

199–1–4.6.a Refresher training. This provision provides that all certified blasters must complete a minimum of 12 hours of refresher training during the three-year period that each blaster's certification is in effect. This refresher training requirement may be satisfied by attendance at various professional and technical seminars and meetings approved by the Office, or by attendance at a refresher training session conducted by the Office. The Secretary of the WVDEP may establish a fee for refresher training to cover costs to the Office. Similar provisions requiring annual refresher training were previously approved at former Chapter 22–4–3.01(B). While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal provision concerning recertification at 30 CFR 850.15(c) and can be approved.

199–1–4.6.b Re-certification of blasters. This provision provides that a certified blaster must be re-certified every three (3) years. Each applicant for re-certification must be currently certified and must document that he or she satisfactorily meets the experience requirements of CSR 199–1–4.1.b and has satisfied the refresher training requirement at CSR 199–1–4.6.a. The application for re-certification must be submitted on forms prescribed by the Secretary with a thirty dollar (\$30.00) reapplication fee. Similar provisions regarding re-certification were previously approved at former Chapter 22–4–7.01, except for the re-application fee. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirement for recertification at 30 CFR 850.15(c) and can be approved.

199–1–4.6.c Re-training. This provision provides that an applicant for re-certification, who does not meet the experience requirements of CSR 199–1–4.1.b, must take the training course, and must take and pass the examination required in CSR 199–1–4.3.b. Similar provisions were previously approved at former 22–4–7.01(B) and CSR 38–2C–8.2, except for the modified provision at subsection 8.2 allowing for the completion of the self-study course as an option to completing the refresher training course, which is to be deleted. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal provision regarding training for certified blasters at 30 CFR 850.13(a), as well as the provision for recertification of blasters at 30 CFR 850.15(c), and can be approved.

199–1–4.6.d Re-examination. This provision provides that each certified blaster shall be required to successfully

complete the examination for certified surface coal mine blasters at least once every sixth year, as required by CSR 199–1–4.3.b. Similar provisions regarding re-examination were previously approved at former Chapter 22–4–7.02. While the revised provision has no direct Federal counterpart, we find that it is consistent with the Federal requirement for recertification of blasters at 30 CFR 850.15(c) and can be approved.

199–1–4.7 Presentation of certificate; Transfer; and Delegation of authority. This provision provides that: Upon request by the Secretary of the WVDEP, a certified blaster shall exhibit his/her blaster certification card; The certified blaster shall take all reasonable care to protect his/her certification card from loss or unauthorized duplication, and shall immediately report any such loss or duplication to the Office; Blaster's certifications may not be transferred or assigned; and certified blasters shall not delegate their authority or responsibility to any individual who is not a certified blaster. A certified blaster shall not take any instruction or direction on blast design, explosives loading, handling, transportation and detonation from a person not holding a blaster's certificate, if such instruction or direction may result in an unlawful act, or an improper or unlawful action that may result in unlawful effects of a blast. A person not holding a blaster's certification who requires a certified blaster to take such action may be prosecuted under W. Va. Code 22–3–17(c) or (i). Similar provisions regarding presentation, transfer and delegation of blaster certification were previously approved at former Chapter 22–4–8. We find that the revised provision is no less effective than the Federal requirements for recertification of blasters at 30 CFR 850.15(d) and (e) and can be approved.

199–1–4.8 Violations by a certified blaster. This provision provides that the Secretary of the WVDEP may issue a temporary suspension order against a certified blaster who is, based on clear and convincing evidence, in violation of any of the items listed at CSR 199–1–4.8.a through 4.8.e. The proposed language was copied and amended from approved language at CSR 38–2C–10.1 concerning violations, and 38–2–11.1 concerning suspension. Language authorizing the Secretary to issue a cessation order and/or take other action was removed from former CSR 38–2C–10.1, but the Secretary retained authority to issue a notice of violation for violations by a certified blaster as approved on February 21, 1996 (61 FR 6528–6529). The revised provision is

similar to CSR 38–2C–10.1 with the following changes. At subsection CSR 199–1–4.8, the words “notice of violation” were deleted and replaced with the words “temporary suspension order.” With these changes, the Secretary of WVDEP may issue a temporary suspension order against a certified blaster who is, based on clear and convincing evidence, in violation of any of the provisions listed at CSR 199–1–4.8.a through 4.8.e. We find that the proposed State language as revised is consistent with the Federal regulations at 30 CFR 850.15(b), concerning suspension and revocation of blaster certification, and can be approved, except as follows.

199–1–4.8.c. Violations by a certified blaster. The words “substantial or significant” were added prior to the word “violations;” the words “or state” were added after the word “federal;” and the words “or the approved blast plan for the permit where the blaster is working” were added after the word “explosives.” With these changes, violations of Federal or State laws or regulations related to explosives or the approved blasting plan must be “substantial or significant” violations before a temporary suspension order can be issued. We find that the proposed State language is not consistent with the Federal regulations at 30 CFR 850.15(b)(1)(iii) which authorizes suspension or revocation for violation of any provision of the State or Federal explosives laws or regulations. The proposed language is narrower than its Federal counterpart, since it allows for suspension or revocation of blaster certification based only on “substantial or significant” violations. In contrast, the Federal regulations at 30 CFR 850.15(b) authorize suspension or revocation of the blaster certification for any type of violation of State or Federal explosives laws or regulations. Therefore, we are not approving the phrase “substantial or significant” at CSR 199–1–4.8.c. We are approving the reference to State laws and regulations, because it is no less effective than the Federal regulation at 30 CFR 850.15(b)(1)(iii) and can be approved. We also find that the addition of the words “or the approved blast plan for the permit where the blaster is working” do not render the provision less effective than 30 CFR 850.15(b)(1)(iii) and can be approved.

199–1–4.8.d Violations by a certified blaster. This provision identifies “false swearing in order to obtain a blaster's certification card” as a violation that the Secretary may issue a temporary suspension order against a certified blaster. The counterpart Federal