

provisions are not inconsistent with SMCRA section 515(b)(15) concerning the use of explosives, and the Federal regulations at 30 CFR 816/817.62 concerning pre-blasting surveys and can be approved.

199–1–3.10 Pre-blast survey review. This provision sets forth the requirements for submittal of pre-blast surveys to the Office of Explosives and Blasting and review of such surveys by the Office. The Federal regulations at 30 CFR 816/817.62, concerning pre-blasting survey, provide for pre-blast surveys, but the Federal regulations do not contain submittal and review procedures for pre-blast surveys. SMCRA at section 505(b) provides that any State statutory or regulatory provision which is in effect or may become effective after the enactment of SMCRA and that provides for control and regulation of surface mining and reclamation operations for which no provision is contained in SMCRA shall not be construed to be inconsistent with SMCRA. We find that this provision is not inconsistent with the Federal regulations at 30 CFR 816/817.62 concerning pre-blasting surveys and can be approved, to the extent described as follows:

Subdivision 3.10.b provides that the operator or his designee shall correct deficiencies within 30 days from receipt of notice of deficiencies. The Federal regulations at 30 CFR 816/817.62(e) provide that any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting. The approved West Virginia program at CSR 38–2–6.8.a.4, concerning pre-blast survey, contains a counterpart to the Federal 10-day requirement at 30 CFR 816/817.62(e). Therefore, we are approving the provision at subdivision 3.10.b, because when read in conjunction with CSR 38–2–6.8.a.4, it is not inconsistent with 30 CFR 816/817.62(e).

Subdivision 3.10.d provides that all pre-blast surveys shall be confidential and only used for evaluating damage claims. This subdivision also provides that the Office of Explosives and Blasting shall develop a procedure for assuring surveys shall remain confidential. The Federal regulations, at 30 CFR 816/817.62, neither require nor preclude pre-blast surveys being confidential, nor do they limit their use to the evaluation of blasting damage claims or expressly specify a broader use of such surveys. While requiring such surveys to be kept confidential appears to pose no consistency problems with respect to Federal regulations, limiting the use of the

surveys to damage claims warrants further discussion. The State's amendments at CSR 38–2–2.11 define blasting claim to mean an allegation by the property owner of blasting related damage to property. To the extent issuance of an enforcement action is necessary in resolving a blasting claim because of an operator's failure to repair, we do not find that these regulations preclude the use of a preblast survey to support actions such as the issuance of an NOV. Therefore, we are approving this provision with the understanding that the phrase "only used for evaluating damage claims" does not preclude the use of preblast surveys to support the issuance of NOV's, CO's, civil penalties or other forms of alternative enforcement actions under the West Virginia Surface Coal Mining and Reclamation Act and its implementing regulations to achieve the repair of blasting damage and thus resolve a damage claim.

199–1–3.11 Additional protections. This new subsection provides that the Secretary of the WVDEP may prohibit blasting or may prescribe alternative distance, vibration and airblast limits on specific areas, on a case-by-case basis, where research establishes it is necessary, for the protection of public or private property, or the general welfare and safety of the public. While this provision has no direct Federal counterpart, we find that it is consistent with the Federal blasting provisions at 30 CFR 816/817.67(a), (b)(1)(ii), and (d)(5) and can be approved.

11. CSR 199–1–4 Certification of Blasters.

199–1–4.1.a Requirements for certification of blasters. This provision provides that in every surface mine and surface area of an 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 W. Va. Code 22–3–1 *et seq.*, and the rules promulgated under that article. This provision also provides that each person responsible for blasting operations shall be certified. Each certified blaster shall have proof of certification either on his/her person or on file at the permit area during blasting operations. Certified blasters shall be familiar with the blasting plan and blasting related performance standards for the operation at which they are working. Where more than one certified blaster is working on a blast, the blaster who designed the blast shall supervise the loading

operations and sign the blasting log. Furthermore, it provides that nothing in this rule modifies the statutory regulatory authority of the State Fire Marshal and the State Commission to regulate blasting and explosives. Similar provisions regarding certified blasters were previously approved at former W. Va. Code 22–4–3.01(A). We find that the revised provision is consistent with SMCRA sections 515(b)(15)(D) and 719 concerning blasters, and no less effective than the Federal regulations at 30 CFR 816/817.61(c)(1), (2) and (4)(i) and can be approved.

199–1–4.1.b Qualifications for certification. This provision provides that each applicant for certification shall have had at least one (1) year active blasting experience within the past three (3) years, and have demonstrated a working knowledge of and skills of 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 CSR 199–1–4.3.b. Similar provisions regarding qualifications for certification were previously approved at W. Va. Administrative Regulations, Department of Mines, Chapter 22–4–3.01(A). Although it has no direct Federal counterpart, we find that the revised provision is consistent with the Federal regulations at 30 CFR 850.14(a)(2) and can be approved.

199–1–4.1.c Application for certification. This provision requires that prior to taking the examination for certification, a person must submit an application along with a fifty dollar (\$50.00) application fee to the Office to take the examination on forms prescribed by the Secretary of the WVDEP. Upon receipt of an application for examination, the Secretary of the WVDEP shall, after determining that the applicant meets the experience requirements of subsection 199–1–4.1.b, notify the applicant of the date, time, and location of the scheduled examination. Similar provisions regarding application for certification were previously approved at former Chapter 22–4–6.02, except for the \$50.00 fee. Although the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal regulations at 30 CFR 850.12(b) and can be approved.

199–1–4.2 Training. This provision provides that the Office of Explosives and Blasting will administer a training program to assist applicants for blaster certification or re-certification in acquiring the knowledge and skills required for certification. The training requirements shall include, at a