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Request for Information to Improve the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mines

Comment On: MSHA-2014-0029-0001

Requests for Information: Improving the Health and Safety of Miners and to Prevent Accidents in Underground Coal Mine

Document: MSHA-2014-0029-0020

Comment from Terence Foreback, NA

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General Comment

See attached file(s)

Attachments

Response RFI MSHA 214-0029

AB85-comm-4



NEW MEXICO BUREAU OF MINE SAFETY

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January 5, 2015

MSHA, Office of Standards,
Regulations, and Variances, 1100
Wilson Boulevard, Room 2350,
Arlington, Virginia 22209-3939.

On Line Submittal At Federal E-Rulemaking Portal: <http://www.regulations.gov>.

RE: MSHA
Docket Number MSHA-2014-0029 RIN1219-AB85
Response from the New Mexico State Mine Inspector questions 41 through 47

41. What criteria and procedures does the State use for certifying persons to perform mine examinations?

For Mine Examiners

Age: Must be 20 years of age

Experience: Must have 2 years of UG coal mine experience

Degree: A degree in mining engineering counts as one year of experience

Required knowledge: Must have UG gas card for O2 deficiency and methane detection from MSHA. Must have current 5000-23 for retraining

Exam: Must pass exam on the following subjects:

- New Mexico mining safety regulations
- First Aid
- Mine Gases
- The Mine Act
- Code of Federal Regulations Title 30
- Part 47 - HazCom
- Part 48 - Training
- Part 49 - Mine Rescue
- Part 50 - Accidents
- Part 62 - Noise
- Part 70 - Health
- Part 75 - Mandatory Safety Standards Underground Coal Mining
- Qualified/Certified Persons
- Roof Control
- Ventilation (includes examiner's report)
- Combustible Materials and Rock Dusting
- Electrical
- Fire Protection
- Communications

For Mine Foreman

Age: Must be 22 years of age

Experience: Must have 4 years of UG coal mine experience and serve 6 months as a certified mine examiner

Degree: A degree in mining engineering counts as two years of experience

Required knowledge: Must have UG gas card for O₂ deficiency and methane detection from MSHA. Must have current 5000-23 for retraining

Exam: Must pass exam on the following subjects:

- New Mexico mining safety regulations
- First Aid
- Mine Gases
- The Mine Act
- Code of Federal Regulations Title 30
- Part 47 - HazCom
- Part 48 - Training
- Part 49 - Mine Rescue
- Part 50 - Accidents
- Part 62 - Noise
- Part 70 - Health
- Part 75 - Mandatory Safety Standards Underground Coal Mining
- Qualified/Certified Persons
- Roof Control
- Ventilation (includes underground ventilation map)
- Combustible Materials and Rock Dusting
- Electrical
- Fire Protection
- Communications

42. If the State requires that certified persons renew their certifications, what procedures are used for a renewal of a certification? Does the State recognize or accept other State certifications? Please provide examples.

Relative to recertification the New Mexico Administrative Code Requires:

19.6.4.11 CERTIFICATION PERIOD AND RECERTIFICATION PROCESS:

A. Certification of officials shall be issued for a period of five years. All officials certified by the state mine inspector prior to June 15, 2007 shall have their certification period extended five years. Each official is required to have retraining as a qualified/certified person on an annual basis from the mine in which they are employed as required in 30 CFR 75.160, 30 CFR 75.161 and 30 CFR 77.107 and 30 CFR 77.107-1. Failure to have re-training as a qualified/certified person on an annual basis may result in suspension of certification.

B. Each official has the responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of such change. Failure to provide current contact information may result in suspension of certification.

C. Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector.

D. Recertification may be done by taking an exam every five years, prior to certification expiration, or an organization may submit an alternative plan for the inspector's approval as follows:

(1) officials taking an exam every five years will follow the same process required for original certification; or

(2) an organization may submit an alternative plan, for the state mine inspector's approval; the alternative plan may be carried out over the five year period; the alternative plan shall include the subjects to be covered, the minimum amount of time per subject, the methods of instruction, and the methods of participant evaluation during process completion;

following completion, the applicant shall provide the state mine inspector with verification that all training for the recertification period is current; and

(3) applicants shall submit an application, pay the applicable fee, and provide all appropriate documentation as required by the state mine inspector, before receiving recertification.

E. Mine examiners may fulfill the recertification requirements for mine examiner by successfully completing the examination for mine foreman certification or recertification.

Relative to reciprocity, the State Mine Inspector may recognize certifications from other states. However that is not the practice. Current practice is to allow testing based on certification by another state and a check with that state's program to ascertain that the certification is in good standing.

43. If the State also has a decertification program, what criteria and procedures are used to suspend or decertify a person's certification? What procedures are used to recertify a person after a suspension or decertification?

Relative to decertification and procedures to recertify the New Mexico Administrative Code states the following:

19.6.4.12 REFUSAL TO CERTIFY OR RECERTIFY AND SUSPENSION OR REVOCATION OF CERTIFICATION:

A. The inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under 19.6.4 NMAC upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act of 1977 or the New Mexico mine safety laws; or

(5) has been disciplined in another state that certifies mine personnel.

B. If the inspector contemplates taking any of the actions described in Subsection A of 19.6.4.12

NMAC for any of the reasons provided in that subsection, the inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the inspector has sufficient evidence that, if not rebutted or explained, will justify the inspector in taking the contemplated action, that indicates the general nature of the evidence and that provides the applicant or certified person at least twenty days to submit written evidence to rebut or explain the allegations.

C. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection B of 19.6.4.12, the inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act 69-8-1 NMSA 1978.

[19.6.4.12 NMAC - N, 10/01/10]

19.6.4.13 APPEAL TO MINING SAFETY BOARD OF CERTIFICATION ACTIONS BY INSPECTOR TO MINING SAFETY BOARD: An appeal of an inspector's action may be made to the board by the person affected by the action.

A. A person affected by the inspector's action shall file a written petition for review of the action within twenty days after service of the action. Unless a timely written appeal for review is made, the action of the inspector shall be final and not subject to judicial review.

B. The petition shall be filed in writing with the chair of the board or the chair's designee, and include the action number and the name of the appellee.

C. If a timely petition is made, the board shall consider the petition at a hearing held no sooner than thirty days and no more than ninety days after receipt of the written petition. The board shall notify the petitioner and the inspector of the date, time and place of the hearing at which the petition will be considered.

D. No board member with any financial interest affected or potentially affected by the outcome of an adjudicatory proceeding may serve as a hearing officer in that proceeding or otherwise participate in the hearing. All board members shall adhere with the Governmental Conduct Act.

E. The board shall review the record compiled before the inspector and shall allow any party to submit arguments at the hearing.

F. Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the action of the inspector, and stating reasons for that action. The decision shall be signed by the board chair or the chair's designee, and shall be served on both parties within 30 days after the decision is rendered and signed. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

44. How does the State notify mine operators and other States that it has decertified or recertified a person to conduct mine examinations? What types of actions are taken by other States based on your State's decertification?

New Mexico notifies the mine operators by sending a copy of the Notice of Action to the operator and to the MSHA Field Office Supervisor. We do not notify other states. In discussions with MSHA 4 years ago the state programs requested that MSHA initialize a national data base to which the states could report revocation-decertification actions. The states could then report and access the database when considering certification actions. To date MSHA has not undertaken any activity in this regard. If New Mexico is presented with a certification from another state, that state agency is contacted to check on the standing of the certification.

In addition, MSHA requests the following information:

45. What criteria should a miner meet to be a certified person to conduct mine examinations under 30 CFR 75.100, e.g., minimum age, years of experience, education, knowledge, training, and other skills?

As the New Mexico State Mine Inspector it is my belief that the New Mexico criteria are reasonable expectations. I also believe that the states should set the requirements that they believe are necessary according to the conditions prevailing in that state.

46. What criteria and procedures would you recommend for the (revocation) of a person's certification? What criteria and procedures would you recommend for recertification? Please, include time frames for recertification.

As the New Mexico State Mine Inspector it is my belief that the New Mexico criteria for decertification-revocation are reasonable expectations. Further, this criteria as well as criteria for recertification should be set by the states based on the requirements that they believe are necessary according to the conditions prevailing in that state. The certifying agency should also be given latitude to exercise judgment according to the circumstances that initiated the decertification-revocation action. There should not be set timeframes. Again, depending on the circumstances, recertification may never be an option.

MSHA has accepted certifications by the states since the initiation of the 1977 Mine Act. States have been managing this process for far longer than MSHA has been in existence. In New Mexico the certification program was initiated in 1933. It is mystifying why MSHA believes it is necessary to micromanage with the federal bureaucracy.

47. What are the advantages, disadvantages, and administrative costs of having uniform criteria and procedures for the certification, decertification, and recertification of persons to conduct mine examinations in underground coal mines?

The state programs who are Interstate Mining Compact Commission (IMCC) members have been through several sets of discussions on this issue with MSHA. New Mexico sees no advantages to uniform criteria and procedures. The states are in a better position to determine the criteria according to the conditions prevalent in the state. IMCC did request that MSHA create a national database that the states could utilize to register their certified coal mine officials and to register decertification-revocation actions. However this request has not been acted upon by MSHA.

Disadvantages are huge. The state's certification language is set in statute and regulation. Any changes that the federal government would make to instituted "common core requirements" would create large cost to state governments to make the necessary changes within their respective legislatures and administrative law divisions. I would estimate New Mexico's cost at \$100,000.

There is also no advantage along the lines of reciprocity. It is realized that this may be an issue in the West Virginia, western areas of Virginia and Eastern Kentucky areas and perhaps in other contiguous eastern states. It is not an issue in the west. Mining conditions vary greatly according to geography and the states should have the latitude to determine the requirements for certification.

I know of no circumstances where the certification requirements of the states have resulting in a single fatality. Certified individuals failing to perform their duty is, and will always be an area that has and will continue to cause accidents and possible fatalities. However that has nothing to do with the process. While there have been cases of false certifications, nothing in the certification process can change cases of intentional fraud or forgery of certifications.

Sincerely,

Terence
Foreback

Digitally signed by Terence Foreback
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Terence Foreback
New Mexico State Mine Inspector