promulgation of regulations requiring the training, examination, and certification of persons engaged in or directly responsible for blasting or the use of explosives in surface coal mining and reclamation operations.

DATES: Comments must be received at the addresses below on or before August 28, 1979, by no later than 5:00 p.m. For public hearings dates, see Public Hearings.

ADDRESSES: Written comments must be mailed to Office of Surface Mining, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20044, or must be hand-delivered to Office of Surface Mining, Room 135, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240. All comments will be available for inspection at Room 135, South Interior Building. For public hearings addresses, see Public Hearings.

FOR FURTHER INFORMATION CONTACT: David R. Maneval, Assistant Director, Technical Services and Research, Office of Surface Mining, U.S. Department of the Interior, Telephone: 202-343-4264.

SUPPLEMENTARY INFORMATION:

On September 18, 1978, the Office published proposed regulations in 43 FR 41934-41936, governing certification and training of blasters and blaster learners. As a result of comments received and other factors, the Office has concluded that these regulations should be reproposed. A detailed preamble accompanies these reproposed rules to explain the rationale and supporting source material for the substantial changes made in this Subchapter. The Office is particularly grateful to those who took the time and effort to review the previously proposed rules and submit comments. The comments are helpful in redrafting this portion of OSM regulations, and the preamble to reproposed Subchapter M contains discussions of changes made in response to public comments.

COMPLIANCE WITH 43 CFR PART 14

Department regulations at 43 CFR Part 14 implementing Executive Order 12044 (March 23, 1978) became effective on January 26, 1979. Section 14.1 provides in subsection (c)(2) that

The procedures of this part are applicable to all rules developed after the effective date of the part. It is also applicable to rules in development on the effective date of the part, except that, if a step in the development process (such as issuance of a notice of proposed rulemaking) has been completed, this part does not require that this or earlier steps be repeated or taken.

The proposed rules for Subchapter M being published today are in fact a reproposal of the Subchapter M rules first proposed on September 18, 1978 (43 FR 41661-41940). As noted elsewhere in this preamble, an environmental impact statement and regulatory analysis were prepared for the September 18, 1978, rulemaking. To the extent determined by OSM to be necessary, those documents analyzed issues relevant to Subchapter M. In addition, as explained in the preamble to the permanent program rules, 44 FR 14908, March 13, 1979, the public had numerous and lengthy opportunities to comment during that rulemaking proceeding.

These prior administrative actions followed by OSM in developing regulations for training, examination and certification of blasters, consistent with 43 CFR 14.1, have sufficiently fulfilled all provisions of 43 CFR insofar as they are applicable to this stage of the rulemaking process. Other requirements of 43 CFR Part 14, insofar as they are applicable to promulgating final rules for Subchapter M, will be fulfilled.

PUBLIC COMMENT PERIOD

The comment period of these repropsoed rules will extend until August 28, 1979. All written comments must be received at the addresses given above by 5:00 p.m. on that date. Comments received after that hour will not be considered or included in the administrative record for the final rulemaking.

The Office cannot ensure that written comments received or delivered during the comment period to locations other than those specified above will be considered and included in the administrative record for the final rulemaking.

AVAILABILITY OF COPIES

Copies of these repropsoed regulations are available for inspection, and copies may be obtained from the following offices:

OSM Headquarters, U.S. Department of the Interior, South Building, Room 120, 1951 Constitution Ave., N.W., Washington, D.C. 20240, 202-343-4728.

OSM Region I, Thomas and Hill Building, 1st Floor, 950 Kanawha Boulevard East, Charleston, West Va. 25301, 304-342-8125.

OSM Region II, Suite 500, 530 Gay Street, S.W., Knoxville, Tenn. 37902, 615-637-8060.

OSM Region III, Federal Building and U.S. Courthouse, Room 502, 46 East Ohio Street, Indianapolis, Ind. 46204, 317-269-2600.

OSM Region IV, Scarritt Building, 5th Floor, 818 Grand Avenue, Kansas City, Mo. 64106, 816-374-2618.

OSM Region V, Post Office Building, 1823 Stout Street, Denver, Colorado 80202, 303-837-5511.

PUBLIC HEARINGS

Public hearings on these regulations will be held on July 31, 1979, to hear all those who wish to testify. The hearings will be held at the following locations and will begin at 9:30 a.m. local time at each location.

Washington -- Department of the Interior Auditorium, 18th and C St., N.W., Washington, D.C.

Charleston -- Holiday Inn, Charleston House, 600 Kanawha Blvd. East, Charleston, West Virginia

Knoxville -- 5th Floor Conference Room, 530 Gay Street, Knoxville, Tennessee

Indianapolis -- Indiana World War Memorial Auditorium, 431 North Meridian St., Indianapolis, Indiana

Kansas City -- Room 140, Federal Building, 601 E. 12th Street, Kansas City, Missouri

Denver -- Room 269, Post Office Building, 1823 Stout Street, Denver, Colorado

Persons wishing to testify at the public hearings on these repropsoed regulations should contact the appropriate persons listed below under Public Meetings.

Individual testimony at these hearings will be limited to 15 minutes. The hearings will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful and would facilitate the job of the court reporter. Submission of written statements in advance of the hearings would greatly assist OSM officials who will attend the hearings. Advance submissions will give these officials an opportunity to consider appropriate questions which could be asked to clarify or to request more specific information from the person testifying.

Each public hearing will continue on the day identified above until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. The hearings will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

The hearing located in Kansas City, Missouri, will follow the above procedure with one exception. If the hearing which commences at 9:30 a.m. is adjourned before 7:00 p.m., an evening session will commence at 7:00 p.m. and end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard.

PUBLIC MEETINGS

Representatives of the Office will be available to meet between July 2, 1979 and August 28, 1979, at the request of members of the public, State representatives, industry officials, labor representatives, and environmental organizations to receive their advice and recommendations concerning the content of these repropoed regulations.

Persons wishing to meet with representatives of OSM during this time period may request a meeting at the Washington office or any of the five regional offices. Persons to contact to schedule or attend such meetings are as follows:

Washington -- (202) 343-6101, Jean McIntyre
Charleston -- (304) 345-4720, Lynne McKenzie
Knoxville -- (615) 637-8060, Ext. 209, Robert Stansfield
Indianapolis -- (317) 269-2600, Nona Daily
Kansas City -- (816) 374-2193, Kerry Cartier
Denver -- (303) 837-5656, Nancy FitzSimmons

OSM representatives will be available for such meetings between 9:00 a.m. and noon and 1:00 and 4:00 p.m., local time, Monday through Friday, excluding holidays, at these locations. All such meetings are open to the public. Advance notices of the meetings will be publicly posted where the meeting is scheduled. A written summary of the nature of the meeting will be a part of the administrative record and will be available to the public.

PUBLIC COMMENTS

Written and oral comments should be as specific as possible. The Office will appreciate any and all comments, but those most useful and likely to influence decisions on these regulations will be those which include a rationale based on fact, not opinion, for any given recommendation.

GOVERNMENT ACCOUNTING OFFICE (GAO) REVIEW

OSM is considered an independent Federal regulatory agency for purposes of 44 U.S.C. Sections 3502 and 3512 (30 U.S.C. Section 1211(e)). As a result, all of its regulations which impose recordkeeping and reporting requirements on members of the public, as defined by GAO regulations, must be submitted to GAO for clearance before becoming final (4 CFR Part 10). To assist the Office and GAO in analyzing the recordkeeping and reporting burdens and possible duplication created by these proposed rules, the public is specifically requested to consider portions of these regulations which impose recordkeeping and reporting requirements. Specific comments concerning these recordkeeping and reporting requirements, including cost estimates and man-hour requirements, as well as whether other Federal agency recordkeeping or reporting requirements are being duplicated, would greatly assist the Office in determining whether the requirements should be modified.

REGULATORY ANALYSIS

The Final Regulatory Analysis (RA) which accompanied the permanent regulatory program of the Surface Mining Control and Reclamation Act of 1977 was published in March, 1979. The RA analyzed two of the issues discussed in the preamble to repropoed Subchapter M, and the RA has been appropriately referenced in the discussion of those issues. Since the economic impacts of alternatives to be considered in implementing the final rules of Subchapter M are not considered to be significantly different, the Office is of the opinion that no additional analyses of this type will be necessary.

ENVIRONMENTAL IMPACT STATEMENT

The Office has determined that environmental impacts resulting from the blaster training and certification program are not significant enough to warrant an environmental impact study.

SUBCHAPTER M -- TRAINING PROGRAMS FOR BLASTERS AND MEMBERS OF BLASTING CREWS, AND CERTIFICATION PROGRAMS FOR BLASTERS

Subchapter M has been substantially changed from the proposed rules (43 FR, pp. 41934-41936, September 18, 1978) due to comments received and for the following reasons:

1. To limit Office requirements for training, examination, and certification so that only those requirements necessary to implement the Act are imposed.

2. To eliminate duplication of effort and to more appropriately apportion responsibility in developing and administering training and certification programs for persons engaging in or directly responsible for blasting or use of explosives in surface coal mining and reclamation operations.

3. To make affected portions consistent with the Equal Employment Opportunity Commission (EEOC) Uniform Guidelines on Employee Selection Procedures (43 FR, p. 38290, August 25, 1978).

4. To make the appeals system for decisions on suspension and revocation of blasters' certificates consistent with Section 526(e) of SMCRA and 43 CFR Part 4.

I. LIMITING TRAINING, EXAMINATION, AND CERTIFICATION REQUIREMENTS

Some proposed decisions to limit Office requirements for training, examination, and certification were necessary to comply with the EEOC Uniform Guidelines on Employee Selection Procedures. These limitations are discussed under item III of the preamble to this Subchapter.

The following discussions explain how and why other specific rules are proposed for adoption to limit Office requirements for training, examination, and certification.

A. TRAINING AND CERTIFICATION OF BLASTING CREWS [Sections 850.11(b), 850.12(c), 851.13(a) in previously proposed rules]

Comments from industry have indicated that many blasting crew members are short-term laborers who perform routine labor tasks such as filling in blast holes or carrying explosive materials from the truck. These laborers "bid" (apply) for other jobs in the coal mining operation as opportunities become available to them and have little interest in continuing to work on blasting crews. Commenters point out that to require formal training and examination for these workers would result in an expensive and ongoing training program which would duplicate much of what MSHA already requires.

Some commenters indicated the OSM could certify blaster learners, but suggested excluding one or more various groups of laborers who --

1. Load, unload, or transport explosives;
2. Place stemming in boreholes;
3. Cover Primacord with earth, and hand explosives to certified persons loading holes; and
4. Engage in inventory and restocking.

These commenters alleged that certification of everyone who engages in blasting use of explosives is not necessary to ensure compliance with Office blasting requirements. Also, requiring operators to use only certified people to perform the laborer tasks listed above will restrict flexibility and adversely affect safety and efficiency. The high rate of turnover in these groups, many of whom leave their jobs after a short time, makes it administratively impractical and expensive to require certification and also creates a shortage of qualified people to conduct blasting.

Other commenters asserted that OSM's only concern should be that blasting operations be directly supervised by a certified blaster. Certification of blaster learners, as that term was defined in the previously proposed rules, is unnecessary and would create excessive, continuing training and certification programs for people who have no intention of continuing to work in blasting.

One commenter stated that various certifications, based only on the "need-to-know" for each job, assure better training for the job through experience and would not be disruptive for existing operations. For example, the person who loads holes needs only to understand the serious consequences of failure to follow established procedures set up by the blaster-in-charge.

One commenter averred that certifying "learners" places undue hardships on many individuals, especially those in smaller operations who assist in blasting activities only when needed. This commenter believes MSHA-required training is enough instruction to ensure that temporary laborers can safely assist in blasting activities and that certifying everyone who works on blasting is too restrictive for efficient surface coal mining and reclamation operations and is not necessary for safety.

MSHA requires, under 30 CFR 48.1-48.32 comprehensive health and safety training programs for new miners, newly employed experienced miners, experienced miners assigned to new tasks, and short-term, specialized (blasting) contract workers who work at surface and underground mines. MSHA training programs include the following provisions which are relevant to the question of whether OSM should require that members of blasting crews be trained before assuming such duties:

1. All new miners must successfully complete training in health and safety aspects of assigned tasks and in hazard recognition (particularly hazards related to explosives) before assumption of duties
2. Newly employed experienced miners must successfully complete training in health and safety standards pertinent to assigned tasks and in hazard recognition (particularly hazards related to explosives) before assumption of duties.
3. Each miner must receive a minimum of 8 hours' annual refresher training which includes mandatory health and safety requirements related to the miner's tasks and a review and instructions on the hazards related to explosives.
4. Miners assigned to new work tasks (e.g., mobile equipment operators or blasting operations) cannot perform the new tasks until task training has been completed. Task training includes --
 - a. Health and safety aspects and safe operating procedures for work tasks, equipment, or machinery,
 - b. Supervised practice during nonproduction, and
 - c. Supervised operation during production.
5. Specialized short-term contract workers, such as drillers and blasters, must receive, at least once, the same training as newly employed experienced miners. Thereafter, these workers must be provided "hazard training" by the operator, at least annually. Such training includes hazard recognition and avoidance, health and safety standards, safety rules, and safe working procedures.
6. Each mine operator must have an MSHA-approved training plan containing the foregoing elements. Depending on circumstances and conditions at the mine, the MSHA Training Center Chief may require additional training. For example, if new miners are to be assigned other than simple tasks which require only oral instruction, or if new miners are not to receive continuous direct supervision, MSHA can require task training and additional formal instruction before these new miners commence their work duties. MSHA retained this flexibility in training requirements so that all miners will receive whatever training is needed to perform their tasks safely, regardless of the site, conditions, and type of mining operations where they are employed.

After review of MSHA training requirements and review of all public comments, the Office is of the opinion that formal training, examination, and certification of blasting crew members may not be necessary to ensure that blasting in surface coal mining and reclamation operations meets Office standards. It is proposed that the following conditions and requirements of proposed Subchapter M, together with the MSHA training requirements described above, would meet the intent of the Act that blasting activities in surface coal mining and reclamation operations be conducted and controlled by competent blasting personnel who know how to use explosives to accomplish coal recovery and, at the same time, protect the public safety and environment, in accordance with Office blasting standards.

1. Blasters-in charge would be required to pass a national, rigorous, validated qualifying examination and meet valid experience requirements which cover all knowledge, skill, and abilities necessary to implement Office blasting standards.
2. Blasting crews would be limited to 12 crew members, under the *direct* supervision of a certified blaster-in-charge.
3. A primary specific duty of the blaster-in-charge would be to ensure that crew members are given adequate instruction and/or on-the-job training to perform their tasks in accordance with Office standards. The operator would also be held responsible for providing such training.
4. The blaster-in-charge would be required to be tested and certified as to whether he or she can properly instruct crew members to perform assigned tasks in accordance with Office requirements.
5. The blaster-in-charge would be held responsible for making and implementing decisions regarding blast design and execution which affect Office standards.
6. The experience requirements for blaster certification will be determined through validity studies. The Office expects that different types, as well as length, of experience will be required. When the operators are aware of this, they will be much more likely than previously to have an on-the-job apprentice program for potential future blasters; and those crew members who perform the varied and more difficult blasting tasks will be better trained than before these proposed rules were promulgated.
7. Under the proposed rules, the regulatory authority would, upon request, provide training materials and would provide instructor training. Whenever resources permit, the regulatory authority would conduct training courses in blasting for employees, especially those of small operators. These courses would be broken down into units which teach simple to

complex blasting tasks. Thus, the regulatory authority will make available, but will not require, any training for blaster helpers.

However, operators and blasters-in-charge will need blaster assistants who can perform more complex blasting tasks without continuous supervision during blast preparation. It will be too time-consuming and inefficient for the blaster-in-charge to continuously instruct and watch every blasting crew member. Operators will also be aware of the need for future certified blasters -- unless enough certified people are available, operators will find themselves very restricted in preparing and executing shots. The obvious solution to these problems will be the selection of those motivated and able crew members for formal training course, as well as varied blasting tasks. As a result, those crew members who actually work full-time in blasting operations will be far better trained than if OSM required, as in the previously proposed rules, an "introductory" course and accompanying test for all blasting workers.

Additionally, after examining the major alternatives as to who must be certified to ensure that blasting is conducted in accordance with Office standards, the Office proposes to select the least costly alternative that meets the basic requirements of Section 719 of the Act. (See pp. 126-127 of the final Regulatory Analysis, OSM-RA-1.)

B. TRAINING OF BLASTERS [Section 850.11(c) in previously proposed rules)

The Office proposes to delete the requirement that applicants for blaster certification present proof of completion of MSHA training. Since the examination for blasters will cover all skills and knowledge necessary to conduct blasting in accordance with Office standards, the Office believes the requirement to present such proof is unnecessary.

II. PROGRAM RESPONSIBILITIES.

A. SECTION 850.4 [SECTION 850.3 IN PREVIOUSLY PROPOSED RULES)

A number of changes are proposed in assigning responsibilities for implementing training and certification programs for blasters. This re-proposed allocation of function represents the most efficient and effective way to implement the mandates of Section 515(b)(15)(D) and Section 719 of the Act. (See p. 128 of the final Regulatory Analysis, OSM-RA-1.)

1. It is proposed that the Director is responsible for developing, through validity studies, all experience requirements for certification and recertification, as well as standardized course materials. Since sound validity studies require large representative samples and since such work is costly, the Office has consolidated responsibility for all Office-imposed training course development and test development under the Director. National studies will have readily available large samples and will prevent costly duplication of effort through regional or State studies. If States impose additional examination requirements, they will be responsible for developing valid examinations and valid training materials to cover those requirements and for making such training materials available upon request.

2. It is proposed that the responsibility of the regulatory authority to train all would-be blasters (blaster learners) be deleted. As in the previously proposed rules, no specific training would be required for blaster certification. Certification would be granted instead on the basis of experience and examination scores. Many practicing blasters may need to formal training to meet those requirements, others may need training in some areas, and still others may need training in all areas to enable them to pass the examination.

To accommodate individual training needs and to provide the flexibility necessary for efficient and timely delivery of needed training, it is proposed that responsibilities be assigned differently. Instead of providing or supervising all training as proposed in the earlier regulations, the regulatory authority would be responsible for --

- a. Making training materials available, upon request;
- b. Providing instructor training; and
- c. Conducting blaster training, whenever resources permit, especially for employees of small operators.

Since potential blasters may need few or many portions of the training (which can be divided into units), and since the regulatory authority may not be able to meet all immediate training needs of operators who want employees certified quickly, this system would enable operators to provide their own training by obtaining standardized course materials and instructor training from the regulatory authority. These training materials would also be made available to educational institutions and commercial trainers, so it would be possible for operators to contract for such courses. The Office is concerned only that blasters meet minimum examination requirements -- where, when, and how the individual is trained makes no difference, as long as necessary skills, knowledge, and ability are demonstrated to meet Office blasting standards.

By removing the restrictions that the regulatory authority must either conduct or supervise all blaster training, the Office provides flexibility in sources and amount of training. Thus, operators can acquire, through various ways, the amount of training they need at the time it is needed. At the same time, the Office does not propose to change the level of competence required for certification.

III. EEOC UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

At the time the Office was drafting the proposed rules (published on September 18, 1978), the EEOC was in the process of issuing the final rules of the Uniform Guidelines on Employee Selection Procedures (published August 25, 1978). The Uniform Guidelines are applicable to any Office certification requirements, since certification (or lack of it) will determine whether persons can or cannot be employed in blasting activities of surface coal mining and reclamation operations.

The fundamental principle underlying the Uniform Guidelines is that employment policies and practices which have adverse impact on employment opportunities of any race, sex, or ethnic group are illegal unless justified by business necessity. If an adverse impact results from any selection procedure (e.g., employment tests or experience requirements), it must be justified on grounds of business necessity. Normally such justification is in the form of validation data which demonstrates the relation between a selection procedure and performance on the job.

The Office will have no control over potential adverse impact in application of its certification requirements for blasters under State programs. It is, therefore, necessary (and logical personnel practice) that all selection procedures imposed by the Office be validated in accordance with the Guidelines prior to their imposition. Selection procedures to be validated will include reasons for revocation and suspension of blaster certificates, as well as requirements to be met prior to certification, since revocation and suspension are also bases for employment decisions.

Proposed revisions in Subchapter M which were necessary to comply with the Guidelines are as follows:

A. SECTIONS 850.4(a)(1) AND (2) [Section 850.3(a) in previously proposed rules]

The Director would be responsible for establishing "valid" examination and experience requirements for certification. Validity studies, accomplished through acceptable methods of the psychological profession, would be conducted by the Director to establish such requirements as are essential for job performance. The Office anticipates completion of these studies before by January 1980, when the examination and experience requirements will be made available to regulatory authorities.

B. SECTIONS 850.4(b)(2) AND (6) [Sections 850.4(b)(2) and 850.4(c)(2) in previously proposed rules]

The date on which certification requirements must be implemented by regulatory authorities would be moved to June 3, 1980, for Federal lands. For non-Federal and non-Indian lands, certification requirements would be effected when blasting is conducted under permits issued under Subchapter G of the Office's final regulations. Validity studies, on which examination, experience requirements, and training courses will be based, cannot be completed in less than 6 months' time. The Office estimates that examination and training materials will not be ready for use by regulatory authorities until January 1980. Thus, the new dates will allow approximately 5 months to train and examine blasters before certification requirements are effected.

C. SECTIONS 850.13(c) [Section 850.11(c) in previously proposed rules] AND 850.14(n) [Section 851.21(b) in previously proposed rules]

Commenters proposed adding or deleting various subjects to be included in the examination and training courses for blasters. The Office declined to accept such suggestions since, under the EEOC Uniform Guidelines, such subjects must be determined through appropriate validity studies. OSM proposes to change the requirements as to the content of training courses and the national examination to that effect. Lists of such subjects have been deleted in these repropounded rules. Contents of training courses and the standardized national examination would be required by the regulations to cover all "skills, knowledge, and abilities developed through validity studies as necessary for performance as a blaster-in-charge."

D. SECTION 850.14(a) [Section 851.11(d) in previously proposed rules]

It is proposed that the 2-year experience requirement for certification in the proposed rules be changed to "types and length of experience required by the office." Length and types of experience necessary for performing as a blaster-in-charge who can meet the Office's performance standards in blasting activities will also have to be determined through validity studies.

Several comments were submitted to the Office regarding the blaster certification requirement in the proposed rules for "two years' experience in blasting as applicable to surface coal mining operations." Some commenters thought the length of experience excessive; others thought it insufficient. Still other commenters pointed out that relevant experience could be acquired through employment in other than surface coal mining and reclamation operations, (e.g., construction or quarry blasting) and that to exclude such experience as "qualifying" is unnecessarily restrictive. The rationales to lengthen shorten, or broaden the 2-year experience requirement are all reasonable. However, they do not sufficiently establish job-relatedness as required by the EEOC Guidelines. Thus, though all such comments were considered, the experience requirements will still have to be determined through technically valid studies, conducted and documented in accordance with the Guidelines.

Commenters suggested that the examination be oral or "hands-on" or that a grandfather clause for those with years of experience be inserted because many competent blasters do not have the necessary reading and writing skills to pass an examination, though they are fully competent to conduct blasts at surface coal mines. Other commenters complained that the examination subjects listed in the proposed rules were unnecessarily extensive to prove such competence.

The Office does not propose to specify examination methodology in repropoed Subchapter M. Since the examination will be developed through technically correct validation studies, it would --

1. Test only the knowledges and skills necessary to implement Office blasting performance standards, and
2. To the extent possible, be administered through methods which eliminate the testing of reading and writing skills, except as those skills are necessary to perform tasks required of a blaster-in-charge in implementing Office blasting standards.

One commenter suggested that several tests would have to be developed since blasting conditions vary considerably among mine types and locations. Other commenters asserted that only the regulatory authority, rather than the Director, has authority to design blaster examinations.

In answer to these related comments, the stated purpose set forth in Section 102(a) of the Act is to establish a nationwide program to protect public safety and the environment from adverse effects of surface coal mining and reclamation operations. Under Section 201(c)(2), the Secretary is authorized to issue regulations necessary to carry out the purposes and provisions of the Act. Thus, the Secretary's authority to establish a national examination as a minimal requirement toward that purpose is clearly established. However, it does not preclude the authority of States, acting as regulatory authorities, to add examination requirements they consider necessary. States as also subject to the requirements of the EEOC Uniform Guidelines on Employee Selection Procedures. Therefore, any State examinations or other State certification requirements imposed must be supported by appropriate validation studies.

As for differing regional tests, if Office validity studies indicate there are fewer, more, or different skills or knowledges necessary for job performance in meeting Office blasting standards, those differences will have to be imposed by the Office for the appropriate region or State. The concept of a "national" examination means that the Office will develop and impose minimal examination requirements to blast in surface coal mining and reclamation operations anywhere in the United States. If data indicate regional differences for competence, those differences must be imposed.

E. SECTION 850.14(e)(2) AND (3) [Sections 851.12(a) and 851.13(b) in previously proposed rules]

A number of comments from industry and from three States were received on the question of whether blasters need to be recertified every 3 years and/or examined every 6 years. These comments can be grouped according to the following substantive alternatives which they proposed.

1. Do not require recertification at all;
2. Do not require recertification if the certified individual has continued to work as a blaster;
3. Require recertification only if a certificate has lapsed, is suspended, or if a blaster has numerous violations;
4. Require retraining every 3 years without reexamination, or require reexamination if the blaster is not retrained every 3 years;

5. Require retraining but no reexamination.

Commenters did not give any rationale to support most of these alternatives except to express their opinion that "there is no need" to retrain, reexamine, or recertify.

Some basis was offered for alternative 2 in that it seems logical that a blaster who has been certified through examination and experience which prove competency and who continues to work successfully does not need further training every 3 years. Regulations and state-of-the-art do not change that rapidly in blasting. However, the Office believes that some minimal experience requirement (to be determined through validity studies) during a 3-year period is probably necessary to retain competency. Thus, the 3-year recertification requirement is proposed because OSM believes it is necessary as a check on whether a certified blaster has had enough experience during those 3 years to retain competence at the level certified.

The 6-year reexamination and the experience requirements are both subject to EEOC Guidelines and will be determined through validity studies which prove a logical relationship between these requirements and job performance.

OSM does not propose to adopt alternatives 1-5 because they were based only on opinions without supporting rationale as to what experience or knowledge each commenter thinks necessary to retain competence. There is no literature on which to base such opinions.

The EEOC Guidelines make it necessary to settle these issues through appropriate validation. If validity studies prove absolutely no necessity for either the experience requirement for recertification or the 6-year reexamination to ensure retention of competence, OSM will want to change both requirements. However, every indication at this time suggests that such studies will not refute the need for some experience during a 3-year period or the need for at least minor reexamination every 6 years.

F. SECTION 850.14(f)(1) [Section 851.13(d) in previously proposed rules]

The Office proposes to change the grounds for suspension or revocation of certification to make them specifically job-related, as follows:

1. "Noncompliance with any order of the regulatory authority" would be changed to "noncompliance with any *blasting-related* order of the regulatory authority." Noncompliance with orders that do not specifically affect performance as a blaster-in-charge are not job-related and are, therefore, not a justified basis for revoking or suspending certification. (Commenters supported this change.)

2. "Violation of the provisions of *any* State or Federal explosive law or regulation" would be changed to "Violation of the provisions of any Federal blasting * * * law * * * that affect implementation of Office blasting regulations." The blaster-in-charge would be responsible to the Office only for implementing Office blasting regulations. (As State regulatory authority may add more stringent standards.) Since knowledge of *all* Federal explosives laws is not necessary for job performance in accordance with Office standards, violation of laws that do not affect those standards is not job related or certification-related and cannot be a reason for suspension or revocation. (Commenters also supported this change.)

3. "Unlawful user of, or is addicted to, alcohol, narcotics, or other dangerous drugs" would be changed to "Proof of addiction to alcohol, narcotics, or other dangerous drugs, or used such drugs in the WORKPLACE."

As commenters pointed out, unlawful use may or may not be job-related. The term "unlawful user" could include the certified individual who consumes one beer annually, but resides in a county which prohibits any consumption of alcoholic beverages. Such an individual would hardly be unfit or incompetent to conduct blasting based on the one-beer-per-year consumption quota. On the other hand, addiction to drugs or use of drugs in the workplace is obviously related to job performance.

G. SECTION 850.14(g) [Section 851.13(c) in previously proposed rules]

The previously proposed rules, under Section 851.13(c), required reexamination prior to recertifying individuals whose certification has been suspended. Since the examination will cover only the implementation of applicable laws and regulations necessary to meet Office (or State) blasting standards, it would be of little use to reexamine the individual whose certification had been revoked for such reasons as "willful misrepresentation" or use of drugs in the workplace. The Office, therefore proposes to change this requirement for reexamination to apply only to "any individual whose certification has been suspended or revoked because of violation of any applicable Federal or State blasting or explosive law or regulation" before being recertified.

IV. APPEALS

A. SECTION 850.14(f)(1) [Section 851.15 in previously proposed rules]

Commenters questioned the authority of the director to act as the appellate review entity where certification has been suspended or revoked by a State regulatory authority. These commenters requested the Section be amended to provide the right of appeal to the State regulatory authority and/or to a State court or competent jurisdiction. The Office agrees with these comments and has repropoed this Section (formerly Section 851.15(a)) to allow appeal to the State regulatory authority where it is the agency suspending or revoking certification. This change would make the regulations consistent with Section 526(a) of the Act, which requires that "Act of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law."

Where the Office is the authority revoking or suspending certification, an entirely new appeals procedure is being proposed to provide review of revocations or suspensions by the Office of Hearings and Appeals as provided in 43 CFR, Part 4. This change was made to assure separation of review procedures from the initial decision maker.

B. SECTION 850.14(f)(2) [New Section]

This Section would provide for immediate suspension of certification and is proposed to take care of situations where the Office or regulatory authority determines that danger or harm to public health or safety may result from continuation on the job by a blaster. This proposed addition was made to correct an omission in the proposed rules. To prevent depriving a blaster of his or her means of livelihood for an unduly long period of time, the section would require that a hearing be conducted within 20 days of immediate suspension.

C. SECTION 850.14(h) [New section]

To assure fairness in matters of suspension and revocation of certification, a new Paragraph (h) was proposed to provide, as a specific duty of the regulatory authority, the determination of the length of suspension and revocation and the severity of any other penalties. This change was made to provide due process by clarification, prior to certification, of the consequences of violating the conditions of certification.

V. OTHER ISSUES

A. SECTION 850.4(c)(2) [Section 850.3(c)(2) in previously proposed rules]

One commenter indicated that Section 850.3(c)(2) was unclear as to whether certification will be required for every State or whether the Federal certification will be effective in all States. In response to this comment, repropoed Section 850.4(c)(2) has been revised to clarify that a Federal or State certification must be accepted by another State before a blaster can work in that State. In this way, Federal certification or the certification of one State cannot be interpreted to apply in another State without its acceptance by that State. In keeping with the Act, the regulations would set forth minimum standards for certification for all regulatory authorities. State regulatory authorities have the option of imposing stricter standards. Therefore, it is left to a State to determine whether the certification of another jurisdiction is sufficient to meet its standards for certification. In any event, OSM could not legally compel States to accept reciprocity.

B. SECTION 850.5 DEFINITIONS

Several commenters objected to the use of "blaster learner" in the previously proposed rules and suggested eliminating it altogether or replacing it with "assistant blaster" or "blaster." The commenters pointed out that "blaster learner" is a misnomer in that many people who perform simple blasting tasks are not learning to become blasters. They contend also that use of the term may humiliate persons who have performed blasting tasks for many years, but do not have the ability or education to become certified blasters.

The Office proposes to adopt these suggestions on the merit of their rationale. It is proposed that the term "blaster learner" be deleted altogether, and a definition of "blasting crew" be substitute in Section 850.5. In other parts of Subchapter M, the term "member of blasting crew" would replace the term "blaster learner" in referring to persons who work under the direct supervision of a certified blaster-in-charge in preparing for and executing blasting in surface coal mining and reclamation operations.

C. SECTION 850.14(e)(4) [Section 851.12(b) in previously proposed rules]

One commenter suggested that employers be required to maintain records of blasters' training and certification, rather than have certified blasters carry the certificate on the job at all times. This commenter asserted that if the employer retains the records of training and certification, inspection will be facilitated and loss of certificates will be less likely.

The Office notes that these proposed regulations do not require training and, therefore, training records would not be required for inspection. Moreover, the blaster's certificate is proof of certification which he or she would be required to show, upon request, to any duly authorized representative of the regulatory authority or Office.

The Office proposes not to require employers to maintain records of blaster certification. The regulatory authority would (since it is the issuing authority) maintain certification records. These records are not needed for inspections as long as the blaster can show certification. The Office does not want to impose on employers an unnecessary burden. However, nothing in the regulations would prevent employers who wish to do so from holding, as a condition of employment, a copy of the employee's certification.

As for the issue of the security of the certificate from on-the-job loss, the certificate is no more susceptible to being lost than is any other certificate such as a driver's license.

D. SECTION 850.14(e)(1) [Section 851.12(b) in previously proposed rules]

One commenter requested that the requirement for a photo on the blaster's certificate be deleted. This commenter argued that the photo requirement would increase the cost of licensing. The cost will come from laminating pictures, more paperwork, and the cost of opening smaller offices to conduct the licensing procedure.

The Office notes that many States already require a photo. The cost is not significant and is to be borne by the regulatory authority. The Office proposes to retain the requirement for a photo since the blaster bears considerable responsibility for protecting the public safety and minimizing adverse environmental effects; and the process of obtaining false certification must be discouraged as much as possible. The Office believes that a photo on the certificate is a proven and effective deterrent to obtaining or transferring illegal certificates.

E. SECTION 850.12(b) [Sections 851.11 and 851.14(d)(1) in previously proposed rules]

This Section lists the responsibilities of the blaster-in-charge.

Commenters objected to the requirement in the previous proposal that a blaster-in-charge "fire all blasts." They asserted that, in many mining operations, actual firing of the shot must be performed only by union employees and would conflict with the supervisory role of the blaster-in-charge. The office agrees with these comments and proposes to require instead that the blaster-in-charge be present at the site when the blast is detonated.

One commenter suggested that the responsibilities of the blaster-in-charge be limited to the use of explosives "at the blast site." Since the blaster-in-charge cannot be responsible for or provide supervision of work performed away from the "use area." Additionally, the blasting site is the only place explosives are "used" in surface coal mining and reclamation operations. The Office agrees with this rationale and proposes to adopt the suggested change. The responsibilities of the blaster-in-charge are now limited to the direct supervision of blast design, preparation, and execution *at the blast site*.

One commenter suggested deleting the requirement in previously proposed Section 851.14(d)(1) that the blaster-in-charge "shall be on the actual site of the blasting operation and directly supervise" each crew member. The commenter asserted that such a requirement would preclude any work by crew members if the blaster-in-charge left the immediate area for even a few moments.

The Office accepts this rationale and proposes to delete the requirements that the blaster-in-charge be on the actual site at all times. However, the rules would still make the blaster-in-charge responsible for *direct* supervision of crew members. *Direct* does not imply that *every movement* or *action of crew members* must be observed. It implies, instead, that the blaster-in-charge supervises, instructs, and checks the work of assistants *without intervening persons*. The blaster-in-charge is directly responsible for the blast and must therefore provide direct supervision of crew members' work. When such supervision is provided, actual presence of the blaster-in-charge at all times may not be necessary, as for example in the case of drilling holes, when the blaster-in-charge can assure correct spacing and size upon return from a temporary absence.

F. SECTIONS 850.12(a)(4) AND 850.12(b)(5) [Section 851.14(d)(1) in previously proposed rules]

In the previously proposed rule, Section 851.14(d)(1), a blasting crew could not exceed six members. Some commenters wanted no limit to crew size, asserting that such limitations interfered with operator's flexibility and were not necessary for public safety. Other commenters wanted a ratio of one crew member to one certified blaster to ensure maximum safety.

It is proposed that crew size be limited to 12 members, to be directly supervised by a certified blaster-in-charge. The proposed regulations would require that permission to use a larger crew because of unusual circumstances or mining methods must be obtained from the regulatory authority and be granted only if the operator can assure the regulatory authority that the blaster-in-charge can provide direct supervision to all crew members. Such exceptions would be granted by the regulatory authority on a case-by-case basis; the operator and blaster-in-charge are still held responsible for ensuring that Office blasting specifications are met. These changes should provide the flexibility needed by industry and at the same time maintain strict control over the preparation and execution of blasting.

To eliminate ambiguity in application of the term, one commenter suggested further limiting the definition of "blasting crew" to "persons engaging in or responsible for conducting blasting or use of explosives *at one operational pit* of a surface mine." This commenter pointed out that a blasting crew could be construed as a group of persons conducting blasting operations at two pits several miles apart. The proposed addition precludes dispersal of the crew and ensures supervision by the blaster-in-charge in a limited area.

The Office proposes to adopt this suggestion on the basis of its rationale and has added the phrase "at one operational pit" to the definition of blasting crew under Section 850.5 and also added it to the restrictions imposed on operators and blasters-in-charge in Section 850.12 regarding the size and use of blasting crews.

G. SECTION 850.12(a) [New Section]

This Section would list the responsibilities of the operator in the use of certified blasters and blasting crews. Its purpose is to make the operator responsible for ensuring that a properly certified blaster, supervising only one crew, is responsible for each shot fired, and for proper size and adequate training of blasting crews.

H. PROPOSED NEW SECTION [Not Proposed to be Adopted]

One commenter suggested that "public awareness" classes in blasting be offered to citizens who live near blasting areas. These classes would serve to educate the public and promote better relations between the mine operators, the regulators, and the local residents. According to the commenter, in the State of Kentucky, recurring complaints were cut by 80 percent after the public was provided understanding of what effect blasting will have on them and their homes.

While the suggestion has merit, this type of public relations, as a regulatory requirement, is not necessary to accomplish the purposes of the Act to protect the public and the environment from adverse effects of surface coal mining and reclamation operations. Mine operators could undertake this type of public relations on their own. Moreover, the Act does not authorize or fund training for the public.

REGULATION DRAFTERS

This repropoed portion of OSM's program regulations has been drafted by professional staff in the Office of Surface Mining. Assistant Director David R. Maneval has been responsible for its preparation and content.

Dated: June 22, 1979.

Joan Davenport, *Assistant Secretary for Energy and Minerals* .

It is proposed to add Part 850 to Title 30 CFR to read as follows:

SUBCHAPTER M -- TRAINING PROGRAMS FOR BLASTERS AND MEMBERS OF BLASTING CREWS, AND CERTIFICATION PROGRAMS FOR BLASTERS

PART 850 -- PROGRAMS

Section

850.1	Scope.
850.2	Objective.
850.4	Responsibilities.
850.5	Definitions.
850.12	General program requirements.
850.13	Required elements for training programs.
850.14	Required elements for certification programs.

Authority: Sections 102, 201, 501(b), 515, 516, and 719 of Public Law 95-87, 91 Stat. 488, 449, 468, 486, 495, and 526 (30 U.S.C. 1202, 1211, 1251, 1265, 1266, AND 1309).

SECTION 850.1 - SCOPE.

This Part establishes program requirements for --

- (a) The training of persons to engage in and conduct blasting or to use explosives in surface coal mining and reclamation operations;
- (b) The examination and certification of persons engaging in and directly responsible for blasting or the use of explosives in surface coal mining and reclamation operations; and
- (c) Conditions and restrictions for operators' use of certified blasters and blasting crews in surface coal mining and reclamation operations.

SECTION 850.2 - OBJECTIVE.

The objective of this Part is to establish training and certification programs which ensure that all blasts in surface coal mining and reclamation operations are designed, prepared, executed, and supervised by trained and competent persons who meet the requirements of these regulations as they relate to blasting in surface coal mining and reclamation operations.

SECTION 850.4 - RESPONSIBILITIES.

(a) The Director of the Office is responsible for --

- (1) Establishing technically valid national examinations for blaster certification and recertification which cover all skills, knowledge, and abilities necessary to meet the requirements of Sections 816.61-68, 817.61-68 of this chapter, and Part 850 regarding blasting and the use of explosives in surface coal mining and reclamation operations. The Director also establishes requirements governing the administration and security of those examinations;
- (2) Establishing valid national experience requirements for blaster certification and recertification; and
- (3) Developing training course materials which cover all skills, knowledge, and abilities to meet the requirements of Sections 780.13, 816.61-68, 817.61-68 of this chapter, and Part 850; making such materials available upon request; and updating such materials as Federal regulations change and as significant developments in the state-of-the-art occur.

(b) Each Regional Director of the Office is responsible for --

- 1) Reviewing training, examination, certification, revocation, suspension, and appeals programs proposed by States under 30 CFR Part 731;[Page 38326]
- (2) Examining, certifying, and recertifying applicants, and revoking or suspending certification in a State which does not have an approved State program after June 3, 1980; and performing those functions for blasters who work on Federal lands after a valid national examination is available, where no cooperative agreement is in effect;
- (3) Monitoring approved State training, examination, certification, revocation, suspension, and appeals programs to ensure compliance with the requirements of this Part;
- (4) Collecting any data required by the Director regarding blaster training, examination, certification, revocation, suspension, and appeals programs conducted in support of the Act;

- (5) Providing Office-developed training course materials, upon request;
- (6) Assisting operators by providing instructor training for potential instructors and, when resources permit, conducting blaster training courses in a State which does not have an approved State program after June 3, 1980, and performing those functions for persons working on Federal lands after valid training courses are available, where no cooperative agreement is in effect; and
- (7) Ensuring that any person who performs as blaster-in-charge in surface coal mining and reclamation operations in a State which does not have an approved State program after June 3, 1980, or a blaster-in-charge who works on Federal lands after June 3, 1980, where no cooperative agreement is in effect, is properly certified.

(c) Each State is responsible for --

- (1) Preparing and submitting to the Regional Director, under 30 CFR Part 731, a State plan for examining, certifying, revoking, and suspending certification, appealing revocation or suspension, promoting and providing training which meets the requirements of this Part;
- (2) In accordance with an approved State program, requiring that any person who performs as blaster-in-charge in surface coal mining and reclamation operations in the State be certified by the State (or, if acceptable to a State, certified, in accordance with this Part, by the Federal Government or another State);
- (3) Administering a certification program for blasters under an approved State program;
- (4) Developing training course materials which cover any State-imposed requirements for blaster certification (e.g., knowledge of State laws);
- (5) Providing to any surface coal mine operator, upon request, training course materials the mastery of whose content ensures the ability to comply with the requirements of applicable State and Federal laws;
- (6) Assisting operators by conducting instructor training for potential instructors of blasting courses and, where resources permit, conducting blaster training courses; and
- (7) Collecting, maintaining, and providing the Office with data on training, test results, and other information the Office may require with respect to a State program.

SECTION 850.5 - DEFINITIONS.

As used in this Part -- (a) *Blaster* means a person who is certified to prepare, execute, and supervise blasts at the blast site in surface coal mining and reclamation operations.

(b) *Blaster-in-charge* means a properly certified person designated by the responsible management official of the operator conducting surface coal mining and reclamation operations to be responsible for ensuring that blasting operations at the blast site are conducted in compliance with the blasting standards set forth in these regulations.

(c) *Blasting crew* means 12 or fewer persons engaged in preparation for and execution of a blast at one operational pit, under the direct supervision of a blaster-in-charge.

SECTION 850.12 - GENERAL PROGRAM REQUIREMENTS.

(a) Operators shall --

- (1) Designate a blaster-in-charge for each blast to be detonated in surface coal mining and reclamation operations;
- (2) Ensure that the designated blaster-in-charge is properly certified in accordance with the time requirements established in 30 CFR 850.12(b)(1).
- (3) Ensure that all employees who perform blasting tasks under the supervision of a blaster-in-charge have adequate training in compliance with the standards of these regulations and any additional applicable State regulations;
- (4) Limit the size of a blasting crew to 12 or fewer persons, supervised by a properly certified blaster-in-charge at one operational pit at the blast site, in preparing for and executing a blast. The regulatory authority may, in individual cases, approve a larger blasting crew, due to unusual circumstances or mining methods. Permission to use a larger blasting crew may be granted by the regulatory authority only if the operator ensures that the blaster-in-charge can provide adequate direct supervision to crew members and remain in control of blast design, preparation, and execution so that blasting complies with Office and applicable State regulations; and
- (5) Ensure that a blaster-in-charge supervises no more than one crew at any given time.

(b) The blaster-in-charge shall --

- (1) Be certified by June 3, 1960, for all blasting operations conducted on Federal lands or, for non-Federal and non-Indian lands, before any blasting operations are conducted under a permit issued in accordance with Subchapter G under a State or Federal program;
- (2) Ensure that blast design and execution meet Office standards prescribed in 30 CFR 816.61-68 or 817.61-68 and

Part 650 and any applicable additional State standards;

- (3) Directly supervise blast preparation and execution at the blast site to ensure that such standards are met;
- (4) Be present at the site when the blast is detonated;
- (5) Ensure that all members of blasting crews under his or her supervision have adequate training to perform assigned tasks in compliance with the standards prescribed in applicable State and Federal regulations; and
- (6) Limit to 12 or fewer the number of persons to be supervised at any given time in preparing and executing a blast at one operational pit at the site in surface coal mining and reclamation operations. Permission to use a larger blasting crew can be granted by the regulatory authority under Section 850.12(a)(4)

(c) The blaster-in-charge may authorize members of the blasting crew to perform general blasting operations, to load and unload explosives at the blasting site, prepare explosives for use in blasting, transport explosives at or near the jobsite, load explosives into drill holes, and stem or otherwise prepare explosives for detonation. However, each of these assigned duties shall be performed only after instructions from and under the direct supervision of the blaster-in-charge. The blaster-in-charge retains full responsibility for all blasting and use of explosives, including, but not limited to, keeping blasting logs and records, supervising the blasting-related activities of the workers in his or her charge, and ensuring all persons under his or her supervision have the necessary training to perform safely their assigned duties in accordance with applicable State and Federal blasting regulations.[Page 38327]

SECTION 850.13 - REQUIRED ELEMENTS OF TRAINING PROGRAMS.

(a) Training course materials which cover all blasting regulations in 30 CFR Chapter VII and other relevant Federal regulations shall be developed and made available by the Office for use in State programs.

(b) The regulatory authority shall provide for a blaster training program which includes --

- (1) Development of training course materials which cover all applicable State regulations for blasting in surface coal mining operations;
- (2) Conducting instructor training courses;
- (3) Making available, upon request, Office-developed and State-developed blaster training course materials; and
- (4) Conducting, as resources permit, blaster training courses, especially for employees of small operators.

(c) Training courses for persons who want to be certified as blasters shall include all skills, knowledge, and abilities determined through validity studies as necessary for performance as a blaster-in-charge.

(d) The regulatory authority shall encourage on-the-job training and experience for potential blasters in a variety of the tasks listed in 30 CFR 850.12(c), so they can subsequently meet the experience requirements for blaster certification.

SECTION 850.14 - REQUIRED ELEMENTS OF CERTIFICATION PROGRAM.

(a) Each applicant for blaster certification shall be required to pass a national qualifying examination established by the Office and shall present acceptable proof of types and length of experience required by the Office.

(b) Examinations may vary among State programs, depending on State requirements that are in addition to the requirements improved by the Office. However, the standardized national examination established by the Office shall be included in each State examination and shall include questions designed to test all skills, knowledge and abilities determined through validity studies as necessary for performance as a blaster-in-charge.

(c) Each applicant for blaster's certification shall receive written notification from the regulatory authority, within 30 days of examination, as to the applicant's certification status.

(d) Applicants who fail to qualify in the examination may reapply for examination by submitting a new application to the examining authority after a 30-day period from notification of failure.

(e) *Terms and conditions of certification .*

(1) Certification shall be for a period of 3 years and shall be made only to a person who passes the required Office and State examinations and presents acceptable proof of required experience. The certificate shall include the person's name, address, photographs, and signature.

(2) Each certified blaster shall apply for recertification every 3 years to the regulatory authority. To be recertified, persons shall meet any experience requirements imposed by the Office or State.

(3) Each certified blaster who fails to obtain recertification at the end of 3 years shall be required to apply for reexamination and shall meet experience standards. In any event, reexamination is required every 6 years.

(4) Each certified blaster shall, upon request, exhibit his or her blaster's certificate to any duly authorized

representative of the regulatory authority or the Office.

(5) Certification shall not be reassigned or transferred.

(f) *Suspension or revocation* .

(1) Under a Federal program, the Secretary may suspend or revoke a blaster's certificate following notice and an opportunity for a hearing pursuant to 43 CFR Part 4. A State regulatory authority may suspend or revoke a certificate in accordance with hearing procedures provided in the approved State plan. Any regulatory authority may revoke a blaster's certificate for any of the following reasons:

(i) Noncompliance with any blasting-related order of the regulatory authority.

(ii) Violation of the provision of any Federal blasting or explosives law or regulation that affects implementation of blasting regulations in 30 CFR Chapter VII.

(iii) Proof that false information was willfully given or misrepresentation willfully made to obtain the certification.

(iv) Proof of addiction to alcohol, narcotics, or other dangerous drugs, or proof that the certified blaster has used such substances in the workplace.

(v) Proof that the certified blaster participated in assigning or transferring certification to a person other than the person to whom the regulatory authority issued it.

(2) In any instance where the regulatory authority considers continued blasting by the blaster involved to be a threat to public safety or the environment, certification shall be suspended until completion of a hearing. In such event, a hearing shall be conducted within 20 days of the notice of suspension.

(g) Any certified blaster whose certification has been revoked because of violation of any applicable Federal or State blasting or explosives law or regulation shall be required to pass a qualifying examination before being recertified.

(h) The length of suspension or revocation and the severity of any other penalties for offenses which provoke such actions shall be determined by the regulatory authority.

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