

regulations at 30 CFR 850.15(b)(1)(iv) provide that the regulatory authority may suspend or revoke a blaster's certification for, among other reasons, providing false information or a misrepresentation to obtain certification. The Federal provision encompasses more than swearing under oath. It is our understanding that the State provision encompasses swearing under oath, as well as providing false information or a misrepresentation to obtain blaster certification. Our finding that this provision is no less effective than the Federal regulations at 30 CFR 850.15(b)(1)(iv) is based on this understanding. Therefore, subdivision 4.8.d can be approved.

199-1-4.8.e Illegal or improper actions by a blaster. At subdivision 4.8.e., the words "in the use, handling, transportation, or storage of explosives or in designing and executing a blast," were added after the words "certified blaster." In addition, the words "a blast site" are deleted and replaced with the words "or near a mine site." As amended, the Secretary of WVDEP may issue a temporary suspension order against a certified blaster for any illegal or improper action taken by a certified blaster in the use, handling, transportation, or storage of explosives or in designing and executing a blast, which may or has led to injury or death at or near a mine site. While there is no direct Federal counterpart to this new language, we find that it is not inconsistent with the Federal regulations at 30 CFR 850.15(b)(1) and can be approved.

199-1-4.9.a Suspension. This provision provides that upon service of a temporary suspension order, the certified blaster shall be granted a hearing before the Secretary of the WVDEP to show cause why his or her certification should not be suspended or revoked. Similar language was previously approved at CSR 38-2C-11.1, except the former provision provided that issuance of the suspension order was based upon the service of a notice of violation. Prior to the issuance of such an order, the certified blaster would be granted a hearing regarding the proposed suspension. We find that the revised provision is no less effective than the Federal regulations concerning suspension or revocation of the certification of a blaster at 30 CFR 850.15(b)(1) and can be approved. CSR 199-1-4.9.a also provides that the period of suspension will be conditioned on the severity of the violation committed by the certified blaster, and, if the violation can be abated, the time period in which the

violation is abated. The Secretary of the WVDEP may require remedial actions and measures and retraining and reexamination as a condition for reinstatement of certification. While there is no direct Federal counterpart to this provision, we find that the State provision is not inconsistent with the Federal regulations at 30 CFR 850.15(b) and can be approved.

199-1-4.9.b Revocation of blaster certification. This provision provides that if the remedial action required to abate a suspension order issued by the Secretary of the WVDEP to a certified blaster, or any other action required at a hearing on the suspension of a blaster's certification, is not taken within the specified time period for abatement, the Secretary of the WVDEP 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 12.1 of this rule. We note that the reference to subsection 12.1 is a typographical error, and the correct citation is subdivision 4.9.a. We approved the deletion of the phrase "or a cessation order" from this subsection on February 21, 1996 (61 FR 6529). The State further proposes to amend this subsection by deleting the words "notice of violation" and adding in their place the words "suspension order." In addition, the phrase "or any other action required at a hearing on the suspension of a blaster's certification" was added to the first sentence, after the words "certified blaster." We find that these changes are not inconsistent with the Federal regulations and can be approved.

While we are approving, with the exception noted above, the State's proposed rules addressing suspension and revocation, we note that there is one Federal requirement not covered by these rules. The State lacks a counterpart to the Federal provision at 30 CFR 850.15(b)(1) that provides that the regulatory authority must suspend or revoke a blaster's certification upon a finding of willful conduct that was previously addressed at West Virginia Administrative Regulations 22-4-6.01.C. Therefore, the State must further amend CSR 199-1-4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon a finding of willful conduct, the Secretary "shall" revoke or suspend a blaster's certification.

199-1-4.9.c Reinstatement. This provision provides that subject to the discretion of the Secretary of the

WVDEP, and based on a petition for reinstatement, any person whose blaster certification has been revoked, may, if the Secretary of the WVDEP is satisfied that the petitioner will comply with all blasting laws and rules, apply to re-take the blasters certification examination, provided the person meets all of the requirements for blasters certification specified by this subsection, and has completed all requirements of the suspension and revocation orders, including the time period of the suspension. While there is no direct Federal counterpart to this provision, we find that the provision is not inconsistent with the Federal regulations concerning suspension and revocation of blasters certifications at 30 CFR 850.15(b) and can be approved.

199-1-4.9.d Civil and criminal penalties. This provision provides that any certified blaster is subject to the individual civil and criminal penalties provided for in W. Va. Code 22-3-17. While there is no direct Federal counterpart to this provision, we find that it is not inconsistent with either SMCRA at section 518 concerning penalties, nor 30 CFR part 846 concerning individual civil penalties and can be approved.

199-1-4.10 Hearings and appeals. This provision provides that any certified blaster who is served a suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in W. Va. Code 22-3-16 and 17. We find that this provision is not inconsistent with the Federal regulations concerning suspensions and revocations of blasters certifications at 30 CFR 850.15(b) and can be approved.

199-1-4.12 Reciprocity with other states. This provision provides that the Secretary of the WVDEP 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 Secretary of the WVDEP, be certified without undergoing the training or examination requirements set forth in this rule. There is no direct Federal counterpart to this State provision. However, because all state coal mining regulatory programs are subject to the same minimum Federal standards under SMCRA at section 719 and the Federal regulations at 30 CFR part 850, we find that this provision does not render the West Virginia program less effective than those Federal requirements concerning the training, examination, and certification of blasters and can be approved.