



U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

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Subject: Suspension and Revocation of Federal Blaster Certification

Approval: *[Signature]* Title: Director

1. Purpose. This directive provides guidance for suspension and revocation of blaster certifications in Federal Program States and on Indian Lands.

2. Summary. 30 CFR Part 955, Certification of Blasters in Federal Program States and on Indian Lands, establishes rules for the training, examination, and certification of blasters by the Office of Surface Mining Reclamation and Enforcement (OSM) in Federal Program States and on Indian Lands. Section 955.17 governs the suspension and revocation of an OSM blaster certification. The Field Office Directors (FOD's) of Federal Program States and Indian Lands are responsible for implementation of the Federal blaster program regulations.

The FOD's of Federal Program States and Indian Lands shall ensure that any punitive action taken against a Federal blaster certification is consistent with the guidance provided in this directive. Determination of punitive measures shall be consistent with the nature and severity of the blaster violation. The FOD shall notify all appropriate State and Federal agencies of any action taken by OSM against Federal blaster certification.

3. Definitions.

a. Willful conduct. An act or omission on the part of the blaster which is intentional, voluntary, or conscious, and with disregard or indifference to legal requirements (for related interpretations, see definition and discussion of civil court interpretations of "willfully" in individual civil penalties rulemaking (30 CFR 724.5 and 846.5), 53 FR 3666 - 3667, 3675 - 3676, February 8, 1988; definition of "willful violation" at 30 CFR 701.5 and 843.5).

b. Suspension.

(1) Immediate Suspension. Suspension of blaster certification immediately, and without prior written notice, at the discretion of an authorized OSM representative.

(2) Conditional Suspension. Suspension of blaster certification, following written notice to the blaster, hearing, and final decision of the FOD, for a duration conditioned upon completion of remedial actions by the blaster.

(3) Suspension for a Definite Period. Punitive suspension of blaster certification, following written notice to the blaster, hearing, and final decision of the FOD, for a specified period based upon the nature and severity of the blaster's action.

c. Revocation. Removal of blaster certification, following written notice to blaster, hearing, and final decision of the FOD.

d. Reciprocity. Recognition by OSM of a blaster certification issued in another State by the regulatory authority wherein the blaster certification program in that State has been approved by OSM.

4. Policy/Procedures.

a. Policy. The Field Office Directors responsible for Federal Program States and Indian Lands are delegated the authority for OSM certification of blasters and, consequently, suspension or revocation of the certification.

Federal blaster certification incorporates responsibilities on the part of the certificate holder to comply with all applicable State and Federal regulations dealing with the use of explosives.

b. Procedures. To implement the above policy, FOD's of Federal Program States and Indian Lands shall:

(1) Ensure documentation of blaster activities in violation of the applicable regulations. Initiate identification of a blaster by name and OSM blaster certification number in the narrative of any Notice of Violation (NOV) or Cessation Order (CO) issued to a permittee as a result of blasting activity. Provide for written notification to the blaster of such documentation.

(2) Maintain a blaster certification file system. Implement procedures whereby any enforcement action resulting from blaster conduct is documented in the blaster's file by including the NOV/CO number and identification of the regulation, permit condition, or portion of SMCRA cited.

(3) Implement consistent procedures for suspension or revocation of blaster certifications. Guidance to the FOD is supplied in the appendix. This guidance supplies direction for consistent suspension and revocation standards within the agency. It is not intended to supplant the FOD's authority and discretion in determining appropriate implementation of Section 955.17.

(4) Notify the appropriate State regulatory authority of any disciplinary action against a blaster certified through reciprocity. Take appropriate action on any Federal blaster certification granted through reciprocity if the applicable State regulatory agency suspends, revokes, or takes other action on the corresponding State certificate.

5. Reporting Requirements. None.
6. Effect On Other Documents. None.
7. References. 30 CFR Section 955.17(a)-(f), 850.15(b), 724.5, 846.5.
8. Effective Date. Date of Issuance.
9. Contacts. Chief, Branch of Research and Technical Standards, (202) 343-1514, (FTS) 343-1514.
10. Keywords. Suspension, Revocation, Reciprocity, Willful Conduct, Blaster Certification.
11. Appendix. Guidance for Determining the Nature and Duration of a Suspension, Revocation or Other Action Against a Federally Certified Blaster.

GUIDANCE FOR DETERMINING THE NATURE AND DURATION
OF A SUSPENSION, REVOCATION OR OTHER ACTION
AGAINST A FEDERALLY CERTIFIED BLASTER

I. Introduction

Field Office Directors (FOD's) responsible for Federal Program States and Indian Lands are responsible for suspension or revocation of Federal blaster certifications as authorized at 30 CFR 955.17.

Section 955.17(a)(1) authorizes, and in the event of a finding of willful conduct mandates, OSM to suspend, revoke or take other necessary action against blaster certification for any of the reasons incorporated through reference to 850.15(b) at 955.17(a)(1) or included at 955.17(a)(2). A finding of willful conduct is not requisite for suspension or revocation of blaster certification; however, if a determination of willful conduct is made, OSM is obligated to take appropriate action. In addition, OSM is required to make the nature and duration of the suspension, revocation or other necessary action commensurate with the cause of the action and any remedial actions taken by the certificate holder (955.17(a)(3)). Provisions are included at 955.17(b)-(f) for written notice and opportunity for a hearing, notification of decision and opportunity for appeal, surrender of certificate, re-instatement and re-issuance of certificate, and conformity with State action.

The suspension and revocation regulations address punitive actions directed towards federally certified blasters. By statute and regulation, OSM issues notices of violation and cessation orders only to the permittee. The certified blaster is the only individual, other than the permittee, whom OSM holds responsible for specific day-to-day mining activities and against whom OSM may take direct actions for violating certain regulations. Consequently, the certified blasters responsibility for the use of explosives carries with it the potential for certification suspension, revocation or other punitive action.

The regulatory authority must remain cognizant of the employer-employee relationship between the operator and the blaster in determining appropriate punitive actions against a federally certified blaster. While ultimate responsibility for blasting operations rests upon the blaster, there may be times when a difference of opinion between the blaster and the operator may

lead to a final decision by the operator (i.e., employer) inconsistent with OSM performance standards. Such cases must be considered individually, with final decision of punitive action against the blaster at the discretion of the FOD.

II. Reasons for Enforcement Action

Section 955.17(a)(1) incorporates by reference the reasons cited at § 850.15(b) for suspension and revocation, or other necessary actions taken against the certification of an OSM-certified blaster. These reasons, and a brief discussion of their implications, follows:

A. Noncompliance with any order of the regulatory authority. If a blaster fails or refuses to comply with any order issued by an authorized representative of OSM (i.e., the inspector) to the permittee, operator, or the blaster himself, the blaster is in noncompliance.

B. Unlawful use in the workplace of, or current addiction to, alcohol, narcotics or other dangerous drugs. The use of alcohol and narcotics at mine sites is explicitly prohibited by MSHA regulation (30 CFR 56.20001). Whenever an inspector witnesses a blaster who is not in effective control during blasting activities due to intoxicants, and makes a determination that unsafe conditions are present or likely to occur, the inspector is obligated under 955.17(a)(2) to immediately halt all blasting activities.

C. Violation of any provision of the State or Federal explosives laws or regulations. Failure to comply with the OSM performance standards and blaster certification regulations, MSHA regulations concerning storage and use of explosives, ATF regulations governing explosives storage, and any State explosives laws applicable to coal mining. This category encompasses the majority of possible actions subject to suspension or revocation.

D. Providing false information or a misrepresentation to obtain certification. Intentionally providing false information in order to obtain a Federal blaster certification. Includes omission of information requested by the regulatory agency (e.g., failure to report previous felony convictions involving illegal use of explosives).

E. In addition to the four reasons for certification suspension or revocation listed above, 955.17(a)(2) authorizes the regulatory authority to immediately suspend the certificate of a blaster if OSM has information which demonstrates that the storage, transportation or use of explosives by that blaster is likely to threaten public safety or the environment.

III. Enforcement Options Available to the Field Office Director

While all NOV's and CO's which result from blasting are issued to the permittee, there are five actions that may be taken against a federally certified blaster:

A. Immediate suspension. A blaster certification may be immediately suspended on site by an authorized representative of the Secretary in the event that an imminent harm situation exists relative to blaster conduct which poses a serious threat to public safety or the environment. Because the action is taken without notice, this suspension cannot exceed 90 days before a hearing and final decision by the FOD.

B. Conditional Suspension. Following written notice, opportunity for a hearing, and final decision by the FOD, a conditional suspension may be imposed upon the blaster's certification. The suspension is conditioned upon the completion of remedial actions by the blaster (e.g., retraining or retesting). The FOD may specify a time period within which the remedial actions must be completed.

In the event that the remedial actions are completed and verified by the FOD, the certification will be reinstated. If the remedial actions are not met within the lesser of the specified time period, one year, or the expiration date of the certificate, the FOD may consider revocation.

C. Suspension for a definite time period. This is a punitive suspension. Following notice, opportunity for a hearing, and final decision by the FOD, the FOD will specify the ending date of the suspension. Special conditions or remedial actions may also be attached to this type of enforcement action. Following completion of the suspension time period and any attendant remedial measures required of the blaster, the certificate will be reinstated.

The time period of the suspension will depend upon the nature and severity of the blaster's actions. Consideration should also be given to the blaster's past compliance history and the possibility of an over-riding decision by the employer. The period of suspension should not exceed one year. If the FOD considers the blaster's actions serious enough to warrant a suspension in excess of one year or past the date of certificate expiration, it is more appropriate to revoke the certificate.

D. Revocation. Revocation of blaster certification may be chosen by the FOD following written notice and opportunity for a hearing. Generally, this type of action is for the most serious blaster violations or selected in lieu of a suspension having a time period which extends past the expiration date of the certificate or exceeds one year. If revocation takes place, the

blaster must return the certification card to OSM.

E. Other necessary action. Examples of such action include, but are not limited to the following: an official written admonishment, or referral to another agency, such as the Bureau of Alcohol, Tobacco and Firearms (ATF), for criminal action. Because the regulations specify that the nature and duration of an enforcement action must be commensurate with the cause, the FOD must take a justifiable and reasonable action.

Regardless of the type of enforcement action decided, the blaster's file should be annotated accordingly. This should include documentation in the blaster's file of any NOV's and CO's resultant from activities on the part of a blaster. Notification must be provided to the appropriate State in cases in which OSM implements enforcement action upon a blaster certified through reciprocity.

IV. Discussion

A general sequence of events which may occur as a result of a blasting violation is outlined below:

- A. An inspector discovers a blasting violation.
- B. The permittee is issued an NOV or CO.
- C. The blaster's name and certification number is noted in the narrative of the NOV or CO if the blaster is at fault. In the event of an imminent harm situation, a statement of immediate suspension of certification may be attached to the remedial action section of the CO.
- D. Notation of the NOV or CO is made in the blaster's file.
- E. The blaster receives notification that such documentation has been noted in his file. In the event that OSM is considering enforcement action or issued an immediate suspension of certification on site, the blaster is notified of the opportunity for a hearing prior to final decision.
- F. The FOD makes a final decision and notifies the blaster by certified mail of that decision within 30 days of the hearing or, in the case of immediate suspension of certification on site, within 90 days of the immediate suspension. The blaster is notified of the right to appeal the decision to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1286.
- G. The FOD notifies the appropriate State regulatory agency of OSM's enforcement action if the certificate was issued through reciprocity.

V. Reference Tables

The following tables are designed to provide guidance when determining appropriate enforcement action related to suspension or revocation of federally certified blasters. The tables are not all inclusive, but contain a number of sample violations or infractions which represent situations in which enforcement action against the blaster is appropriate.

VIOLATION	Citation Source			Seriousness			Appropriate Enforcement Action
	OSMRE 30CFR	MSHA 30CFR	ATF 27CFR	Min	Mod	Maj	
B. UNLAWFUL USE IN THE WORK- PLACE OF, OR CURRENT ADDITION TO, ALCOHOL, NARCOTICS, OR OTHER DANGEROUS DRUGS.	955.17 (a)(1), 850.15 (b)(1) (11)	56. 20001*					Notification to appropriate MSHA and State agencies.
1. Intoxicated while engaging in blasting operations.	955.17 (a)(2)	56. 20001				x	Immediate suspension. Hearing to consider revocation.
2. Consuming alcoholic beverages while conducting blasting operations.	955.17 (a)(2)	56. 20001				x	Immediate suspension. Hearing to consider suspension for a definite period or revocation.

*MSHA regulations at 30 CFR Part 100 provide criteria and procedures for assessment of civil penalties for violations of MSHA regulations.

VIOLATION	Citation Source			Seriousness			Appropriate Enforcement Action
	OSMRE 30CFR	MSHA 30CFR	ATF 27CFR	Min	Mod	Max	
C. VIOLATION OF ANY PROVISION OF THE STATE OR FEDERAL EXPLOSIVES LAWS OR REGULATIONS.	955.17 (a)(1), 850.15 (b)(1) (III)						Notification of violation to the appropriate MSHA, ATF, and State agencies.
C1. CERTIFICATION CONDITIONS	955.15 (f)						
1. Failure to report lost certificate to the regulatory authority.	850.15 (d)			x			Official admonishment with condition to obtain a replacement certificate.
C2. STORAGE AND TRANSPORTATION	816.61 (a)/ 817.61 (b)	77. 1301 (b)*	55.213 (b), 55.164 **		x	x	Action taken upon certification dependent upon ultimate responsibility for storage. Conditional suspension (e.g., until storage is brought into compliance) or revocation.

* MSHA regulations provide criteria and procedures for assessment of civil penalties for violations at 30 CFR Part 100.

**ATF regulations specify a fine of not more than \$1,000 or imprisonment for not more than one year, or both, for storage of explosives in a manner not in compliance with that part at 27 CFR 55.164.

VIOLATION	Citation Source			Seriousness			Appropriate Enforcement Action
	OSMRE 30CFR	MSHA 30CFR	ATF 27CFR	Min	Mod	Maj	
C3. USE OF EXPLOSIVES							
1. Failure to control flyrock	816/ 817.67 (c)				x	x	Official admonishment, immediate suspension, suspension for a definite period, or revocation.
2. Consistent improper calculation of weight of explosives per 8-millisecond delay period.	955.11 (d)			x	x	x	Official admonishment to suspension with condition of obtaining additional training within a specified time period.
C4. BLASTING RECORDS.							
1. Failure to note maximum weight of explosives/delay.	816/ 817.68 (k)			x	x		Official admonishment to suspension for a definite period.
2. Failure to make a written record of any blast.	816/ 817.68			x	x	x	Official admonishment to suspension for a definite period.

VIOLATION	Citation Source			Seriousness			Appropriate Enforcement Action
	OSMRE 30CFR	MSHA 30CFR	ATF 27CFR	Min	Mod	Maj	
D. PROVIDING FALSE INFORMATION OR A MISREPRESENTATION TO OBTAIN A CERTIFICATION.	955.17 (a)(1), 850.15 (b)(1) (iv)						SMCRA, Section 518(g) provides criminal penalties for providing false information or representation on any application or other document pursuant to a Federal or Federal lands program.
1. Omitting a past felony conviction.	955.11 (e), 955.13 (b)					x	Immediate suspension followed by a hearing to consider revocation.
2. Providing misrepresentation concerning experience.	955.11 (b)				x	x	Immediate suspension pending a hearing to consider suspension for a definite period or revocation.
3. Providing false information concerning age.	955.11 (a)				x	x	Immediate suspension pending a hearing to consider suspension for a definite period or revocation.
4. Providing false information on a training course.	955.12 (b)				x	x	Immediate suspension pending a hearing to consider suspension for a definite period or revocation.

VIOLATION	Citation Source			Seriousness			Appropriate Enforcement Action
	OSMRE 30CFR	MSHA 30CFR	ATF 27CFR	Min	Mod	Max	
E. STORAGE, TRANSPORTATION OR USE OF EXPLOSIVES IS LIKELY TO THREATEN PUBLIC SAFETY OR THE ENVIRONMENT.	955.17 (a) (2)						
1. Intoxicated while engaging in blasting operations.	850.15 (b) (1) (11)	56. 20001*				x	Immediate suspension pending a hearing to consider revocation.
2. Failure to control flyrock (e.g., inspector observes blasted materials offsite).	816/ 817.67 (c)				x	x	Official admonishment to revocation.

*MSHA regulations at 30 CFR Part 100 provide criteria and procedures for assessment of civil penalties for violations of MSHA regulations.