Federal Register

Thursday
May 29, 1986

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 750 et al.

General Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands; Permanent Regulatory Program—Use of Explosives: General Requirements; Programs for the Conduct of Surface Mining Operations Within Each State; Certification of Blasters in Federal Program States and on Indian Lands; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 750, 816, 817, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942, 947 and 955

General Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands; Permanent Regulatory Program—Use of Explosives: General Requirements; Programs for the Conduct of Surface Mining Operations Within Each State; Certification of Blasters in Federal Program States and on Indian Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining REclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is amending its rules on the use of explosives, and adding a new rule on the certification of blasters in Federal program States and on Indian lands. OSM also is revising its rules on Federal programs for States and on the Indian lands program to reference the new rule on the certification of blasters.

This rule adds similar provisions to the existing OSM rules on the use of explosives in surface and underground coal mining operations. It requires any blaster responsible for conducting blasting operations at a blasting site to be familiar with certain information, and to give direction and on-the-job training to persons who are not certified and who are assigned to the basting crew or assist in the use of explosives. In addition, it deletes from the previous rule on underground mining the requirement that persons responsible for blasting operations at a blasting site be familiar with the blasting plan.

This rule also adds a new part governing the training, examination and certification of blasters in Federal program States and on Indian lands. It covers the issuance, renewal, reissuance, suspension and revocation of an OSM blaster certification, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority. In addition, references to this new rule are added to the Indian lands program and to each Federal program for a State.

EFFECTIVE DATE: June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur Anderson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–1504 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule and Responses to Public Comments on Proposed Rule
III. Procedural Matters

I. Background

Requirement of 30 CFR Part 850

The OSM rules at 30 CFR Chapter VII, Subchapter M, govern the training, examination and certification of blasters. Part 850 of Subchapter M, 44 FR 9492 (March 4, 1983), establishes requirements and procedures applicable to the development of regulatory programs for these functions.

Section 850.12 of Part 850 provides that "[t]he regulatory authority is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster certification program for surface coal mining operations." Subsequent sections of Part 850 require that this blaster certification program include specified procedures.

As the regulatory authority in States with a Federal program for the regulation of surface coal mining operations, and on Indian lands, OSM is promulgating this final rule to comply with these requirements of Part 850 for Federal program States and Indian Lands.

History of Rule

The proposed rule was published on September 11, 1984. 49 FR 35714. A notice correcting the public comment period and hearing dates was published on September 25, 1984. 49 FR 37641. The public comment period was extended, a public meeting and a public hearing were announced, and several public hearings were cancelled by a notice published on November 19, 1984. 49 FR 45595.

The public comment period closed on November 29, 1984. OSM received comments on the proposed rule from 6 individuals and organizations. One request was received for a public meeting, and one for a public hearing, which were held on November 26 and 27, 1984, respectively, in Olympia, Washington. The public comments and a transcript of the public hearing are on file in the administrative record for this rule in the OSM Administrative Record Room, Room 5124, 1100 L Street, NW., Washington, DC.

II. Final Rule and Responses to Public Comments on Proposed Rule

The following text, which describes this final rule and responds to the public comments OSM received on the proposed rule, is organized by the part and section numbers of the affected provisions. Grammatical or stylistic changes that do not affect the substance of this final rule are not discussed.

In this final rule, proposed Part 855 has been moved from Subchapter M to Subchapter T and redesignated as Part 955. This was done to prevent misinterpretation of this part as establishing permanent program requirements that apply to State regulatory programs. Because proposed Part 855 was located in Subchapter M, which also includes existing Part 850, and because Part 850 Sets out permanent program requirements that apply to State regulatory programs, there existed the possibility that Part 855, through proximity with Part 850, might be misinterpreted as also establishing permanent program requirements applicable to State regulatory programs. OSM wishes to emphasize that Part 955 does not set standards for State regulatory programs, but applies only in Federal program States and on Indian lands.

This final rule includes a number of provisions that did not appear in the proposed rule. The new provisions affect Parts 750, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947, which set out the programs governing surface coal mining and reclamation operation in Federal program States and Indian lands. The new provisions merely add to these Federal and Indian lands programs direct references to the blaster certification requirements of Part 955. These provisions are essentially technical, and within the purview of what was proposed.

Part 750—Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

Section 750.19 Certification of blasters.

Existing § 750.19, which previously required compliance with the forthcoming "Federally-administered blaster certification programs" is revised to reference specifically the corresponding provisions of this final rule at 30 CFR Part 955.

Part 816—Permanent Program Performance Standards—Surface Mining Activities

Section 816.61 Use of Exlposives: General requirements.

Section 816.61(c)(4)

Section 816.61(c)(4) requires any blaster who is responsible for conducting blasting operations at a

blasting site to be familiar with the blasting plan and site-specific performance standards, and to give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use if explosives.

While proposed § 816.61(c)(4) was directed at any "person responsible for blasing operations at a blasting site," this final rule is directed at any "blaster who is responsible for conducting blasting operations." The revised wording reflects the fact, which was implicit in the proposed rule, that the person responsible for blasting operations at a blasting site is the blaster who is conducting blasting operations. The revised wording follows from the requirement of existing § 816.61(c)(1) that "all blasting operations . . . shall be conducted under the direction of a certified blaster," and of existing § 816.61(c)(3) that "[a] blaster . . . shall be present at the firing of a blast."

Proposed § 816.61(c)(ii) would have explicitly specified that the person responsible for blasting operations at a blasting site must have a current blaster certificate. This provision was deleleted from this final rule as redundant in view of the added reference to a blaster in the introductory language of the paragraph. Under § 850.5 of this chapter a blaster by definition must be "certified under this part," so the proposed language is unnecessary.

Preemption of State Law

Several commenters asked OSM to explain whether the Act or this rule preempts any State law or regulation that otherwise would apply to persons who store, transport or use explosives in surface coal mining operations. Under 30 730.11(a) this rule will preempt only that State law or regulation which is inconsistent with, or precludes implementation of, the requirements of the Act or 30 CFR Chapter VII, which includes this rule. In either case the Secretary must follow the procedures specified in § 730.11(a) and identify the specific law or regulation.

Given the variety of State laws and regulations that apply to the storage, transportation or use of explosives in surface coal mining operations, it is not possible to predict which of them the Act or this rule might preempt. In any event, no State law or regulation will be preempted until it formally is identified as such by the Secretary.

Section 816.61(c)(4)(ii)

Section 850.13(a)(2) of 30 CFR requires the regulatory authority to establish procedures to insure the persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster. The logical place to implement this requirement is in § 816.61, which contains general requirements governing the use of explosives.

Since the ultimate responsibility for providing on-the-job training necessarily lies with the blaster at the blasting site, this rule adds a new § 816.61(c)(4)(ii), which requires any blaster who is responsible for conducting blasting operations at a blasting site to give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

Part 817—Permanent Program Performance Standards—Underground Mining Activities

Section 817.61 Use of Explosives: General requirements.

Section 817.61(c)(4)

Section 817.61(c), which governs underground mining activities, contains provisions similar to those of § 816.61(c), which governs surface mining activities. This rule revises § 817.61(c)(4) in the same way and for the same reasons as discussed previously for § 816.61(c)(4).

In addition, this rule revises § 817.61(c)(4) by deleting the previous requirement that persons responsible for blasting operations at a blasting site be familiar with "the blasting plan." The reference to a blasting plan was included in § 817.61(c)(4) inadvertently when two similarly worded rules were promulgated concerning the use of explosives for surface and underground mining activities. 48 FR 9486 (March 4, 1983). However, as was explained in the preamble to the related final rule at 30 CFR 780.13(a), a blasting plan is not required for the underground mining activities governed by § 817.61. 48 FR 9789 (March 8, 1983). Therefore, this rule deletes from § 817.61(c)(4) the previous incorrect reference to a blasting plan.

Part 900—Introduction

Part 900 is an introduction to the State and Federal programs set out in subsequent parts of Subchapter T for the conduct of surface mining operations within each State. This final rule revises §§ 900.1, 900.11 and 900.13 of Part 900 to include references to new Part 955, which this final rule adds to Subchapter T. In addition, the previous wording of §§ 900.11 and 900.13 is revised somewhat to improve its clarity with no intended change in substance.

Part 910—Georgia

Part 910, which sets out the Federal program for the State of Georgia, is revised by adding a new § 910.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 912—Idaho

Part 912, which sets out the Federal program for the State of Idaho, is revised by adding a new § 912.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 921—Massachusetts

Part 921, which sets out the Federal program for the State of Massachusetts, is revised by adding a new § 921.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 921.850, which is superseded by § 921.955, is removed.

Part 922—Michigan

Part 922, which sets out the Federal program for the State of Michigan, is revised by adding a new § 922.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 933—North Carolina

Part 933, which sets out the Federal program for the State of North Carolina, is revised by adding a new § 933.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 933.850, which is superseded by § 933.955, is removed.

Part 937—Oregon

Part 937, which sets out the Federal program for the State of Oregon, is revised by adding a new § 937.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 939—Rhode Island

Part 939, which sets out the Federal program for the State of Rhode Island, is revised by adding a new § 939.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 939.850, which is superseded by § 939.955, is removed.

Part 941—South Dakota

Part 941, which sets out the Federal program for the State of South Dakota, is revised by adding a new § 941.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State.

Part 942—Tennessee

Part 942, which sets out the Federal program for the State of Tennessee, is revised by adding a new § 942.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 942.855, which incorrectly references non-existent Part 855, is removed.

Part 947—Washington

Part 947, which sets out the Federal program for the State of Washington, is revised by adding a new § 947.955 to reference Part 955 as applying to the training, examination and certification of blasters for surface coal mining and reclamation operations in that State. In addition, existing § 947.850, which is superseded by § 947.955, is removed.

Part 955—Certification of Blasters in Federal Program States and on Indian Lands

As noted previously in the introduction to this portion of the preamble, proposed Part 855 was moved from Subchapter M to Subchapter T and redesignated as final Part 955. Thus, the comments OSM received on proposed Part 855 now apply to Part 955. To avoid the confusion that might result from repeated references to these two similar part numbers, the following discussion refers only to Part 955, with the understanding that it covers the correspondingly numbered sections of proposed Part 855.

Section 955.1 Scope.

Section 955.1 defines the scope of new Part 955, which establishes the program required by 30 CFR 850.12 for the training, examination and certification of blasters in Federal program States and on Indian lands. Part 955 governs the issuance, renewal, reissuance, suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority.

The purview of Part 955 is limited to Federal program States and Indian lands. Thus, for Federal lands in a State with a Federal program the training, examination and certification of blasters is governed by Part 955. However, for Federal lands in a State with a State regulatory program the training, examination and certification of blasters is governed by the State program, regardless of whether there is a Federal-State cooperative agreement. *See:* 30 CFR 740.11(a).

Relationship to State Law and Programs

Except as described under the heading *Preemption of State Law* in the preceding analysis of § 816.61(c)(4), this rule does not preempt any State law or regulation governing either the licensing or certification of blasters, or the storage, transportation or use of explosives in general. A State may require a blaster to comply with any State law or regulation that has not been identified by the Secretary as preempted by the Act or this rule.

Several commenters asked whether OSM plans to integrate the blaster certification program under Part 955 with similar State licensing or certification programs that already may exist in Federal program States. One suggested that OSM modify the rule to enable OSM and a State to issue jointly a single certificate. The commenter thought this would insure that a blaster becomes aware of any need to obtain authorization from both jurisdictions.

Another commenter suggested including in the rule a provision allowing OSM to enter into a cooperative agreement under which a qualified State agency would administer the OSM blaster certification program. This commenter thought that even though a State elected not to pursue primacy in the overall regulation of surface coal mining operations it might elect to administer the more limited blaster certification portion of the Federal program.

OSM currently has no plans to seek either joint Federal-State or independent State administration of the OSM blaster certification program established by this rule. Nor has OSM reached any conclusion on either the need for or the legality under the Act of a provision authorizing OSM to enter into a cooperative agreement for either joint or independent State administration of the program. Therefore, this final rule includes neither of the suggested provisions.

Another commenter was concerned about whether OSM would make the training and certification of blasters under Part 955 compatible with State procedures already in place. As discussed subsequent § 955.14(b), under the heading *Oral Examination*, this commenter thought the requirement for a written examination was incompatible with some existing State procedures.

OSM disagrees. While some requirements of Part 955 may be more stringent than those of some State procedures, they are not incompatible. OSM is aware of nothing in Part 955 that would prevent the holder of a State license or certificate from obtaining an OSM blaster certificate, or vice versa.

Section 955.2 Implementation.

In accordance with 30 CFR 750.19, 816.61(c) and 817.61(c), § 955.2 specifies that in Federal program States and on Indian lands the requirement that any person who is responsible for conducting blasting operations at a blasting site shall have a current blaster certificate is not effective until June 30, 1987. Before that date, §§ 750.19, 816.61(c) and 817.71(c) require that all blasting operations in Federal program States and on Indian lands be conducted by competent experienced persons who understand the hazards involved.

This is a new section added to the final rule to set out the specific date when the requirements of existing §§ 750.19, 816.61(c) and 817.61(c), as they relate to an OSM blaster certificate, will apply in Federal program States and on Indian lands. It does not change the date that otherwise would have applied under these existing sections. Nor does it affect the effective date of any other requirement of this part.

Under 30 CFR 816.61(c)(1) and 817.61(c)(1) the requirement that all blasting operations are to be conducted under the direction of a certified blaster does not become effective until 12 months after the implementation of a blaster certification program. The Indian Lands Program at 30 CFR 750.19 incorporates, §§ 816.61(c) and 817.71(c), and thus delays the effective date of the requirement for a blaster certificate on Indian lands for the same 12-month interval. This interval will give candidates for an OSM blaster certificate ample time to complete training, submit an application, pass the examination, and become certified before the requirement to have a certificate is implemented in Federal program States and on Indian lands.

Several commenters were concerned that delays in the availability of application forms, training materials, or the examination might minimize the value of this 12-month interval. OSM assures these commenters that the forms and other materials necessary to comply with Part 955 will be available on the effective date of this rule.

Notwithstanding the 12-month interval before the requirement for an OSM blaster certificate is implemented, OSM

advises everyone subject to this part to apply for a certificate as soon as is practicable after they meet the required qualifications. Anyone who submits an application at the last minute does so at his or her own risk. OSM neither will be responsible for nor will excuse any failure to meet the requirements of § 955.2, or of §§ 750.19, 816.61(c) or 817.61(c), due to the length of time involved in the certification process.

Section 955.5 Definitions.

Section 955.5, which did not appear in the proposed rule, defines a number of terms used in this part. It clarifies, but does not change, the substance of what was proposed.

Applicant is defined as a person who submits an application for an OSM blaster certificate. *Application* is defined as a request for an OSM blaster certificate submitted on the prescribed form, including the required fee and any applicable supporting evidence or other attachments. These definitions are added to this rule to supplant the inapt definitions of these same two terms in 30 CFR 701.5, which apply generally to Chapter 30 unless otherwise indicated.

Issue and *issuance* are defined as meaning to grant to an applicant his or her first OSM blaster certificate that is not granted through reciprocity. To qualify for the issuance of a certificate an applicant must meet certain qualifications, a number of which differ from those for the subsequent certificate renewal or reissuance, and all of which differ from those for a certificate through reciprocity. An applicant who previously had obtained a certificate through reciprocity, but no longer qualifies for or wishes to rely on reciprocity, must qualify for certificate issuance in the same manner as any other applicant. Hence, the terms *issue* and *issuance* do not apply to a first certificate that is granted through reciprocity.

Reciprocity is defined to mean the recognition by OSM of a blaster certificate issued by a State regulatory authority under an OSM-approved blaster certification program as qualifying an applicant for the grant of an OSM blaster certificate. For more information on reciprocity, see particularly the discussion of § 955.16.

Reissue and *reissuance* are defined as synonymous with the term *recertification* in 30 CFR 850.15(c), and as meaning to grant to an applicant who holds a renewed OSM blaster certificate, or who holds an OSM blaster certificate that expired more than 1 year prior to the date of his or her application, or who held an OSM blaster certificate that was revoked, a subsequent certificate that is not granted through reciprocity and for which additional training and examination are required.

As was noted in the proposed rule, Part 850, on which Part 955 is based, provides in § 850.15(c) for the "recertification" of blasters. In drafting Part 955 is was found that use of the term *recertification* would reduce the grammatical clarity of the rule. For this reason, the terms *reissue* and *reissuance* are substituted in its place. For more information on reissuance in relation to the renewal of a current or expired certificate, see the subsequent discussion of § 955.15(d), and for a revoked certificate see the subsequent discussion of § 955.17(e)(2).

Renew and *renewal* are defined as meaning to grant to an applicant who holds an issued or reissued OSM blaster certificate a subsequent certificate that is not granted through reciprocity and for which additional training and examination are not required.

Replace and *replacement* are defined as meaning to grant to an applicant a duplicate OSM blaster certificate as a substitute for one that was lost or destroyed.

Section 955.10 Information collection.

The information collection requirements in Part 955 are contained in §§ 955.12 (a)(2) and (b)(2), 955.13(a) and 955.15(g). Section 955.12 (a)(2) and (b)(2) require an applicant to obtain satisfactory evidence of having completed training in the use of explosives. Section 955.13(a) requires an applicant to provide on an OSM application form information pertinent to determining his or her qualifications for a blaster certificate, and ultimately to identifying him or her as the certificate holder. Section 955.15(g) requires a person who holds an OSM blaster certificate to notify OSM within 30 days of any change in his or her address. This information is needed by OSM to determine whether an applicant is qualified to obtain an OSM blaster certificate, and to administer the program once the certificate is issued.

Section 955.11 General requirements.

Section 955.11 lists the general requirements an applicant must meet to qualify for an OSM blaster certificate. It derives primarily from proposed § 955.11(a), with some changes. Proposed § 995.11(b) was deleted as redundant.

To qualify for an OSM blaster certificate under § 955.11, a person must:

(a) Be at least 20 years old prior to submitting an application, and at least 21 years old prior to the grant of a certificate;

(b) Have worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for either 1 or 2 of the 3 years preceding the submission of an application, the length of time depending on the applicant's current certification status;

(c) For certificate issuance or reissuance, have received on-the-job training, completed a training course, and obtained satisfactory evidence of having completed training, as provided in § 955.12;

(d) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(e) Submit an application as specified in § 955.13;

(f) For certificate issuance or reissuance, pass a written examination as specified in § 955.14;

(g) For a certificate through reciprocity, meet the requirements of § 955.16; and

(h) Not be subject to suspension, revocation or other action under § 955.17.

The differences between these requirements and those in the proposed rule for each paragraph of this section are discussed under the following headings.

Section 955.11(a) Minimum age.

Under § 955.11(a), the minimum age at which a person may apply for an OSM blaster certificate is 20 years, and the minimum at which a person may be granted a certificate is 21 years. The proposed rule would have set the minimum age for the granting of a certificate at 18 years, but did not specify any minimum for submitting an application. The minimum age of 21 years is similar to current State requirements.

Several commenters thought that the proposed minimum age of 18 years was too young because, together with the 2-out-of-3 year minimum experience requirement of this rule for certificate issuance, it might prompt persons who were only 15 or 16 years old to work in a hazardous occupation. Several commenters also noted that other Federal and State laws which regulate the use of explosives specify a minimum age of 21 years. For example, the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms rules on commerce in explosives at 27 CFR 55.49

specify that an applicant for a license or permit must be 21 years of age or older.

OSM agrees with these commenters that the proposed minimum age of 18 was too low, and that 21 years is the minimum age at which a person reasonably might be expected to have sufficient training, knowledge, experience and competence to accept responsibility for conducting blasting operations, and has revised this final rule accordingly.

Because of unavoidable delays that will result from the requirement for an examination and from administrative processing, a significant amount of time may elapse between the filing of an application and the grant of a certificate. To compensate for these delays, and enable an otherwise qualified applicant to obtain a certificate as soon as he or she reaches the age of 21, this final rule allows anyone over the age of 20 to submit an application. Once OSM determines that an underage applicant has met all of the other qualifications required by this part, it may grant a post-dated certificate to take effect on the applicant's 21st birthday.

Section 955.11(b) Experience.

Section 955.11(b), which corresponds with proposed § 955.11(a)(2), specifies both the kind and amount of experience an applicant must have to qualify for an OSM blaster certificate. It requires that an applicant either have been qualified and worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for a specified period of time.

The amount of experience an applicant must have depends on his or her certification status. For certificate issuance it is 2 years out of the 3 years preceding the submission of an application; for certificate renewal or reissuance it is 1 year out of the preceding 3. In each case the amount of experience is cumulative during the 3 years preceding the submission of an application. An applicant may aggregate experience gained as a blaster or the equivalent with that gained under the direction of a blaster or the equivalent. Likewise, an applicant may aggregate shorter periods of interrupted experience to reach the 1 or 2 year totals.

In determining whether the years of experience claimed by an applicant meet the time periods specified in the rule, OSM will consider not only the duration of the experience, but also the type of activity involved. Only that experience which otherwise meets the requirements of this rule will be counted toward satisfying the minimum time requirement.

Section 955.11(b) differs from the proposed rule in a number of ways. One, to improve the organization of the rule the on-the-job training requirement in proposed § 955.11(a)(2) was relocated to § 955.12(a) of this final rule, which includes a related requirement for the completion of a training course, and a reference to the on-the-job training requirement in § 955.12 was added to § 955.11(c).

Rule Recognizes Blaster or the Equivalent

Two, this section now enables a person to qualify for an OSM blaster certificate by working as or under the direction of either a blaster *or the equivalent.* The proposed rule did not recognize equivalent experience.

Several commenters maintained that proposed § 955.11(a)(2) was too strict because many persons with adequate qualifications for an OSM blaster certificate would not meet, or have worked under the direction of someone else who meets, the narrow definition of the term "blaster."

As defined by 30 CFR 850.5, "*Blaster* means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part." Thus, the only experience recognized by proposed § 955.11(a)(2) was that obtained specifically in surface coal mining operations as, or under the direction of, the holder of an OSM or State blaster certificate issued under Part 850.

With respect to the proposal to recognize experience gained only in surface coal mining operations, these commenters suggested that OSM also recognize equivalent blasting experience gained in activities such as quarrying, construction, other mining, management, consulting, education and sales. OSM agrees, and the final rule now recognizes equivalent blasting experience gained in such activities. Later in this discussion, general criteria are given on what type of experience OSM may accept as equivalent.

With respect to the proposal to recognize experience gained only under an OSM or State blaster certificate, these commenters also suggested that OSM recognize equivalent experience gained under a State license not issued under Part 850.

OSM had proposed to do this in the transition period immediately following promulgation of this rule, when no one possibly could have sufficient experience under an OSM or State blaster certificate, by interpreting the word "blaster" in this provision to include any person licensed, certified or otherwise authorized by OSM or a State to conduct blasting operations. Thus, OSM agrees with these commenters and intends the words "or the equivalent" in this final rule to include experience gained under equivalent State licensing or certification procedures. This will obviate any special interpretation in the transition period, and will apply throughout the life of the rule.

Due to the many types of blasting experience which applicants for an OSM blaster certificate might proffer as equivalent, it is not possible for OMS to set precise criteria for assessing equivalance. Generally, however, OSM will accept as equivalent only that experience gained in activities which reasonably approximate the environment, procedures, shot size, and hazards of surface coal mining operations. This must include sufficient practical experience with blasting technique, equipment and personnel in an actual working environment. Mere abstract experience with the theory and practice of blasting will not suffice. Likewise, OSM will recognize as equivalent only a license, certificate or other authorization to conduct blasting operations which qualifies the holder to act in a capacity reasonably approximating that of a blaster.

Under this rule an applicant for an OSM blaster certificate will have the burden of demonstrating to the satisfaction of OSM that his or her experience is equivalent to that obtained as, or under the direction of, a blaster.

One commenter asked OSM to consider whether persons who are not responsible for blasting operations at a blasting site might need an OSM blaster certificate, and to modify the experience requirement of the rule accordingly. This commenter cited, for example, mine management personnel who are directly responsible for but are precluded by union rules from taking an active part in blasting operations, and consultants who develop blasting plans but do not participate in on-site blasting activities.

Under 30 CFR 816.61(c), the only person who must have an OSM blaster certificate is one conducting blasting operations at a blasting site. Management personnel and consultants away from the site are not required to have a certificate, regardless of any direct or indirect responsibility they may have for the operations. If such a person wanted to obtain an OSM blaster certificate, whether he or she could qualify would depend on whether the management or consulting experience was equivalent to that obtained as, or under the direction of, a blaster.

Minimum Amount of Experience

And three, this section now requires less experience for certificate renewal and reissuance than it does for certificate issuance. The proposed rule would have required 2 years of experience for all of these certificates.

Several commenters said that the requirement of this section for blasting experience in 2 out of the 3 years preceding submission of an application was excessive. One thought that considering the requirements for training and examination, 1 year of experience was sufficient. Another suggested that to prevent "severe hardships" OSM should reduce the requirement during the first year of the program to only 1 year, with at least 75% of that year worked directly as a blaster.

One commenter asked OSM to reconsider the minimum amount of experience required for reissuance of an OSM blaster certificate. This commenter suggested a requirement of 1 year of experience out of the preceding 3 to accommodate certificate holders who through uncontrollable circumstances did not actively engage in blasting for the entire 3-year certificate term.

To the extent these comments relate to certificate issuance, OSM disagrees. For certificate issuance this final rule retains the requirement for 2 years of experience out of the 3-year period preceding the submission of an application. Notwithstanding any inconvenience the requirement for 2 years of experience might impose on a candidate for certificate issuance, the safety and welfare of people and property at the blasting site are more important.

Blasting is a dangerous occupation, and among the numerous State and Federal government officials, consultants, manufacturers and other experts contacted by OSM in drafting the proposed rule there was a consensus that 2 years of experience was the minimum needed to qualify as a blaster. OSM agrees with this consensus, and concludes that a minimum of 2 years of recent experience is necessary to give most potential candidates for certification a sufficiently thorough understanding of explosives for them to assume responsibility for blasting operations.

This requirement for 2 years of experience should not put anyone out of work or otherwise impose a severe hardship for several reasons. First, it is unlikely that any significant number of persons who currently are working at a level of responsibility equivalent to that of a blaster would lack the required 2 years of experience. This is particularly true since the rule allows an applicant to aggregate experience gained as a blaster or the equivalent with that previously gained under the direction of a blaster or the equivalent.

Second, not everyone who handles explosives or works on a blasting crew must have a blaster certificate, only the blaster who is responsible for conducting blasting operations at a blasting site. Thus, a person who does not qualify for an OSM blaster certificate may continue to earn an income in the blasting profession while gaining the required experience.

Finally, as described previously for § 955.2, OSM will not implement the requirement for an OSM blaster certificate in Federal program States and on Indian lands until 12 months after the effective date of this rule. This interval will give potential applicants additional time to gain the required 2 years of experience.

To the extent these comments relate to certificate renewal and reissuance, however, OSM agrees that 1 year of experience out of the 3 years preceding the submission of an application is sufficient. The amount of expereince necessary to maintain proficiency as a blaster obviously is less than what is required to acquire such proficiency in the first place. Once an applicant has qualified for and obtained an OSM blaster certificate, 1 year of experience out of the preceding 3 is sufficient to maintain proficiency. Thus, the experience requirement for certificate renewal and reissuance has been reduced from 2 years to 1 year.

Section 955.11(c) Training.

Section 955.11(c) corresponds with proposed § 955.11(a)(4). In the proposed rule, this provision implied that every applicant was required to complete training in order to qualify for an OSM blaster certificate. However, training is required only for certificate issuance and reissuance. Applicants for other types of certificates need not complete additional training. To clarify this requirement, the phrase "For certificate issuance or reissuance" was added to § 955.11(c).

In addition, the term "blaster," which modified the term "training," was deleted as superfluous. And a reference to the requirements for on-the-job training and obtaining satisfactory evidence of training were added to correspond with changes in final § 955.12. For more information on these changes, and on the training requirement in general, see the discussion under subsequent heading *§ 955.12 Training.*

Section 955.11(d) Competence.

Section 955.11(d) is the same as proposed § 955.11(a)(3).

Section 955.11(e) Application.

Section 955.11(e) corresponds with proposed § 955.11(a)(5). The reference to a fee in this section was deleted as superfluous because this final rule now includes the fee in the definition of application.

Section 955.11(f) Examination.

Section 955.11(f) corresponds with proposed § 955.11(a)(6). The proposed rule did not explicitly state that the requirement for an examination applies only to certificate issuance and reissuance. Since applicants for other types of certificates need not pass an examination, the phrase "For certificate issuance or reissuance" was added to this section. For more information on the examination requirement, see the discussion under subsequent heading *§ 955.14 Examination.*

Section 955.11(g) Reciprocity.

This is a new paragraph which did not appear in the proposed rule. It merely cross-references § 955.16, which governs the grant of a certificate through reciprocity, to make the list of general requirements in this section more complete.

Section 955.11(h) Suspension and revocation.

Section 955.11(h) is the same as proposed § 955.11(a)(7).

Section 955.12 Training.

Section 955.12 requires an applicant for certificate issuance or reissuance to have completed a training course. An applicant for certificate issuance also must have completed on-the-job training. This section also requires OSM to ensure that courses are available to train potential applicants on the required topics.

Proposed § 955.12(b)(2) would have authorized OSM to modify the training required of an applicant for certificate reissuance to reflect previous training. This provision was deleted from this final rule as unnecessary because new § 955.12(b)(1) now contains a modified training requirement for certificate reissuance which inherently accounts for previous training. OSM does not intend to modify further the training required for certificate reissuance.

Section 955.12(a) On-the-job training.

Section 955.12(a) is a new provision derived from proposed § 955.11(a)(2). Paragraph (a)(1) requires each applicant

for the issuance of an OSM blaster certificate who does not qualify as a blaster or the equivalent to have received on-the-job training, including practical field experience in blasting operations, from a blaster or the equivalent for 2 out of 3 years preceding the submission of his or her application. The time period that applies to this requirement derives from proposed § 955.11(a)(2), and is adopted for the same reasons as discussed previously for the minimum experience requirement of § 955.11(b)(1).

Paragraph (a)(1) references a narrow exception to its requirements in § 955.14(c)(2), which for reexamination provides that any person who fails the examination and submits a new application within 2 years of completing training need not repeat training, or resubmit evidence of having completed training. For more information on this exception, see the subsequent discussion of the referenced § 955.14(c)(2).

Paragraph (a)(2) of this section requires the applicant to have obtained from either the blaster or the equivalent who provided the on-the-job training, the relevant employer at the time the training was received, or some other knowledgable source, satisfactory evidence of having received on-the-job training in accordance with paragraph (a)(1). Satisfactory evidence must include sufficient information to demonstrate that the training was received, and enable OSM to contact either the blaster or the equivalent who provided the training, the employer, or the other knowledgable source, to verify this fact.

The applicant is given several options as to the source of the evidence because in some situations either the blaster who provided training or the employer may no longer be available to provide it. To avoid the problem of having to obtain satisfactory evidence from a blaster or employer with whom the applicant no longer is associated, or finding another sufficiently knowledgable source, OSM encourages blaster-trainees to obtain the required evidence on a routine basis as part of their training.

Section 955.12(b) Training course.

Section 955.12(b) corresponds with proposed § 955.12(a). Paragraph (b)(1) requires an applicant for the issuance or reissuance of an OSM blaster certificate to have completed a training course in specified topics. It references the same narrow exception to this requirement that was noted in the preceding discussion of § 955.12(a)(1).

Under this paragraph an applicant must complete training within 2 years of submitting an application. Depending on whether the application is for certificate issuance or reissuance, two different levels of training are required. For certificate issuance the training must cover the technical aspects of blasting operations, and State and Federal laws governing the storage, transportation and use of explosives, including the topics specified in 30 CFR 850.13(b). For certificate reissuance the training must cover any significant changes that have occurred in the topics specified in 30 CFR 850.15(b) since the applicant last completed a training course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. If OSM determines that no significant changes have occurred, then OSM may waive this latter requirement.

Section 955.12(b)(2) requires an applicant to have obtained from his or her training provider satisfactory evidence that he or she completed training in accordance with paragraph (b)(1). At a minimum, such evidence will include the names and addresses of the applicant and the training provider, and the type, content and date[s] of the training.

The evidence need not follow any specific format, as long as it adequately documents that the applicant has completed the required training. In specifying the type of training, it should indicate the nature of the training provider and the form of instruction. It should specify the content of the training in sufficient detail for OSM to judge whether the topics specified in 30 CFR 850.13(b) were covered adequately. And it should specify the date the training was begun, or how long it lasted, and the date it was completed.

The applicant need not include evidence of any grade that may have been received in a course, and a passing grade will not be considered by OSM as a criterion in determining whether an applicant has completed adequate training. No grade is required because OSM considers its examination to be an adequate measure of what the applicant has learned. The applicant will have the burden of demonstrating to the satisfaction of OSM that he or she has completed adequate training.

Section 955.12(b) differs from the proposed rule in several ways. One, as was implicit in the proposed rule, this final rule explicitly states that the training requirement applies only to applicants for certificate issuance or reissuance. Applicants for the other types of certificates need not complete any additional training or submit a training voucher.

Two, the maximum time that may elapse between the dates when an applicant completes training and submits an application is reduced from 3 years to 2 years. OSM has concluded that a 3-year interval is too long to ensure that a training course is sufficiently up-to-date with respect to significant changes in the law and technology. OSM considered shortening the interval to 1 year, but concluded that this would unreasonably restrict not only the training option available to an applicant, but also the time available for an applicant to complete the remainder of the certification process.

Three, this final rule substitutes for the term "OSM or equivalent training" in the proposed rule the term "a training course." As discussed subsequently for § 955.12(b), OSM will not itself provide any of the training required by this part, and therefore the term "OSM or equivalent training" is inapt. Since proposed § 955.12(b)(1) would have required OSM to provide or otherwise ensure the availability of training courses, the requirement that an applicant for certificate issuance or reissuance have completed a training course was implicit in the proposed rule.

To meet the requirements of this section, a training course must be adequate to prepare the applicant to assume responsibility for conducting blasting operations at a blasting site. This may include a correspondence course in which the trainee receives interactive instruction and feedback, but does not include unsupervised self-study of either prepared matter materials or random information on the required subjects.

A commenter asked OSM to provide specific criteria on what would constitute acceptable training, including the amount of time involved. OSM has concluded that specific criteria might limit unduly the training options available to potential applicants, with few offsetting benefits. Therefore, this rule provides only general criteria. For more information on the training requirement in general, see the notice of final rulemaking for 30 CFR 850.13. 48 FR 9488–9489 (March 4, 1983).

And four, final § 955.12(a)(1) now requires different levels of training for certificate issuance and reissuance. Proposed § 955.12(a) would have required applicants for both types of certificates to complete the same level of training. Proposed § 955.12(b)(2), however, would have authorized OSM to modify the training required for reissuance to reflect previous training an applicant had received. In response to public comments, OSM has included a modified training requirement for certificate reissuance directly in

paragraph (b)(1), and has deleted the corresponding provision of proposed § 955.12(b)(2).

OSM received a number of comments on the provision for modification of the training requirement. One commenter asked whether OSM had developed any criteria for determining the training required for certificate reissuance. This commenter suggested that OSM should require additional training only when a blaster must use new procedures, and thought that any training given to certificate holders would only duplicate training already offered by the Mine Safety and Health Administration (MSHA).

Revised § 955.12(b)(1) now bases the training required for certificate reissuance on any significant changes that have occurred in the topics specified in 30 CFR 850.13(b) since the applicant last completed a training course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. A potential applicant for certificate reissuance will be able to meet this requirement in most instances by taking a short refresher course. When no significant changes have occurred, OSM may waive this requirement entirely. OSM will not require anyone to duplicate training that already had been provided by MSHA, or any other adequate course, within the applicable 2-year period.

Section 955.12(c) Availability.

Section 955.12(c) corresponds with proposed section 955.12(b)(1). It requires OSM to ensure that courses are available as provided in 30 CFR 850.13(b) to train persons who are subject to Part 955 and responsible for the use of explosives in surface coal mining operations. This implements the requirement of § 850.13(b) that "[t]he regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations."

Section 955.12(b) differs from the proposed rule in a number of ways. One, as discussed previously in the introduction to this section, proposed paragraph (b)(2) was deleted in view of the two different levels of training included in final paragraph (b)(1).

Two, the phrase "subject to this part" was added to clarify that OSM must ensure the availability of courses only to the extent it is the regulatory authority. Under 30 CFR 850.13(b), the regulatory authority need only ensure that courses are available to persons under its jurisdiction. With respect to such courses, the jurisdiction of OSM as regulatory authority is limited to those persons who are subject to this part in Federal program States and on Indian lands.

And three, the requirement in proposed paragraph (b)(1) for OSM to provide courses has been deleted. Although one commenter agreed with this requirement, OSM has concluded that there is no need for it to duplicate the courses that already are available, or may be offered in the future, to provide the training required by section 955.12(b).

This same commenter also recommended that OSM develop a self-study training program. OSM does not intend to do so. As discussed previously for section 955.12(b), OSM has concluded that while a correspondence course in which a trainee receives interactive instruction and feedback may meet the training requirement of this section, unsupervised self-study of either prepared materials or random information on the required subjects will not. OSM is not prepared to engage in the interactive training a correspondence course would require. However, OSM will attempt to make available to potential applicants a list of courses, including any taught by correspondence, that meet the requirements of section 955.12(b).

This commenter also asked whether course instructors would need to have an OSM blaster certificate. The answer is no. Many fully competent instructors may not have sufficient, recent, practical experience to qualify for a certificate. Furthermore, the requirement for a blaster certificate applies only to persons responsible for conducting blasting operations at a blasting site.

Another commenter suggested that OSM should add to section 955.12 a new paragraph that would enable a surface mining permittee to train potential applicants for an OSM blaster certificate. OSM has not adopted this suggestion because the additional provision is unnecessary. Nothing in section 955.12 would preclude a permittee from providing the required training.

Section 955.13 Application.

Section 955.13 governs the application process for an OSM blaster certificate. It specifies the required application procedures, including the payment of an application fee and the submission of evidence of any applicable training, and requires OSM to make available a prescribed form on which an application must be submitted.

Section 955.13(a) Submission procedures.

Section 955.13(a) requires any person seeking an OSM blaster certificate to: (1) Complete and submit to OSM an application on the prescribed form; (2) include as part of the application a specified nonrefundable fee; (3) for certificate issuance or reissuance, include as part of the application satisfactory evidence of having completed training as provided in section 955.12; and (4) submit the application and fee a specified number of days in advance of a specified reference date, the number of days and the reference date in each case depending upon whether the application is for certificate issuance, renewal, reissuance, or a certificate through reciprocity.

Section 955.13(a)(1) Prescribed form.

For a discussion of the prescribed application form, see the subsequent heading *§955.13(b) Application form.*

Section 955.13(a)(2) Application fee.

Section 955.13(a)(2) requires an applicant to include as part of his or her application a fee that ranges in amount from $28 to $122, depending on the type of certificate sought. The proposed rule would have required the applicant to submit a fee "with the application," while this final rule requires the applicant to include the fee "as part of the application" since the term "application" now is defined by section 955.5 to include the fee.

The specified application fees are adopted under the authority of section 9701 of Pub. L. 97-258, 96 Stat. 1051 (31 U.S.C. 9701), which prior to editorial revision and recodification was section 501 (31 U.S.C. 483(a)) of the Independent Offices Appropriation Act (IOAA). Section 9701 authorizes an agency to prescribe regulations establishing a charge for a service or thing of value provided by the agency. The charge must be fair and based on costs to the government, the value of the thing or service to the recipient, the public policy or interest served, and other relevant facts.

The application fees in section 955.13(a)(2) were derived by calculating the direct and indirect costs OSM expects to incur in the certification process. For the issuance or reissuance of a certificate, the application fee includes the cost of clerical processing, technical review, and the cost of the examination. For reexamination, the fee includes only the cost of the examination.

For renewal or replacement of a certificate, or a certificate through reciprocity, the fee includes only the cost of processing the application and

certificate, since no examination is required. There is no fee for a temporary certificate, the cost of which is covered by the underlying application fee.

As shown by the following table, the application fee for the issuance or reissuance of an OSM blaster certificate is $122. This includes the costs OSM expects to incur in the clerical processing and technical review of the application; developing, administering, renting the facility for, and grading the examination; and processing the certificate. The application fee for reexamination of an applicant who has failed the examination on a previous attempt is $61, which covers the cost of the examination.

FEE CALCULATION FOR CERTIFICATE ISSUANCE AND REISSUANCE [1]

Activity	Time allotted (hours/appl.)	Hourly rate of pay		Cost/applicant (dollars)
		Clerical (GS-4)	Technical (GS-9)	
Application:				
Clerical processing	2	$7		$14
Technical review	3		$11	33
Examination:				
Develop	[2] 3		11	33
Administer	[2] 0.2		11	2
Facility				[4] 4
Grading	2		11	22
Certification: Process certificate	2	7		14
Total				$122

[1] Based on 1985 U.S. Government pay schedule.
[2] 300 hours/exam/year divided by 100 applicants/exam/year.
[3] 5 hours/exam divided by 25 applicants/exam.
[4] $100/exam divided by 25 applicants/exam.

The application fees for renewal and for a certificate through reciprocity are each $61. The fee calculation for these certificates is similar to that for issuance and reissuance, except that the cost of an examination is not included. For certificate replacement the application fee is $28, which includes only the cost of the clerical processing of the application and certificate.

One commenter said that a fee of $122 for certificate issuance and reissuance was "inflated and unjustifiable" because the number of hours OSM projected it would take to review and process an application, and to develop the examination, was excessive. The basis for this commenter's conclusions was his experience with administering a State blaster certification program.

OSM has reviewed the proposed fee schedule in light of this comment, but nevertheless has adopted the schedule as proposed. The hours projected for each activity in the fee calculation are reasonable estimates of the average amounts of time it will take OSM to issue or reissue a blaster certificate.

The amount of time allotted to each activity is an average for all certificates. While some certificates may take less time, others will take more. These allotted times cover both the development of the certification process, and its subsequent administration.

OSM does not intend merely to rubber-stamp an application, but to review thoroughly the applicant's training, experience, employment history, and other qualifications, and where there is any question, to verify the accuracy of the information provided.

The time allotted to developing, administering and grading the examination reflects the need to review and update the examination on a regular basis, and to insure that it fairly and accurately measures an applicant's qualifications. The time allotted to processing the certificate covers not only the actual issuance of the certificate itself, but also the maintenance of records, and any subsequent communications with certificate holders.

If experience shows that any application fee in this rule does not reasonably reflect OSM's costs, OSM will propose a new rule to adjust the fee accordingly.

Another commenter believed OSM should not charge a fee for a certificate through reciprocity. This commenter thought OSM was not justified in charging an applicant who already had paid a fee to a State for a similar service.

OSM disagrees. The fee for a certificate through reciprocity is an estimate of the actual costs OSM will incur in the certification process. As it is the applicant for a certificate through reciprocity who causes OSM to incur these costs, it is reasonable for the applicant to bear these costs through the payment of a fee.

Section 955.13(a)(3) Evidence of training.

This is a new paragraph that did not appear in the proposed rule. It requires an applicant for certificate issuance or reissuance to include as part of the application satisfactory evidence of having completed training as provided in section 955.12. As with the application fee described previously under section 955.13(a)(2), this evidence is defined by section 955.5 as part of the application. For more information on the requirement for evidence of training, see the preceding discussion of section 995.12.

Section 955.13(a)(4) Examination date.

This is a new paragraph that did not appear in the proposed rule. It was derived from proposed section 955.13(b), and requires an applicant for certificate issuance or reissuance to specify in the application the date when he or she desires to take a previously scheduled examination. While proposed section 955.13(b) explicitly required the application form to include provision for the applicant to specify the desired examination date, final section 955.13(b) now covers the application form only in general terms. To facilitate the interpretation of subsequent section 955.13(a)(5), which uses the date of examination as the benchmark for determining when an applicant for certificate issuance or reissuance must submit an application, the explicit requirement for the applicant to specify the examination date was retained in section 955.13(a)(4).

Section 955.13(a)(5) Submission deadlines.

Proposed section 955.13(a)(3) was renumbered as section 955.13(a)(5). It requires an applicant for certificate issuance, renewal or reissuance to submit his or her application not less than 60 days before certain specified dates. For certificate issuance the deadline is 60 days before the date on which the applicant desires to take a previously scheduled examination. For renewal it is 60 days before the expiration date of the applicant's current certificate. And for reissuance it is 60 days before the date on which the applicant desires to take a previously scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate.

The term "previously" was added to modify the term "scheduled examination" in this section to clarify the requirement that the applicant must conform with the current application

schedule published by OSM. OSM does not intend to adapt this schedule retroactively on the basis of requests it might receive from applicants for a particular examination date.

The deadline for submitting an application for certificate issuance or reissuance is keyed to the examination date in order to give OSM advance notice of how many people wish to attend, and thus enable OSM to schedule the necessary personnel and facilities. It is expected that OSM routinely will circulate an examination schedule for the information of prospective applicants.

These deadlines will give OSM the minimum amount of time it needs for processing the application, holding the examination, and the timely issuance, renewal or reissuance of any resulting certificate. Under this provision the applicant is responsible for submitting an application in time to obtain a certificate by a desired date, to gain admission to a particular examination, or to prevent the expiration of his or her certificate.

The direct consequence of a failure to meet any of these deadlines is limited to potential delay in the issuance, renewal or reissuance of a certificate beyond the date when one is needed or desired by the applicant. An indirect consequence may be the expiration of a certificate, and the resulting loss of authorization for the holder to work as a blaster.

Unless OSM issues a temporary certificate, a person whose certificate expires for any reason may not assume responsibility for blasting operations at a blasting site until the expired certificate is renewed or reissued.

Section 955.13(b) Application form.

Section 955.13(b) requires OSM to make available to any person seeking an OSM blaster certificate an application form and instructions for its completion. The form must include a statement in accordance with law that the information provided is true and accurate to the best knowledge and belief of the applicant, and require the signature of the applicant.

Proposed section 955.13(b) specified the contents of the application form in consideration detail. OSM has concluded that there is no need for so detailed a rule, and that the more general requirement of this final rule is sufficient. Notwithstanding this general requirement, the application form OSM will make available under this final rule will seek, and the applicant will be required to provide, essentially the same information as specified in the proposed rule.

OSM has adopted a prescribed form to simplify the application process from the standpoints of both the applicant and OSM. The form will assist the applicant in determining and providing the information required to qualify for each of the various types of certificates. It also will assist OSM by imposing on the application process a high degree of organization, uniformity and consistency.

One commenter suggested that OSM should require the applicant to have a notary attest to his or her signature on the application form. OSM did not adopt this suggestion because the required statement in accordance with law is sufficient to ensure the authenticity of the applicant's signature, as well as the accuracy of the information submitted in the application.

Section 955.14 Examination.

Section 955.14 governs the timing, completion, administration and content of the examination each applicant for the issuance or reissuance of an OSM blaster certificate is required to pass.

Section 955.14(a) Certificate issuance and reissuance.

Section 955.14(a) requires an applicant for the issuance or reissuance of an OSM blaster certificate to pass the written examination specified in paragraph (b) of this section, on the technical aspects of blasting and State and Federal laws governing the storage, transportation and use of explosives, as provided in 30 CFR 850.14. The applicant must pass the examination *after* submitting the application; passing a previous examination does not fulfill this requirement.

The requirement in proposed section 955.14(a) that an applicant pass a practical examination has been deleted; this final rule requires only a written examination. The reasons for this change are given in the following discussion of section 955.14(b).

OSM received numerous public comments concerning the examination requirement of section 955.14(a). Summaries of these comments, and OSM's responses, appear in the following discussion of sections 955.14 (b) through (e).

Section 955.14(b) Administration and content.

Section 955.14(b) requires OSM on a regular basis to schedule and hold a written examination on the technical aspects of blasting, and State and Federal laws governing the storage, transportation and use of explosives, as provided in 30 CFR 850.14. At a minimum the examination must cover the topics specified in 30 CFR 850.13(b), and include: (1) Objective questions; (2) blasting log problems; and (3) initiation system and delay sequence problems. The examination will be offered only in the English language.

Practical Examination Deleted

As discussed previously for paragraph (a), the requirement for a practical examination has been deleted from section 955.14(b)(1). OSM has concluded that a written examination is adequate to measure an applicant's grasp of blasting theory and practice, and that a hands-on practical examination would be difficult to administer and grade objectively. Together with the requirement of section 955.11(b) for practical field experience, the written problems contained in the examination will adequately measure an applicant's practical skills. For these reasons the proposed requirement for a practical examination was deleted from this rule.

Several commenters maintained that the examination should stress the practical aspects of blasting, as opposed to abstract theory. While OSM will not conduct a practical examination, it agrees with these commenters and will try to design the written examination in a way that measures as far as possible those aspects of blasting which are of practical significance to the conduct of safe and responsible blasting operations.

Oral Examination

Several commenters suggested that as an alternative to a written examination, the rule should provide for oral examination. They maintained that there are persons who otherwise may be qualified to hold an OSM blaster certificate, but lack the reading and writing skills necessary to pass a written examination. An oral examination, they concluded, would provide an alternative way to evaluate these persons.

These commenters identified two major categories of persons who may not be able to pass a written examination. One category includes persons with limited formal education who have learned blasting theory and technique primarily through practical experience. The other category includes persons who may be proficient in a language such as Spanish or Navajo, but could not pass a written examination in the English language.

One commenter described a miner-training program for a workforce consisting primarily of Navajo Indians, which is conducted in the Navajo language and includes oral examination.

This commenter noted that the regulations of the State of New Mexico authorize oral examination of Native Americans for blaster certification, and that the use of oral examination does not appear to have any negative effect on safety. This commenter suggested adding to this rule regulatory language similar to that of New Mexico, which would give OSM discretion to examine an applicant orally upon request in certain limited circumstances.

OSM appreciates the concerns of these commenters, but has not revised the rule to authorize oral examination. The existing rule at 30 CFR 850.14(a)(1) requires the regulatory authority to give candidates for blaster certification "a written examination." As here, a number of commenters on proposed section 850.14 requested that OSM also provide for oral examination. The reasons why OSM kept the requirement for a written examination are set out in the preamble to that final rule. 48 FR 9489–9490 (March 4, 1983). None of the comments on this current rule give OSM any reason to change that existing requirement.

The laws and regulations governing blasting are written in the English language. All of the information published by the Institute of Makers of Explosives on the safe storage, transportation and use of explosives is in the English language. In order to understand the technical specifications of explosives, prepare blast designs, submit the required records, interpret safety notices and other information, and give direction and on-the-job training to persons under his or her supervision, a blaster must be able to read and write the English language. The only effective way to measure adequately a candidate's ability to understand these materials and do these things is through a written examination in the English language.

Anyone who cannot pass the written examination required to qualify for certification nevertheless may work under the direction of a blaster on a blasting crew. Thus, the requirement to pass a written examination will not, by itself, prevent any miner from earning a living in the blasting profession.

Because this rule governs the certification of blasters on Indian lands, OSM is particularly sensitive to any effect the rule might have on Indians. OSM realizes that the requirement to pass a written examination in the English language may prevent some Indian miners from qualifying for an OSM blaster certificate, and that in some instances this may have an economic impact on some individuals. However, these impacts are offset by the need for OSM to consider the general need to assure the safety of fellow miners and other persons in the vicinity of the blasting site. To enhance protection of the health and safety of all who may be affected, this rule requires all applicants to pass a written examination in the English language.

Initiation System and Delay Sequence

Proposed section 955.14(b)(2)(iii) required the examination to include a "practical wiring simulation problem." Several commenters noted that this type of problem applies only to electrical initiation systems, but not to others, such as gas initiation, which a blaster might use. These commenters suggested that instead of a wiring simulation problem the examination should include a delay sequence simulation.

OSM agrees with these comments, and has revised section 955.14(b)(2)(iii) to eliminate the unintentional bias toward electrical systems. This section now requires the examination to include more general "[i]nitiation system and delay sequence problems," which will not be geared to any particular type of system.

Validation of Examination

Several commenters asked whether, and to what extent, OSM would validate the blaster certification examination, both from technical and equal employment opportunity standpoints.

From a technical standpoint, these commenters were concerned that a too hasty implementation of this rule might not give OSM sufficient time to design a technically valid examination. They noted that under section 955.14(c) an applicant who failed a poorly designed examination could repeat the examination only 1 time in the subsequent 12-month period. This, they believed, might prevent some applicants from meeting the requirement for an OSM blaster certificate within the required 12 months after the effective date of this rule.

OSM appreciates the concerns of these commenters, but it already has prepared what it considers to be a technically valid examination.

Nor should the limit of 2 examinations in a 12-month period under § 955.14(c) have a detrimental effect on any significant number of applicants. OSM is required by § 955.14(b)(1) to hold examinations on a regular basis. In view of the 12-month grace period provided by § 955.2, and even if much of this period is used to obtain the required training, most applicants will be able to take examination 2 times, if necessary, before they are required to have a certificate.

If OSM finds that any defect in the examination is causing a significant number of applicants to fail, it will consider steps to alleviate any resulting hardship. However, it seems most appropriate to make any revision to this regulation after actual experience has been obtained with the examination.

From an equal employment opportunity standpoint, OSM has determined that a validity study does not need to be conducted for the examination to be used as part of the process for determining whether individuals should be certified as blasters.

A validity study is required in certain circumstances by the Uniform Guidelines on Employee Selection Procedures of the Equal Employment Opportunity Commission (the EEOC guidelines, or the guidelines). 29 CFR Part 1607.

The EEOC guidelines apply to tests and other selection procedures used as a basis for employment decisions, including licensing and certification. Essentially, they require an agency to conduct a validity study of each examination for an applicable license or certificate.

In promulgating the existing rules at 30 CFR Subchapter M governing the certification of blasters, OSM interpreted the EEOC guidelines as applying to the examination for blaster certification. 44 FR 38321–38323 (1979), 45 FR 82086–82087 (1980), 47 FR 12781 (1982), and 48 FR 9488 (1983). Under this interpretation, OSM apparently would be required to conduct a validity study of the examination.

In light of the comments on the proposed rule, OSM has reexamined its previous interpretation of the EEOC guidelines to determine how they apply to the examination for blaster certification. OSM has concluded that its previous interpretation of the guidelines as applying to the blaster certification process was incorrect, and that a validity study of the examination is not required by law. Any decision by OSM to do a validity study is strictly a matter of agency policy.

By their own terms, the EEOC guidelines do not cover the blaster certification process. As the guidelines state, they "will be applied by . . . Federal agencies subject to section 717 of Title VII [of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972]." 29 CFR 1607.2A. However, the referenced section 717 of the Civil Rights Act applies only to "personnel actions affecting employees or applicants for

employment . . . in executive agencies." 42 U.S.C. 2000e–16(a).

Thus, the purview of the guidelines is limited to Federal personnel actions in executive agencies, and they apply to the blaster certification process only to the extent it affects such actions. But while blaster certification may be a prerequisite to employment as a blaster in the private sector, it is unrelated to any Federal personnel action. So neither section 717 nor the guidelines apply to the certification process.

Even if the EEOC guidelines could be construed as applying to the blaster certification process in general, the examination given to a candidate for certification is not a "selection procedure" as defined by the guidelines, and thus does not raise the need for a validity study.

The guidelines presume that any selection procedure which has an adverse impact on employment is discriminatory unless the procedure has been validated in accordance with the guidelines. 29 CFR 1607.3A. Selection procedures include tests which are used as a basis for any employment decision. "Employment decisions include . . . licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law." 29 CFR 1607.2B.

Under these provisions, an examination is not a selection procedure unless the underlying certification is covered by some Federal equal employment opportunity law. But the blaster certification process is not covered by section 717 of the Civil Rights Act, and OSM is aware of no other civil rights law which is applicable to the certification process. So the examination for blaster certification is not selection procedure covered by the guidelines.

Even where they are not mandatory, the EEOC guidelines may "be applied . . . by any . . . . Federal agency which adopts them." 29 CFR 1607.2A. However, OSM has decided as a matter of agency policy that applying the guidelines to the blaster certification process might raise irreconcilable conflicts with its overriding concern for protecting the public health and safety and the environment. OSM will make every effort to design an examination that is non-discriminatory, but considering the hazards inherent in blasting operations it will place primary emphasis on how well the examination will serve to minimize those hazards.

Modification of Examination

Proposed § 955.14(b)(3) would have authorized OSM to modify the examination given to an applicant for certificate reissuance to reflect a previous examination the applicant had passed. This provision was deleted from this final rule. OSM has concluded that an applicant for certificate reissuance should take and pass the same examination as an applicant for certificate issuance. Thus, there is no need for a provision authorizing OSM to modify the examination.

Additional Issues

One commenter noted that the proposed rule did not specify any locations where OSM would hold examinations, and recommended holding them near the mining operations affected by this rule.

OSM agrees that as far as practicable the examinations should be held in locations that are convenient to applicants. This rule does not specify any locations so that OSM will have maximum flexibility in selecting suitable examinations sites. The application submission deadlines in § 955.13(a)(5) will give OSM sufficient advance notice of the demand for an examination at a particular site, and enable it to relocate an examination to a more convenient site in appropriate circumstances.

One commenter asked whether OSM would make available to the public in advance of the examination a large number of questions from which it would select a smaller number for each version of the examination. While OSM does plan to prepare several different versions of the examination, to preserve the integrity of the examination OSM will not disclose any of the questions in advance. The list of topics in 30 CFR 850.13(b) and the general description of the examination in § 955.14(b)(2), in conjunction with the completion of adequate formal training, will give each candidate for an OSM blaster certificate adequate notice of what the examination questions will cover.

Several commenters suggested that OSM should divide the examination into sections, and require an applicant to retake only those sections which he or she fails to pass. The knowledge and skills required to conduct safe blasting operations are comprehensive in scope and not readily separable into discrete parts. A piecemeal approach to examination or reexamination would not accurately measure an applicant's overall qualifications. Furthermore, OSM believes that any benefits which a piecemeal approach to the examination might provide to applicants would not justify the resulting substantial increase in the administrative cost burdens which would be incurred by OSM. Therefore, this suggestion was not adopted in the final rule.

Several commenters recommended that OSM develop a different examination for each type of blast initiation system, and then restrict the resulting certificate to operations employing that system. They also suggested that a certificate might be restricted to operations in a particular State or region where that initiation system was in use. An applicant who wished to qualify for all types of systems or all jurisdictions would have to seek a comprehensive certificate.

This recommendation is evaluated in the subsequent discussion of § 955.15(b), under the heading *Restricted Certification.* OSM has determined that it will not be appropriate to issue restricted certificates, either on the basis of initiation system or of jurisdiction, hence, different examinations will not be required. The examination will cover blasting concepts of general application, will pertain equally to all systems, and will be the same for all Federal program States and Indian lands.

Section 955.14(c) Reexamination.

Section 955.14(c)(1)

Section 955.14(c)(1) allows an applicant who fails the examination to apply for reexamination by submitting a new application, including the prescribed fee. However, no person may take the examination more than 2 times in any 12-month period. Applicants are advised to keep a copy of each application for reference in preparing any subsequent applications.

Because a significant amount of time may elapse between failure and reexamination, with corresponding changes in the information provided by the applicant, a candidate for reexamination must submit an entire new application. Except where the applicant is not required to resubmit a training voucher, an application for reexamination does not differ from an initial application for the same type of certificate. Because the costs associated with processing the new application and conducting the reexamination are the same as for an original application, the applicant also is required to submit a new fee.

For determining how many times an applicant has taken the examination, the 12-month period is measured back in time from the date on which the applicant desires to repeat the examination. If more than 1 previous examination falls within that 12-month period OSM will not admit the applicant for reexamination on that date. OSM has adopted this limit to ensure that candidates for reexamination have

sufficient time to study and gain the additional experience needed to prevent repeated examination failures.

One commenter maintained that the proposed limit of 2 examinations in a 12-month period was unnecessarily restrictive. This commenter suggested a frequency of no more than 1 examination in any 60 day period, and if the examination were divided into sections no more than 1 examination in any 30 day period. This commenter also recommended increasing the allowed frequency of reexamination during the first year-and-a-half of the program.

This commenter recommended more frequent reexamination for three reasons: One, the proposed limit might put miners who failed the examination out of work in the early part of the program. Two, the limit on reexamination, in conjunction with retesting requirements, could impede miners from moving from State-to-State. And three, this commenter disagreed with the statement in the proposed rule that a limit on reexamination was needed to give applicants who failed the examination time to gain more practical experience.

OSM disagrees, and has adopted none of the suggested alternatives. Nothing in the proposed rule will put a qualified applicant for an OSM blaster certificate out of work. An applicant who fails the examination the first time can take it a second time as soon as a new application and fee are processed and a subsequent examination is held. Anyone who is reasonably diligent in submitting applications should be able to take and retake the examination if necessary in the 12-month period between the effective date of this rule and the date when the requirement for a certificate is implemented. And anyone who fails to pass the examination before the requirement for a certificate is implemented can continue to work as a member of a blasting crew.

Nor will the limit on reexamination impede the movement of blasters from State to State. An OSM blaster certificate is valid in all Federal program States and on all Indian lands. The holder of a certificate may work in any of these jurisdictions without restriction. Although a blaster who wants to work in a State with a State regulatory program must have a State blaster certificate, the limit on reexamination under this rule will not prevent an applicant for a State certificate from taking the State examination.

OSM continues to believe that an applicant who fails the examination 2 times in a 12-month period will benefit from gaining additional practical experience before reexamination. Although the examination is in written form, it measures not only blasting technique, but also the practical knowledge an applicant gains through on-the-job training and experience. This rule will increase the likelihood that an applicant who fails the examination repeatedly will gain the added theoretical and practical knowledge needed to pass it on a subsequent attempt.

One commenter suggested that OSM should limit reexamination to those topics an applicant failed to pass on the previous attempt. As discussed previously for § 955.14(b), OSM will not divide the examination into separate sections, either for initial examination or for reexamination.

One commenter concluded that an applicant who failed the examination at the start of a 12-month period, and again at the end of the period could not take the examination again for 1 full year. This interpretation of the rule is incorrect. On the anniversary of the first attempt the applicant would be eligible to take the examination a third time without exceeding the limit of 2 examinations in a 12-month period.

Section 955.14(c)(2)

Under § 955.14(c)(2), any person who fails the examination and submits a new application within 2 years of completing training as provided in § 955.12(a) need not repeat training or resubmit evidence of having completed training. This is a new provision that did not appear in the proposed rule. It was added to clarify that retraining is not necessarily required for reexamination, and to eliminate the unnecessary resubmission of evidence when OSM already has evidence of current training on file for the applicant. An applicant for reexamination who does not submit a new application within 2 years of completing training must repeat training and submit new evidence of having completed training. Any application for reexamination must otherwise meet the requirements for an original application.

Section 955.14(d) Failure to attend.

Except where the applicant shows and OSM finds good cause, § 955.14(d) authorizes OSM to reject the pending application of anyone who fails to take the examination after OSM has granted his or her request for admission. This section is essentially the same as proposed.

OSM will administer this section as follows:

Either before or after the examination is held, an applicant may show OSM that he or she has good cause for failing to take it. For example, medical, employment or other unforeseen circumstances may make it impracticable for an applicant to take the examination. By notifying OSM sufficiently in advance of the examination date, the applicant may learn whether OSM will reject his or her application, and adjust his or her plans accordingly.

To make the showing an applicant should send OSM a letter describing the cause of the failure, and indicating the new date, if any, when the applicant desires to take the examination. Within a reasonable time after receiving the letter, OSM will notify the applicant of its decision.

If OSM has not received such a letter from an applicant who fails to take the examination, OSM will notify the applicant that he or she has 30 days to show good cause and to request a subsequent examination date, after which OSM may reject his or her application.

OSM will have complete discretion in determining whether an applicant shows good cause for failing to take the examination, and its decision will be final and not subject to appeal. An applicant whose application is rejected under § 955.14(e) may reapply for an OSM blaster certificate by submitting a new application.

Section 955.15 Certification.

Section 955.15 governs: (a) The processing of an application for an OSM blaster certificate; (b) the grant of a certificate; (c) the term of a certificate; (d) the limits on certificate renewal; (e) the grant of a temporary certificate; (f) the conditions of certification; and (g) notice of a certificate holder's change of address.

Section 955.15(a) Processing of application.

Section 955.15(a) governs the processing of an application for an OSM blaster certificate. It establishes procedures for: (1) Notifying an applicant of the receipt of, and of any deficiency in, his or her application; (2) notifying an applicant that his or her request for admission to a scheduled examination either is granted or denied; and (3) rejecting an application.

This section differs from the proposed rule in two ways. One, unlike proposed paragraph (a), which required OSM to notify only an applicant for certificate issuance or reissuance of the status of his or her application, and of any deficiency, final paragraph (a)(1) requires OSM to provide this notice to every applicant. This change eliminates the inconsistent treatment the proposed

rule gave to applicants for different types of certificates.

And two, paragraph (a)(2) is added to require explicitly that when OSM determines that an applicant has failed to qualify for an OSM blaster certificate, OSM shall reject his or her application and notify him or her accordingly. The authority given to OSM by this section was implicit throughout the proposed rule, as was the requirement for notice to the affected applicant. This section merely defines that authority in concrete terms, as well as the criterion OSM is to apply in rejecting an application. In administering this section OSM will determine that an applicant has failed to qualify for an OSM blaster certificate only after the applicant has had a reasonable opportunity to comply with the procedures established by this part.

Section 955.15(b) Grant of certificate.

Section 955.15(b) requires OSM to:

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the applicable training, passes the examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the issued or reissued OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed;

(4) Grant an OSM blaster certificate through reciprocity as provided in § 955.16; or

(5) Reinstate a suspended, or reissue a revoked, OSM blaster certificate as provided in § 955.17(e).

The term "grant" did not appear in the proposed rule. To simplify the language of the rule, it is used to refer generally to certificate issuance, renewal, reissuance and replacement, and to certification through reciprocity. The term "qualified applicant" is included in this section to insure that all of the requirements of Part 955 are taken into consideration by OSM in deciding to grant or deny a certificate to a particular applicant.

Paragraph (b)(5) is a new provision that did not appear in the proposed rule. It does not impose any new requirement, but merely references subsequent § 955.17(e), which governs the reinstatement of a suspended certificate and the reisssuance of a revoked certificate.

Restricted Certification

Several commenters suggested that OSM should issue several classes of certificates, based on the different blast initiation systems currently in use. To be certified for all systems, a blaster would have to obtain a comprehensive certificate. OSM did not adopt this suggestion. A candidate who qualifies for an OSM blaster certificate through training and experience with one initiation system will be able to use any other system safely. The principles that enable a blaster to control ground vibration, airblast, and flyrock are uniform from system to system. OSM will neither require training in, nor base either the examination or certification on, any particular type of blast initiation system.

One commenter suggested that OSM should restrict an OSM blaster certificate to a specific State or region. OSM did not adopt this suggestion. An OSM blaster certificate will entitle the holder to work as a blaster in all Federal program States and on all Indian lands. The requirements of Part 955 will ensure that a blaster is qualified to conduct safe blasting operations, regardless of the State or region involved.

Also, as discussed previously for § 955.1, under the heading *Relationship to State Law and Programs,* in addition to complying with any Federal requirements a blaster must comply with applicable State law and regulations. To the extent the requirements for certification under Part 955 do not meet the needs of a particular State, the State may impose additional non-conflicting requirements. Thus, there is no reason to tailor an OSM blaster certificate to the requirements of any State or region.

One commenter wanted OSM to grant a certificate only to those persons who truly need it to work as a blaster in a Federal program State or on Indian lands, but deny a certificate to those who want one only for the status it might convey. Another commenter thought that any qualified candidate should be able to obtain a certificate.

OSM disagrees with the former commenter, and agrees with the latter. This rule does not authorize OSM to consider an applicant's need in evaluating his or her qualifications for an OSM blaster certificate. There is no way by which OSM objectively could measure the need for a certificate. Therefore, OSM will issue an OSM blaster certificate to any applicant who has the required qualifications, and will not attempt to assess the applicant's need or motive.

Section 955.15(c) Term of certificate.

Section 955.15(c) specifies the terms of the different types of OSM blaster certificates. Under this section, OSM will issue a certificate for a term to expire 3 years from the date of issuance.

A renewed or reissued certificate will expire 3 years from the expiration date of the applicant's current or expired certificate. This will provide continuity of certification without penalizing an applicant who applies in a timely manner. And it will preclude the possibility of extending the certificate term by submitting a late application. The term "expired" was added to paragraphs (c)(2) and (c)(3) to clarify the intent of the proposed rule, in which the term "current" was ambiguously used to refer to both in-force and expired certificates. Neither the term "current" nor the term "expired" applies to a temporary certificate, and the granting of a temporary certificate has no effect on the term of any subsequent certificate.

A replacement certificate will expire on the same date as the applicant's lost or destroyed certificate.

A certificate granted through reciprocity will expire 60 days after the expiration date of the corresponding State certificate. This 60 day extension will prevent a potential lapse of OSM certification in the period when OSM is processing a reciprocity application. Since an applicant may qualify for reciprocity only after the corresponding State certificate is granted, the OSM certification process necessarily will lag that of the State. If the State and OSM certificates expired on the same date it would not be possible for an applicant to requalify for reciprocity before the OSM certificate expired.

Section 955.15(d) Limits on renewal.

Section 955.15(d) prohibits OSM from renewing an OSM blaster certificate more than 1 time. It also prohibits OSM from renewing an OSM blaster certificate that expired more than 1 year prior to the date of an application for renewal. To extend a renewed certificate, or one that has been expired for more than 1 year, the certificate holder must apply to OSM for certificate reissuance.

The limitation to a single certificate renewal will ensure that each blaster is trained and examined at 6-year intervals, and thus ensure that he or she continues to have the competence, knowledge and experience necessary to accept responsibility for conducting blasting operations.

One commenter disagreed with the proposed limit on certificate renewal as unnecessary and counterproductive, while agreeing that a certificate holder should be required to demonstrate continuing proficiency. As an alternative

to renewal, this commenter suggested the concept of certificate continuance. To qualify for certificate continuance, an applicant merely would have to provide evidence of sufficient recent experience.

OSM did not adopt this suggestion. Certificate continuance would not give a blaster adequate incentive to maintain his or her initial proficiency, or to keep abreast of current developments. The lack of a requirement for periodic training and examination would deprive a blaster of the incentive to obtain necessary information and feedback on a regular basis in an organized training course. And it would severely reduce the ability of OSM to reevaluate a blaster's qualifications at regular intervals.

The prohibition in this rule against the renewal of a certificate that expired more than 1 year prior to the date of an application for renewal is a new provision that was suggested in the proposed rule. It fills a gap in the proposed rule regarding how OSM should treat an applicant who holds an expired certificate. OSM has concluded that since an applicant who holds such a certificate would not have worked as a blaster for at least 1 year, and possibly more, he or she would be likely to need the additional training, and should be required to pass the examination required for certificate reissuance.

The proposed rule solicited public comment on whether the final rule should set such a 1-year deadline. Only one comment was received on this issue. The commenter suggested that 90–120 days before the expiration date of an OSM blaster certificate, OSM should send to the holder a notice of expiration. The period of 90–120 days was suggested to give the holder time to meet the 60-day deadline for submitting an application, as required by § 955.13(a)(4). This commenter also suggested that OSM should notify any blaster whose certificate had expired, and then issue a temporary certificate if an application for renewal or reissuance was submitted within 30 days. If this notice were provided, the commenter thought the 1-year limit that was suggested in the proposed rule was neither necessary nor appropriate.

OSM disagrees with this comment regarding the 1-year limit on renewal of an expired certificate. As was explained previously, this limit is included in the final rule. There is, however, no time limit for submitting an application for the reissuance of an expired certificate.

OSM agrees with the comment, however, that a notice of certificate expiration would be useful to blasters, and although not required to do so by this rule OSM will provide such notice on a discretionary basis in administering the blaster certification program. Approximately 90 days before a certificate is due to expire, OSM will attempt to send the blaster written notice of the need for renewal or reissuance.

This advance notice will be entirely discretionary, and any failure of OSM to provide it will have no effect on any requirement of Part 955. Along with this notice OSM also may provide a copy of the application form, and updated information concerning training, the examination, or other requirements. As this advance notice should be sufficient to inform a blaster of the need to extend his or her certificate, OSM will not provide any additional notice once a certificate has expired.

Finally, OSM agrees with this commenter that the period during which an applicant may request a temporary certificate should not extend beyond 30 days after certificate expiration, and has revised this rule accordingly. For more information on the affected provision, see the following discussion of § 955.15(e).

Section 955.15(e) Temporary certificate.

Section 955.15(e) authorizes OSM, in its discretion, to issue a temporary OSM blaster certificate for a maximum term of 90 days to any applicant who demonstrates that his or her current certificate is about to expire, or expired within 30 days prior to the date of his or her application, for reasons beyond his or her control.

The proposed rule did not set a deadline by which an applicant must request a temporary certificate. However, as noted in the preceding discussion of § 955.15(d), a commenter suggested the 30-day limit adopted in this rule. OSM has concluded that this 30-day limit is necessary to ensure that a temporary certificate does not extend unreasonably beyond the date of the expired certificate, and that a temporary certificate is granted only to persons who are likely to meet the qualifications for the grant of a regular certificate.

Section 955.15(f) Conditions of certification.

Section 955.15(f) requires the holder of an OSM blaster certificate to comply with the conditions specified in 30 CFR 850.15 (d) and (e). These conditions concern protecting a certificate, exhibiting a certificate upon request, and prohibitions against the assignment or transfer of a certificate and the delegation of a blaster's responsibility.

Section § 955.15(g) Change of address.

Section 955.15(g) requires the holder of an OSM blaster certificate to notify OSM in writing within 30 days of any change in his or her address.

This new provision, which did not appear in the proposed rule, merely extends the proposed requirement for current address information in the application. It will enable OSM to maintain up-to-date records on where to send the notices required by § 955.15(a), as well as the discretionary notice of impending certificate expiration previously discussed under § 955.15(e).

Section § 955.16 Reciprocity.

Section 955.16 governs the grant of an initial or subsequent OSM blaster certificate through reciprocity. It applies only to persons who hold a current blaster certificate issued by a State regulatory authority, and only to the grant of a certificate by OSM. It does not apply when the holder of an OSM blaster certificate moves from one Federal program State to another, or to or from Indian lands. While a State may impose additional nonconflicting requirements, an OSM blaster certificate is valid in any Federal program State or on any Indian lands, and in these jurisdictions there is no need for a blaster to seek reciprocity from the State.

Proposed § 955.16(d) was deleted from this rule because replacement of a certificate granted through reciprocity is covered adequately by the general provision for certificate replacement in § 955.15(b)(3).

Section § 955.16(a) Grant of certificate.

Section 955.16(a) combines proposed paragraphs (a) and (b) to eliminate duplication. It requires OSM to grant an OSM blaster certificate through reciprocity to any qualified applicant who holds a current blaster certificate granted by a State regulatory authority under an OSM-approved State blaster certification program. The State must have an approved blaster certification program, and not merely an approved State program, since in some instances the latter might exist without the former.

This section now states that an applicant for a certificate through reciprocity need not otherwise demonstrate that he or she meets the age, experience, knowledge, competence, training and examination requirements of Part 955. This new provision was added to clarify the implicit intent of the proposed rule.

The proposed rule would have required that the OSM-approved State blaster certification program have "rules

no less effective than this part." This phrase was deleted from the final rule as superfluous because an OSM-approved State program necessarily must meet this standard.

The application, certification, suspension and revocation, and other applicable procedures for a certificate through reciprocity are specified elsewhere in Part 955.

OSM received several public comments that misinterpreted the scope of this section. One commenter used the term "State regulatory authority" as applying to any State agency with jurisdiction over the licensing or certification of persons for the storage, transportation or use of explosives. Under this rule, however, the term "State regulatory authority" applies only to a State agency administering the Act under a State regulatory program. For the definition of the term "regulatory authority." see 30 CFR 700.5.

Another commenter misinterpreted this rule as affecting the right of a State to grant or deny reciprocity to the holder of an OSM or out-of-State blaster certificate. This rule governs only the grant of a certificate through reciprocity by OSM. It does not require any State either to grant or to deny reciprocity to a blaster licensed or certified by either OSM or another State.

Section § 955.16(b) Subsequent certificate.

Section 955.16(b) governs the grant of a subsequent certificate to a person who holds an OSM blaster certificate granted through reciprocity. Paragraph (b)(1) authorizes the holder to obtain a subsequent certificate either through reciprocity, or by meeting directly the applicable requirements of Part 955 for certificate issuance, renewal or reissuance. Paragraph (b)(2) prohibits OSM from recognizing a certificate granted through reciprocity as qualifying an applicant for certificate issuance, renewal or reissuance.

This section will prevent an applicant from using reciprocity as the initial step toward obtaining full OSM certification. An applicant granted an OSM certificate through reciprocity must continue to rely on reciprocity unless he or she otherwise qualifies under the procedures of this part for the issuance, renewal or reissuance of a certificate.

One commenter noted that if OSM withdrew approval of a State blaster certification program there could be blasters whose OSM blaster certificates were based on reciprocity with that State program. This commenter was concerned that a blaster in this situation would no longer be able to rely on reciprocity to obtain a renewed or reissued OSM blaster certificate, but would have to meet the training and examination requirements of Part 955. This commenter concluded that in this situation a blaster who previously had qualified for a certificate through reciprocity should be exempt from meeting any additional training and examination requirements.

OSM disagrees. This rule provides for reciprocity to avoid duplicating the requirements of approved State blaster certification programs with rules no less effective than Part 955. If OSM withdrew the approval of a State blaster certification program any basis for reciprocity would cease to exist. Moreover, a State program for which approval is withdrawn may have included inadequate provision for training and examination. It would be inconsistent for OSM on the one hand to withdraw approval of a deficient State program, but on the other hand to exempt an applicant for an OSM blaster certificate from additional training and testing on the basis of that deficient program.

Due to the variety of situations that might arise, it is not possible to specify the effect of State program withdrawal on each OSM blaster certificate that is based on reciprocity. If OSM finds it necessary to withdraw the approval of a State blaster certification program, upon promulgating a Federal program for that State it will inform any affected blasters of what they must do to comply with Part 955.

Section 955.17 Suspension and revocation.

Section 955.17 governs the suspension and revocation of an OSM blaster certificate. It specifies: (a) The cause, nature and duration of a suspension or revocation: and procedures for (b) notice and hearing; (c) decision and appeal; (d) surrender of a certificate; (e) certificate reinstatement and reissuance; and (f) conformance with State action.

Section 955.17(a) Cause, nature and duration.

Section 955.17(a)(1) authorizes, or upon a finding of willful conduct of the blaster requires, OSM to suspend for a definite or indefinite period, revoke or take other necessary action on the certificate of an OSM-certified blaster for any of the reasons specified in 30 CFR 850.15(b). The term "OSM-certified" was added to modify the term "blaster" in this and other paragraphs of this section to clarify that this rule applies only to certificates issued under this part.

The reasons for suspension and revocation specified in 30 CFR 850.15(b) include noncompliance with any order of the regulatory authority; unlawful use in the workplace of, or current addiction to, alcohol, narcotics or other dangerous drugs; violation of any provision of State or Federal explosives laws or regulations; and providing false information or a misrepresentation to obtain certification.

Section 955.17(a)(2) requires OSM to suspend the certificate of the blaster as soon as is practicable where it has reliable information which demonstrates that the storage, transportation or use of explosives by an OSM-certified blaster is likely to threaten public safety or the environment.

Section 955.17(a)(3) requires OSM to make the nature and duration of a suspension, revocation or other action commensurate with the cause of the action and what the blaster does to correct it. The wording of this section is essentially the same as the last sentence of proposed paragraph (a)(1). It was relocated in a separate paragraph to clarify that this requirement applies not only to a suspension, revocation or other action under paragraph (a)(1), but also to a suspension under paragraph (a)(2).

Section 955.17(b) Notice and hearing.

Section 955.17(b) requires OSM, when practicable, to provide to the affected certificate holder written notice and an opportunity for an informal hearing prior to suspending, revoking or taking other action on an OSM blaster certificate. It requires OSM to limit any action taken without such notice and opportunity to a temporary suspension for a maximum term of 90 days pending a decision on final suspension, revocation or other action after such notice and opportunity have been provided.

This section differs from the proposed rule in several ways. The term "affected blaster" was changed to "certificate holder" because the former term would have been inapt in situations where OSM revoked a certificate before it provided the required notice, as the holder of a revoked certificate would not meet the definition of "blaster." This change does not affect the substance of the rule. Also, the period of a temporary suspension was limited to a maximum of 90 days. This will insure that a certificate holder subject to a termporary suspension is given a reasonably prompt opportunity for a hearing.

Section 955.17(c) Decision and appeal.

Section 955.17(c) requires OSM to notify the certificate holder of its final decision affecting his or her OSM blaster certificate, including the reason

for any suspension, revocation or other action, by certified mail within 30 days after written notice and an opportunity for an informal hearing. The term "certificate holder" was substituted for the term "affected blaster" for the same reason as previously discussed for § 955.17(b). If the certificate was issued through reciprocity, OSM also must notify the State regulatory authority of its action.

In addition, in any decision suspending, revoking or taking other action on an OSM blaster certificate, § 955.17(c) requires OSM to grant to the certificate holder the right of appeal to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1286. The specific reference to the applicable appeal procedures, which did not appear in the proposed rule, was added for the information of potential appellants. OSM is required to grant the right of appeal in the decision itself because such a grant is a prerequisite to appeal under the referenced provisions.

Section 955.17(d) Surrender of certificate.

Section 955.17(d) requires a certificate holder, upon receiving written notice of a suspension, revocation or other action, immediately to surrender to OSM his or her OSM blaster certificate to OSM in the manner specified in the notice. Again, the term "certificate holder" was substituted for the proposed term "the blaster" for the reasons previously discussed for § 955.17(b). A requirement that the notice be in writing was added to eliminate ambiguity. And finally, the phrase "in the manner specified in the notice" was added to clarify how the blaster is to accomplish the surrender. This latter change, which requires OSM to inform the blaster of the applicable procedures, will make it easier for a blaster to comply with this section.

Section 955.17(e) Reinstatement and reissuance.

Section 955.17(e) governs the reinstatement or reissuance of a suspended or revoked OSM blaster certificate. Paragraph (e)(1) requires OSM to reinstate a suspended certificate when (i) the term of a definite suspension expires, or (ii) when the former certificate holder demonstrates and OSM finds that the cause of an indefinite suspension has been corrected. The term "former certificate holder" was substituted for the proposed term "blaster" for the reasons previously discussed for a similar change in § 955.17(b). Upon reinstatement, OSM must return the certificate to the blaster with written notice.

Paragraph (e)(2) requires OSM to reissue a certificate to an applicant whose certificate was revoked if his or her application demonstrates, and OSM finds, (i) that the cause of the revocation has been corrected, and (ii) that the applicant meets all other applicable requirements of Part 955. This section combines the overlapping requirements of proposed §§ 955.17(e) and 955.17(f) to eliminate unnecessary duplication and simplify the rule. It does not change the substance of what was proposed.

Section 955.17(f) Conformance with State action.

Section 955.17(f) corresponds with proposed § 955.17(g). It requires OSM to suspend, revoke or take other commensurate action on an OSM blaster certificate granted through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in this rule were submitted to the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0083. The information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

Executive Order 12291

The DOI has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The proposed changes will not have an adverse effect on the investment or productivity of United States coal operators. Employment in the coal industry will not be significantly affected since the rule will not affect coal production procedures. There also will be no effect on the ability of United States coal operators to compete with foreign coal operators in the domestic or export markets. While some costs may increase, they will be offset by corresponding increases in safety, which will benefit both coal operators and the public in general.

Regulatory Flexibility Act

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities because the cost to an operator or blaster for a certificate is minimal.

National Environmental Policy Act

To the extent this rule governs the certification of blasters in Federal Program States it is part of a Federal program, the promulgation of which is exempt under section 702(d) of the Act, 30 U.S.C. 1292(d), from compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C).

To the extent this rule governs the certification of blasters on Indian lands, OSM has prepared an environmental assessment (EA) and has made a finding that it would not significantly affect the quality of the human environment. The EA and finding of no significant impact are on file in the administrative record for this rule in the OSM Administrative Record Room at 1100 L Street, NW., Washington, DC.

Author

The author of this final rule is Arthur Anderson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1504 (Commercial or FTS).

Certification

An application form for an OSM blaster certificate may be obtained from any OSM office. Contact your nearest OSM office to determine the dates, locations and times of any certification examinations that may be scheduled for your vicinity. Your application for a certificate must be submitted to and approved by OSM before you may take the examination.

List of Subjects

30 CFR Part 750

Indian lands, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 900

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 910

Administrative practice and procedure, Environmental protection,

Intergovernmental relations, Penalties, Surety bonds, Surface mining, Underground mining.

30 CFR Part 912

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 921

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 922

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 933

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 937

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 939

Administrative practice and procedure, Intergovernmental relations, Penalties, Surface mining, Underground mining.

30 CFR Part 941

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 942

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 947

Intergovernmental relations, Surface mining, Underground mining.

30 CFR Part 955

Coal mining, Explosives, Indian lands, Intergovernmental relations, Safety, Surface mining, Training program, Underground mining.

For the reasons set out in the preamble, 30 CFR Parts 750, 816, 817, 900, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 are amended, and 30 CFR Part 955 is added, as follows:

Dated: April 14, 1986.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

1. The authority citation for Part 750 continues to read as follows:

Authority: 30 U.S.C. 1201–1328; 5 U.S.C. 301.

2. Section 750.19 is revised to read as follows:

§ 750.19 Certification of blasters.

A person seeking to conduct blasting operations on Indian lands shall comply with the requirements of §§ 816.61(c) and 817.61(c) and Part 955 of this chapter.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. The authority citation for Part 816 reads as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

4. Paragraph (c)(4) of § 816.61 is revised to read as follows:

§ 816.61 Use of explosives: General requirements.

* * * * *

(c) * * *

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the blasting plan and site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

6. Paragraph (C)(4) of § 817.61 is revised to read as follows:

§ 817.61 Use of explosives: General requirements.

* * * * *

(c) * * *

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

* * * * *

PART 900—INTRODUCTION

7. The authority citation for Part 900 continues to read as follows:

Authority: Secs. 102, 201, 405, 503, 504, 505 and 523 of Pub. L. 95–87 (30 U.S.C. 1201, 1211, 1235, 1253, 1254, and 1273).

8. Section 900.1 is revised to read as follows:

§ 900.1 Scope.

This part sets forth the purpose and organization of Parts 901–955 of this subchapter.

9. Section 900.11 is revised to read as follows:

§ 900.11 Organization of this subchapter.

Parts 901 through 950 are reserved for each State alphabetically. The program applicable within each State is codified in the part for that State. In addition, Part 955 establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands.

10. Section 900.13 is revised to read as follows:

§ 900.13 Federal programs and Federal coal exploration programs.

The rules for each Federal program and Federal coal exploration program are codified below under the assigned part for the particular State. Rules governing the training, examination and certification of blasters for surface coal mining operations in States with Federal programs are codified in part 955, and referenced by each Federal program.

PART 910—GEORGIA

11. The authority citation for Part 910 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

12. Section 910.955 is added to read as follows:

§ 910.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 912—IDAHO

13. The authority citation for Part 912 continues to read as follows:

Autority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat 445.

14. Section 912.955 is added to read as follows:

§ 912.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 921—MASSACHUSETTS

15. The authority citation for Part 921 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

§ 921.850 [Removed]

16. Section 921.850 is removed.

17. Section 921.955 is added to read as follows:

§ 921.955 Certification of blasters.

Parts 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 922—MICHIGAN

18. The authority citation for Part 922 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

19. Section 922.955 is added to read as follows:

§ 922.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 933—NORTH CAROLINA

20. The authority citation for Part 933 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

§ 933.850 [Removed]

21. Section 933.850 is removed.

22. Section 933.955 is added to read as follows:

§ 933.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 937—OREGON

23. The authority citation for Part 937 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

24. Section 937.955 is added to read as follows:

§ 937.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 939—RHODE ISLAND

25. The authority citation for Part 939 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 91 Stat. 445 *et seq.* (30 U.S.C. 1201 *et seq.*).

§ 939.850 [Removed]

26. Section 939.850 is removed.

27. Section 939.955 is added to read as follows:

§ 939.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 941—SOUTH DAKOTA

28. The authority citation for Part 941 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

29. Section 941.955 is added to read as follows:

§ 941.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 942—TENNESSEE

30. The authority citation for Part 942 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 942.855 [Removed]

31. Section 942.855 is removed.

32. Section 942.955 is added to read as follows:

§ 942.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

PART 947—WASHINGTON

33. The authority citation for Part 947 continues to read as follows:

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.).*

§ 947.850 [Removed]

34. Section 947.850 is removed.

35. Section 947.955 is added to read as follows:

§ 947.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

SUBCHAPTER T—PROGRAM FOR THE CONDUCT OF SURFACE MINING ACTIVITIES WITHIN EACH STATE

36. In Subchapter T, Part 955 is added to read as follows:

PART 955—CERTIFICATION OF BLASTERS IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS

Sec.

955.1 Scope.
955.2 Implementation.
955.5 Definitions.
955.10 Information collection.
955.11 General requirements.
955.12 Training.
955.13 Application.
955.14 Examination.
955.15 Certification.
955.16 Reciprocity.
955.17 Suspension and revocation.

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*). Sec. 955.13 also issued under sec. 9701, Pub. L. 97–258 (31 U.S.C. 9701).

§ 955.1 Scope.

This part establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands. It governs the issuance, renewal,

reissuance, suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority.

§ 955.2 Implementation.

In accordance with §§ 750.19, 816.61(c) and 817.61(c) of this chapter, after June 30, 1987, in Federal program States and on Indian lands any person who is responsible for conducting blasting operations at a blasting site shall have a current OSM blaster certificate.

§ 955.5 Definitions.

As used in this part:

Applicant means a person who submits an application for an OSM blaster certificate.

Application means a request for an OSM blaster certificate submitted on the prescribed form, including the required fee and any applicable supporting evidence or other attachments.

Issue and *issuance* mean to grant to an applicant his or her first OSM blaster certificate that is not granted through reciprocity.

Reciprocity means the recognition by OSM of a blaster certificate issued by a State regulatory authority under an OSM-approved blaster certification program as qualifying an applicant for the grant of an OSM blaster certificate.

Reissue and *reissuance* are synonymous with the term *recertification* in § 850.15(c) of this chapter, and mean to grant to an applicant who holds a renewed OSM blaster certificate, or who holds an OSM blaster certificate that expired more than 1 year prior to the date of his or her application, or who held an OSM blaster certificate that was revoked, a subsequent certificate that is not granted through reciprocity and for which additional training and examination are required.

Renew and *renewal* mean to grant to an applicant who holds an issued or reissued OSM blaster certificate a subsequent certificate that is not granted through reciprocity and for which additional training and examination are not required.

Replace and *replacement* mean to grant to an applicant a duplicate OSM blaster certificate as a substitute for one that was lost or destroyed.

§ 955.10 Information collection.

The information collection requirements in this part were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0083. This information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

§ 955.11 General requirements.

To qualify for an OSM blaster certificate, a person shall:

(a) Be at least 20 years old prior to submitting an application, and at least 21 years old prior to the grant of a certificate;

(b) In the 3 years prior to submitting an application have been qualified and worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for the following cumulative length of time:

(1) Certificate issuance—2 years; or

(2) Certificate renewal or reissuance—1 year;

(c) For certificate issuance or reissuance, have received on-the-job training, completed a training course, and obtained satisfactory evidence of having completed training, as provided in § 955.12;

(d) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(e) Submit an application as provided in § 955.13;

(f) For certificate issuance or reissuance, pass a written examination as provided in § 955.14;

(g) For a certificate through reciprocity, meet the requirements of § 955.16; and

(h) Not be subject to suspension, revocation or other action under § 955.17.

§ 955.12 Training.

(a) *On-the-job training.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance of an OSM blaster certificate who does not qualify as a blaster or the equivalent shall:

(1) Have received on-the-job training, including practical field experience in blasting operations, from a blaster or the equivalent for 2 out of the 3 years preceding the submission of his or her application; and

(2) Have obtained from the blaster or the equivalent, the relevant employer, or other knowledgable source, satisfactory evidence of having received on-the-job training in accordance with paragraph(a)(1) of this section.

(b) *Training course.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance or reissuance of an OSM blaster certificate shall:

(1) Within 2 years prior to submitting an application, have completed a training course as follows:

(i) For certificate issuance the course shall cover the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, including the topics specified in § 850.13(b) of this chapter; or

(ii) For certificate reissuance the course shall cover any significant changes that have occurred in the topics specified in § 850.13(b) of this chapter since the applicant last completed a course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. If OSM determines that no siginficant changes have occurred, OSM may waive this requirement; and

(2) Have obtained from the training provider satisfactory evidence that he or she has completed training in accordance with paragraph(b)(1) of this section.

(c) *Availability.* OSM shall ensure that courses are available as provided in § 850.13(b) of this chapter to train persons subject to this part who are responsible for the use of explosives in surface coal mining operations.

§ 955.13 Application.

(a) *Submission procedures.* Any person seeking an OSM blaster certificate shall:

(1) Complete and submit to OSM an application on the form prescribed by paragraph (b) of this section;

(2) Include as part of the application a nonrefundable fee as follows:

(i) Issuance or reissuance	$122
(ii) Reexamination	$61
(iii) Renewal	$61
(iv) Replacement	$28
(v) Reciprocity	$61;

(3) For certificate issuance or reissuance, include as part of the application satisfactory evidence of having completed training as provided in § 955.12;

(4) For certificate issuance or reissuance, specify in the application the date when the applicant desires to take a previously scheduled examination; and

(5) Submit the application in advance of the date of examination, or of certificate expiration, as follows:

(i) For certificate issuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination;

(ii) For certificate renewal, not less than 60 days before the expiration date of the applicant's current certificate;

(iii) For certificate reissuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate; or

(iv) For a certificate through reciprocity, not less than 45 days before the expiration date of the applicant's current certificate.

(b) *Application form.* OSM shall make available to any person seeking an OSM blaster certificate an application form and instructions for its completion. The form shall include a statement in accordance with law that the information provided is true and accurate to the best knowledge and belief of the applicant, and shall require the signature of the applicant.

§ 955.14 Examination.

(a) *Certificate issuance or reissuance.* After submitting an application, each applicant for the issuance or reissuance of an OSM blaster certificate shall pass a written examination, as provided in paragraph (b) of this section.

(b) *Administration and content.* (1) On a regular basis OSM shall schedule and hold a written examination on the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, as provided in § 850.14 of this chapter.

(2) The examination at a minimum shall cover the topics specified in §850.13(b) of this chapter, and shall include:

(i) Objective questions;

(ii) Blasting log problems; and

(iii) Initiation system and delay sequence problems.

(c) *Reexamination.* (1) Any person who fails the examination may apply to OSM for reexamination by submitting a new application, including the prescribed fee, but no person may take the examination more than 2 times in any 12-month period.

(2) Any person who fails the examination and submits a new application within 2 years of completing training as provided in § 955.12(a) need not repeat, or resubmit evidence of having completed, training.

(d) *Failure to attend.* Except where the applicant shows and OSM finds good cause, OSM may reject the pending application of any applicant who fails to take the examination after OSM has granted his or her request for admission.

§ 955.15 Certification

(a) *Processing of application.* (1) Upon receiving an application for an OSM blaster certificate OSM shall:

(i) Notify the applicant of the receipt of, and of any deficiency in, the application.

(ii) Where applicable, notify the applicant that his or her request for admission to a scheduled examination either is granted or denied.

(2) When OSM determines that an applicant has failed to qualify for an OSM blaster certificate, OSM shall reject his or her application and notify him or her accordingly.

(b) *Grant of certificate.* OSM shall:

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the applicable training, passes the examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the issued or reissued OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed;

(4) Grant an OSM blaster certificate through reciprocity as provided in § 955.16; or

(5) Reinstate a suspended, or reissue a revoked OSM blaster certificate as provided in § 955.17(e).

(c) *Term of certificate.* OSM shall grant an OSM blaster certificate for a term to expire as follows:

(1) Issuance—3 years after issue date;

(2) Renewal—3 years after expiration date of applicant's current or expired certificate;

(3) Reissuance—3 years after expiration date of applicant's current or expired certificate;

(4) Replacement—same expiration date as replaced certificate; or

(5) Reciprocity—60 days after expiration date of corresponding State certificate.

(d) *Limits on renewal.* (1) OSM shall not renew an OSM blaster certificate more than 1 time. A blaster who seeks to extend a renewed certificate may apply to OSM for certificate reissuance.

(2) OSM shall not renew an OSM blaster certificate that expired more than 1 year prior to the date of an application for renewal. An applicant who desires to extend a certificate that expired more than 1 year prior to the date of his or her application may apply to OSM for certificate reissuance.

(e) *Temporary certificate.* Upon request of an applicant who demonstrates that his or her current OSM blaster certificate is about to expire, or expired within 30 days prior to the date of his or her application, for reasons beyond his or her control, OSM may issue a non-renewable temporary OSM blaster certificate for a maximum term of 90 days.

(f) *Conditions of certification.* Any person who holds an OSM blaster certificate shall comply with the conditions specified in §§ 850.15 (d) and (e) of this chapter.

(g) *Change of Address.* Any person who holds an OSM blaster certificate shall notify OSM in writing within 30 days of any change in his or her address.

§ 955.16 Reciprocity.

(a) *Grant of certificate.* OSM shall grant an OSM blaster certificate through reciprocity to any qualified applicant who demonstrates that he or she, and whom OSM finds, holds a current State blaster certificate granted by a State regulatory authority under an OSM-approved State blaster certification program. An applicant for a certificate through reciprocity need not otherwise demonstrate that he or she meets the age, experience, knowledge, competence, training or examination requirements of this part.

(b) *Subsequent certificate.* (1) Any person who holds an OSM blaster certificate granted through reciprocity may qualify for a subsequent certificate either through reciprocity or by meeting directly the applicable requirements of this part for certificate issuance, renewal or reissuance.

(2) OSM shall not recognize a certificate granted through reciprocity as qualifying an applicant for certificate issuance, renewal or reissuance.

§ 955.17 Suspension and revocation.

(a) *Cause, nature and duration.* (1) OSM may, and upon a finding of willful conduct of the blaster OSM shall, suspend for a definite or indefinite period, revoke or take other necessary action on the certificate of an OSM-certified blaster for any of the reasons specified in § 850.15(b) of this chapter.

(2) Where OSM has reliable information which demonstrates that the storage, transportation or use of explosives by an OSM-certified blaster is likely to threaten public safety or the environment, OSM shall suspend his or her certificate as soon as is practicable.

(3) OSM shall make the nature and duration of a suspension, revocation or other action under this section commensurate with the cause of the action and what the person whose

certificate is subjected to the action does to correct it.

(b) *Notice and hearing.* When practicable, OSM shall give a certificate holder written notice and an opportunity for an informal hearing prior to suspending, revoking or taking other action on his or her OSM blaster certificate. OSM shall limit any action taken without such notice and opportunity to a temporary suspension for a maximum term of 90 days pending a decision on a final suspension, revocation or other action after such notice and opportunity have been provided.

(c) *Decision and appeal.* By certified mail within 30 days after giving written notice and an opportunity for an informal hearing, OSM shall notify the certificate holder in writing of its final decision on his or her OSM blaster certificate, including the reasons for any suspension, revocation or other action. If the certificate was granted through reciprocity, OSM shall notify the State regulatory authority of its action. In any decision suspending, revoking or taking other action on an OSM blaster certificate, OSM shall grant to the certificate holder the right of appeal to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1286.

(d) *Surrender of certificate.* Upon receiving written notice that his or her OSM blaster certificate was suspended, revoked or subjected to other action, a certificate was suspended, holder immediately shall surrender the certificate to OSM in the manner specified in the notice.

(e) *Reinstatement and reissuance.* (1) OSM shall reinstate a suspended OSM blaster certificate by returning the certificate to the former certificate holder with notice of reinstatement when:

(i) The term of a definite suspension expires; or

(ii) The former certificate holder demonstrates, and OSM finds, that the cause of an indefinite suspension has been corrected.

(2) OSM shall reissue an OSM blaster certificate to an applicant whose certificate was revoked if his or her application demonstrates, and OSM finds, that:

(i) The cause of the revocation has been corrected; and

(ii) The applicant meets all other applicable requirements of this part.

(f) *Conformance with State action.* OSM shall suspend, revoke or take other commensurate action on an OSM blaster certificate granted through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

[FR Doc. 86-11835 Filed 5-28-86; 8:45 am]
BILLING CODE 4310-05-M