

COAL MINE HEALTH AND SAFETY RULES AND REGULATIONS

OF

THE COAL MINE BOARD OF EXAMINERS

Division of Reclamation, Mining and Safety (revised 10/29/09)

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COAL MINE HEALTH AND SAFETY – COAL MINE BOARD OF EXAMINERS

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## **RULE 1: GENERAL PROVISIONS AND REQUIREMENTS**

### **1.1 Authority**

This regulation is adopted pursuant to the authority in section 34-22-102, C.R.S. and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S. and the Coal Mine Board of Examiners Act, sections 34-22-101 et seq. (the "Act"), C.R.S.

### **1.2 Scope and Purpose**

This regulation shall govern the health and safety of coal miners.

### **1.3 Applicability**

These regulations shall be applicable to coal mines.

### **1.4 Definitions**

- (1) *Advisory panel* means a designation given by the Board to a person or group of persons providing technical assistance to the Board in preparing, administering and grading examinations for certified coal mine positions. (An example would be an electrical advisory panel).
- (2) *APA* refers to the Administrative Procedures Act, C.R.S. 24, Article 4, and the Open Meetings Law, C.R.S. 24, Article 6. (1995 Replacement Vol. and 1996 Cumulative Supp.) (24-4-107)
- (3) *Applicant* means a person who submits an application and appropriate fee, as necessary for examination under these rules.
- (4) *Applicant who qualifies* means a person who has submitted a complete and accurate application, paid the required fee, and has been notified by the Office that they are eligible to take an examination.
- (5) *Application fee* means the fee required for examination as provided by law or in these rules. (34-22-111)
- (6) *Application forms* means forms approved by the Board for the purposes of obtaining information pertinent to the qualifications of an individual to test, retest, or upgrade for a certified coal mine position
- (7) *Approved* means as accepted by the Division, Board, Office, or inspector.
- (8) *Authorized person or representative* means a person employed by the Division who is designated by the Director to conduct safety and health studies, equipment surveys, tests and technical assistance visits and to perform other duties assigned by the Director. (34-20-102(3))
- (9) *Board* means the Coal Mine Board of Examiners established by CRS 34-22-102.
- (10) *Candidate* means an applicant who qualifies and has completed the testing portion and is awaiting the results; or an applicant who has been given temporary certification by the Board until the next available test opportunity.

- (11) *Certification* means a letter, miner's card and certificate stating that certification has been obtained; also referred to as "papers".
- (12) *Certificate of competency* means a written declaration made, and other media issued and assured by the Board that a person has successfully qualified and passed the required examination(s) for a specific certified coal mine position, and is therefore eligible for employment in that position in coal mines in Colorado.
- (13) *Certified coal miner* means one who has obtained certification for a state or federally recognized certified coal mine position, also means a certified individual, or person.
- (14) *Certified coal miner position* means a state or federally recognized, surface or underground, coal mining position, where certification is a condition for employment in that position. (34-22-105) Recognized positions include, but are not limited to:

<u>Certified Coal Miner Positions</u>	<u>Required by</u>
underground mine foreman	state and federal
underground assistant mine foreman	federal
underground mine examiner	state and federal
underground electrician	state and federal
underground methane and oxygen deficiency tester	state and federal
underground hoistman	state and federal
underground shot-firer	state and federal
surface mine foreman	state and federal
surface assistant mine foreman	federal
surface mine examiner	federal
surface electrician	state and federal
surface blaster	state and federal,
surface methane and oxygen deficiency tester	state and federal
surface shot firer	state

- (15) *Commissioner* means the Commissioner of Mines, who may also be the Executive Director of the Department of Natural Resources, or a person otherwise designated by the Executive Director. (34-21-102)
- (16) *C.R.S.* means Colorado Revised Statutes, (1995 Replacement Vol. and 1996 Cumulative Supp.), statutory authority and provisions as approved, revised or amended by the general assembly.

- (17) *Decertification* means a process of suspending and/or revoking a certification previously issued by the Board.
- (18) *Deny qualifications* means a determination by the Board that an applicant has not met the minimum qualifications and/or other criteria necessary to be examined for certification.
- (19) *Department* means the Colorado Department of Natural Resources.
- (20) *Director* means the Director of the Division of Reclamation, Mining and Safety.
- (21) *Division* means the Division of Reclamation, Mining and Safety, established by CRS 34-20-103.
- (22) *Fire boss* means underground certification previously issued by the state, now termed an underground mine examiner. (34-22-112(4))
- (23) *Inspector* means an employee or authorized agent of the Office of Active and Inactive Mines.
- (24) *MSHA* means the Mine Safety and Health Administration, U. S. Department of Labor; the federal agency charged with administering, coordinating and enforcing the federal program for mine health and safety regulation in the United States.
- (25) *Office* means the Office of Active and Inactive Mines, in the Division of Reclamation, Mining and Safety, established in CRS 34-21-101, (1995 Replacement Vol. and 1996 Cumulative Supp.).
- (26) *Operator* means any owner, lessee, independent contractor or other person who operates, controls, or supervises a mine.
- (27) *Policy* means the policy of the Coal Mine Board of Examiners.
- (28) *Qualified applicant* means an applicant who has been accepted and approved by the Board for examination for a certified position.
- (29) *Qualified* means a person has been trained and authorized to perform certain duties at the mine; or, that a person has satisfied a set of criteria.
- (30) *Reason to believe notice* means an official certified notice from the Office or Board that there is just cause to bring an issue under the jurisdiction of the Board forward for consideration and action by the Board.
- (31) *Recertification* means the process of certifying an individual who has previously held certification, but whose certification has lapsed or been terminated.
- (32) *Reciprocity* means granting temporary state certification, or recognizing for some period of time as valid, a certification issued by another state or agency.
- (33) *Registration* means the official record of a valid certification by the Board.
- (34) *Renewal* means the reissue or continuation of certification, based upon the individual's successful completion of the requirements pertinent to the renewal.

- (35) *Revocation* means the outcome of a due process and final determination by the Board, or by another agency with the authority to revoke certification, in which an individual's certificate of competency is revoked or annulled. (24-4-104 and 34-22-107)
- (36) *Satisfactory eyesight* means a demonstration or medical proof that a certified individual has adequate eyesight to perform the functions required of the certified position. (34-22-112(1))
- (37) *Satisfactory hearing* means a demonstration or medical proof that a certified individual has adequate hearing to perform the functions required of the certified position. (34-22-112(1))
- (38) *State certification* means certification issued by Colorado. (34-22-102(1)(a),(b),(e) and 34-22-105(4))
- (39) *Temporary certification* means the granting of interim, non-renewable certification by the Board, not to exceed a period beyond two weeks after the next scheduled examination date.

### **1.5 Coal Mine Board of Examiners: Meetings and Structure**

- (1) The board of examiners shall meet every year, or more frequently, if necessary, at times and places designated by the chairman. (34-22-104(1))
  - (a) Notice of any special meeting of the Board, and the subject matter to be discussed, shall be posted on the Division's notice board no less than 24 hours prior to holding such meeting. (24-6-402(2)(c))
  - (b) Notice of any hearing conducted by the Board, at which the Board will consider possible suspension or revocation of an individual's certification, must be given no less than 60 days prior to such hearing. Such notice and proceedings shall be conducted in accordance with Rule 6 of these rules. (24-4-104)
- (2) Except for executive sessions of the Board, all meetings shall be open to the public and any interested person may appear and may, if time permits, make oral and/or written presentations on any subject matter within the Board's jurisdiction. (24-6-402)
  - (a) In the event the presenter's item has not been properly noticed, the matter will be handled as an informational agenda item with no formal action of the Board being taken. The Board may schedule the item for a future Board meeting for action.
- (3) Special and emergency meetings of the Board may be called by the chair or a designee of the chair, in compliance with the notification procedures in these rules and the Colorado APA.
- (4) At the first regular calendar year meeting of the Board, the Board's chair shall be elected by a majority vote of voting Board members present, for a term of one year. The chair shall preside at meetings and perform other duties as designated by the Board. (34-22-104(1))
  - (a) A quorum shall be constituted by the presence of three voting Board members, or two voting members and the ex-officio member.
  - (b) The ex-officio member is a non-voting member. (34-22-102(e))
- (5) The Board shall act by a majority vote of its voting members present or participating by teleconference, except as provided in Rule 1.2(4)(c)(1). A majority vote shall be considered:

three voting members when four voting members are participating, two voting members when three voting members are present, and two voting members when two voting members and the ex-officio member are present.

- (6) Three affirmative votes shall be required for adoption of any amendment of existing rules, or the adoption of any new rule.
- (7) Board meetings may be conducted by telecommunications when special circumstances warrant such a meeting.
- (8) Accurate minutes of the meetings of the Board shall be kept by the Division staff assigned to the Board. Minutes shall be subject to approval by the Board at its next regular meeting.
- (9) Those portions of business relating to examination preparation and evaluation shall be conducted in executive session.
- (10) The Board may select and convene expert advisors in the form of advisory panels for the purposes of preparation, evaluation and grading examinations. Advisors shall be entitled to compensation for their expenses, in the same manner as Board members.
- (11) The Board shall examine applicants and issue certificates of competency for:
  - (a) positions requiring certification by federal law
  - (b) positions requiring certification by state law
- (12) The Board may add or delete state certified positions, and change the criteria for certification of state positions in conjunction with changes corresponding to CFR 30 regulations, CRS, and/or these rules.
- (13) Expenses of Board members and advisory panel members shall be reimbursed at actual cost, in accordance with state fiscal rules. (34-22-103)

#### **1.6 Notification Process for Board Meetings and Hearings**

The Board or Office shall maintain and distribute a meeting mailing list of interested persons who wish to be notified of the regular meetings and hearings of the Board, and the nature of the business to be discussed.

- (1) A meeting notice and an agenda shall be posted in the offices of the Division of Reclamation, Mining, and Safety on the Division's notice board, in accordance with notification requirements in these rules.
- (2) Notification for hearings and actions of the Board shall be given in a timely manner as specified in statute or these rules.

#### **1.7 Notification Process for Training and Certification Examinations**

The Board or Office shall maintain and distribute a notification mailing list of interested persons wishing to be notified of scheduled training or retraining sessions offered by the Office, and examinations conducted by the Board for certified coal miner positions.

- (1) The Office may request the advice and assistance of the Board in developing training and retraining programs for coal mines with respect to coal mine certification requirements. (34-23-101(3))



- (2) On a quarterly basis, the Office shall send notice to its mailing list, the dates and general locations of the next three quarters of examinations. (34-22-110 and 34-22-104(2))

### **1.8 Preparation and Conduct of Examinations for Certification**

- (1) The Board shall prepare and maintain an inventory of examination questions for the purpose of preparing examination tests for certification of various coal miner positions. (34-22-102(a))
- (2) Examinations will be graded by the Board and associated expert panels or advisors as necessary.
- (3) In order to eliminate duplicative processes, the Board may coordinate and administer examinations in part or whole with the Mine Safety and Health Administration (MSHA) as appropriate.

### **1.9 Public Inspection of Documents, Confidential Information**

- (1) Except as provided in Rule 1.6(1)(a) and (b), all records of actions or findings of the Board and any other information required under this law or these rules shall be promptly made available to any member of the public for inspection at the offices of the Division of Reclamation, Mining and Safety.
  - (a) Confidential material such as test examinations, test questions, or test results are not available to the public for inspection.
  - (b) Personal information of an applicant or certified person is not available to the public for inspection.
- (2) Upon request, copies of documents available to the public shall be provided at cost or other suitable arrangements made for copying at the requester's expense, as allowed by copyright law.
- (3) The Board shall make every reasonable attempt to protect the confidentiality of an applicant or certified person's personal information, except as may be required by law.

### **1.10 Fees**

- (1) A non-refundable fee shall be paid by the applicant and submitted with the application for examination.
  - (a) If for some reason the applicant does not test at the next quarterly examination following the date of application, the application and fee shall remain on file and considered valid for any of the next three regular quarterly examinations.
  - (b) If the applicant does not take the examination within a year of filing the application, a new application and fee must be submitted.
- (2) The amount of the fee shall be that as established in statute. (34-22-111)
- (3) The application fee shall be applicable to the test position and test date for which it was originally submitted, and shall not be transferable to another type of application, or another testing date without the written approval of the Office.

### **1.11 Change of Address or Employer Notification**

In order for the Board and Office to be able to notify applicants of examination results and future training or examination opportunities, it is the responsibility of the applicant or certified person to keep the Office and Board notified of any mailing address change, or change of employer.

## **RULE 2: RESPONSIBILITIES OF OPERATORS AND CERTIFIED INDIVIDUALS**

### **2.1 Responsibilities of Operators**

- (1) The operator shall immediately notify the Office of a fatality.
  - (a) During regular business hours of the Office, notice shall be given to the Division of Reclamation, Mining and Safety, Mine Safety and Training Program.
  - (b) At all other times, or alternatively, the notice may be given to the Colorado Office of Emergency Management.
- (2) The operator shall allow the Office or Board access to the mine property for the purposes of conducting any investigation related to health and safety as provided herein.
- (3) The operator may at any time request the Office and Board to conduct an investigation of any injury or accident in order for the Office to obtain knowledge that may be valuable in conducting certification and training. (34-21-101(h))

### **2.2 Responsibilities of Certified Individuals**

Certified individuals shall:

- (1) comply with state and federal rules and regulations applicable to mine health and safety, and with other such state or federal laws as may be in effect concerning certified positions.
- (2) be knowledgeable about state and federal mine health and safety laws, and operate in a safe and competent manner. (34-22-109)
- (3) initiate whatever actions are necessary to obtain renewal or reinstatement of certification.

### **2.3 Duration of Certification**

- (1) Once certified, certification shall continue to remain in effect except for the following situations:
  - (a) if certification expires from a person's lack of being actively employed in the coal mining industry for more than five years, the Board may require proof of employment history or refresher training completed to determine if certification may still be valid.
  - (b) if certification is suspended or revoked as provided in these rules;
  - (c) if renewal conditions to maintain certification in good standing have not been satisfied, as follows:
    - (i) surface blasters must renew their certification every five years.
    - (ii) surface and underground electricians must renew their certification every year.

- (2) On a case-by case basis, the Board will weigh special circumstances contributing to expiration of certification, such as military duty or working abroad, when determining a person's qualifications.
- (3) The Board may take action to reinstate an individual's certification.

### **RULE 3: APPLICATION AND QUALIFICATIONS FOR CERTIFICATION EXAMINATIONS**

#### **3.1 General Criteria and Qualifications**

The following general criteria apply to all applicants.

- (1) The applicant must submit a complete and accurate application to be qualified by the Board to take an examination.
- (2) Any application fee required must be received prior to the application deadline set by the Office.
- (3) An applicant must be able to demonstrate to the examiners, that at the time of the examination, the applicant has adequate hearing and/or eyesight for and safe competent performance of the position for which he or she is being examined; or the applicant must be able to subsequently verify the same by demonstration or medical examination.
- (4) An applicant should be knowledgeable of the job requirements for which he or she is testing, including knowledge of state and federal laws applicable to general mine health and safety and that certified position.
- (5) An applicant must have completed mine safety training, including first aid.
- (6) As requested, the applicant must be able to produce verification for all qualifications and references presented as part of the application including verification of work experience, training and retraining, and education as applicable.

#### **3.2 Specific Criteria and Qualifications**

An applicant must have as a minimum, the following qualifications in order to take the examination for certification for that position. On a case by case basis, the Board may allow substitution of college education for experience according to Rule 3.2(4). The applicant must then pass said examination, including any on-site demonstration required, to the satisfaction of the Board to receive a certificate of competency for that position.

- (1) All applicants for certification must have been previously qualified by MSHA as a methane and oxygen deficiency tester.
- (2) For underground mine certification, the following criteria apply:
  - (a) Underground Mine Foreman:
    - (i) The applicant must have performed in the capacity of underground mine examiner (fire boss), and
    - (ii) must have a minimum of three years working experience in coal mines, or in mining determined to be equivalent by the Board, at least one of

which years shall have been in a underground coal mine. (34-22-112(2) and 34-22-112(3))

(b) Underground Assistant Mine Foreman:

- (i) The applicant must have performed in the capacity of underground mine examiner (fire boss), and
- (ii) must have a minimum of three years working experience in coal mines, or in mining determined to be equivalent by the Board, at least one of which years shall have been in a underground coal mine.

(c) Underground Mine Examiner:

The applicant must have proof of training and at least three years of practical experience in gassy underground mining, at least one of which years shall have been in an underground coal mine. (34-22-112(4))

(d) Underground Electrician:

- (i) The applicant must provide proof of training and experience to perform electrical work, and
- (ii) must provide proof of at least one year of experience performing electrical work in an underground coal mine, or in underground mining determined to be equivalent by the Board. (34-22-112(5))

(e) Underground Hoistman:

- (i) The applicant must provide proof of at least 30 days experience as a hoisting engineer.
- (ii) The applicant shall also demonstrate to an examiner or advisor, at the mine site, that he or she has the competency and skills to safely operate hoisting equipment. (34-22-112(6), 34-22-112(7), and 34-21-109)

(f) Underground Shot Firer:

- (i) The applicant must provide proof of previous training, as a shot firer, and
- (ii) must have at least 1 year of practical field experience in underground mining, and
- (iii) may be required to perform a practical demonstration for the examiner. (34-22-112(6))

(g) Underground Methane and Oxygen Deficiency Tester:

- (i) a person who has been qualified by MSHA as an underground methane and oxygen deficiency tester shall be recognized by the state as a qualified person to perform those tests.
- (ii) This qualification may also be obtained as part of the Colorado certification process.

- (3) For surface mine certification, the following criteria apply:
- (a) Surface mine foreman:

The applicant must have a minimum of three years working experience in coal mines, or in mining determined to be equivalent by the Board, at least one of which years shall have been in a surface coal mine.
  - (b) Surface Assistant Mine Foreman:

The applicant must have a minimum of three years working experience in coal mines, or in mining determined to be equivalent by the Board, at least one of which years shall have been in a surface coal mine.
  - (c) Surface Mine Examiner:

The applicant must have a minimum of three years working experience in coal mines, or in mining determined to be equivalent by the Board, at least one of which years shall have been in a surface coal mine.
  - (d) Surface Electrician:
    - (i) The applicant must provide proof of training and experience to perform electrical work, and
    - (ii) must provide proof of at least one year of experience performing electrical work in a surface coal mine, or in surface mining determined to be equivalent by the Board. (34-22-112(5))
  - (e) Surface Blaster:
    - (i) The applicant must have Colorado certification as a surface shot firer, and
    - (ii) must provide proof of at least one year of practical experience in the use and handling of explosives.
    - (iii) must provide proof of U.S. Office of Surface Mining training as a surface blaster.
  - (f) Surface Shot Firer:
    - (i) The applicant must provide proof of at least one year of practical experience in surface mining, and
    - (ii) may be required to perform a practical demonstration for the examiner.
  - (g) Surface Methane and Oxygen Deficiency Tester:

A person, who has been qualified by MSHA as a methane and oxygen deficiency tester, shall be recognized by the state as a qualified person to perform those tests. This qualification may also be obtained as part of the Colorado certification process.

- (4) Education as a Substitute for Experience

On a case-by-case basis, the Board may allow substitution of college education in approved mining degree programs as partial satisfaction of mining experience for the positions of surface or underground mine foreman, and assistant mine foreman.

(5) Reciprocity

The Board may recognize certification by another state if such certification requirements are substantially similar to those required in the Colorado program. The Board will consider requests for reciprocity on a case-by-case basis. (34-22-106)

- (a) On a case by case basis, the Board may recognize certification obtained directly from MSHA as valid certification in Colorado for the positions of underground electrician, surface electrician, or hoistman.
- (b) On a case by case basis, the Board or Office may grant temporary certification to an individual for the following certified positions:
  - (i) underground or surface mine foreman
  - (ii) underground or surface assistant mine foreman
  - (iii) underground or surface electrician
  - (iv) underground hoistman
- (c) consideration shall be based upon such factors as employment history and confirmation of qualifications.
- (d) any temporary certification granted by the Board shall expire two weeks after the date of the next immediate quarterly examination for that position, and is not renewable.

(6) Recognition of Formerly Colorado Certified Positions as Equivalent to Currently Certified Positions

Fire-boss: a Colorado certified fire-boss shall be considered by the Board to be equivalent to a certified Underground Mine Examiner.

### 3.3 Application and Examination Process

Application forms and test materials shall be prepared and approved by the Board.

- (1) Examinations are organized into several parts, each part designed to test different areas of competency for a specific certification. Each part is graded as a unit and carries an individual test score.
  - (a) An examination may include a practical demonstration of competency at the applicant's mine site.
- (2) If an applicant fails a single part or multiple parts of an examination, the part or parts of the examination failed may be retaken one time during the next 12 months at a regular quarterly examination by the applicant. The applicant will not be reexamined on the parts for which the applicant received a passing grade.

- (a) The Board or Office may discuss the tests results with an applicant, and advise the applicant of any special areas of training or study that may be needed to gain competency in a particular examination area.
- (3) At the discretion of the examiners conducting the examination, applicants may be disqualified from the examination for impropriety.
  - (a) If such action is taken by the examiners, a written report shall be filed with the Board, for consideration of further Board action.
- (4) If an applicant is applying for an upgrade of a current position, he or she may retake portions of an examination already passed, in order to achieve a higher score to meet the requirements for the upgraded position.

### **3.4 Examination Results, Issuance of Certification**

- (1) The Office shall notify the applicant in writing of the examination results. Applicants who pass the examination will receive certification in the form of a letter and an identification card of certification.
- (2) The Office shall maintain permanent records of all persons certified by the state of Colorado through the Board. Permanent records shall be maintained at the office in the Division of Reclamation, Mining and Safety. The Office shall also maintain an active record of all certified individuals.

### **3.5 Upgrading, Eligible Positions and Process**

- (1) The Board recognizes two situations in which a certified person may be eligible for upgrading of their existing certification:
  - (a) The certified position of Surface or Underground Assistant Mine Foreman may be upgraded to Surface or Underground Mine Foreman, as applicable.
  - (b) The certified position of Underground Mine Examiner may be upgraded to Underground Mine Foreman, after the individual has worked in the position of Underground Mine Examiner.
- (2) Requests for upgrading as provided for in Rule 3.5(1), above, are allowed on a case-by-case basis, at the discretion of the Board. Requests for upgrading should be sent to the Board in the form of a written letter from the employer, requesting that the Board review the requestor's qualifications and determine if the requestor meets the Board's requirements for an upgrade.
  - (a) If the Board determines that the requestor is eligible for an upgrade, the Board may schedule an examination which may include written or oral examination or a hands on demonstration by the applicant.
  - (b) If the Board determines that the requestor is not eligible for an upgrade, the Board will send the requestor a letter stating the Board's conclusion, and also stating what measures would be necessary for the requestor to obtain the necessary qualifications for the desired position.
  - (c) The application fee for upgrading shall be the same as for an application for certification.

## **RULE 4: TRAINING AND RETRAINING FOR CERTIFIED COAL MINER POSITIONS**

### **4.1 Study Guides and Training Materials**

The Board and Office shall maintain necessary reference materials, including practice ventilation maps and study guides to aid applicants in preparation for test examinations.

- (1) Study materials will be sent to individuals who request them and pay a nominal fee to cover the costs of copying and mailing.
- (2) Refresher training workshops may be arranged and conducted by the Office upon request.

## **RULE 5: SUSPENSION AND/OR REVOCATION OF CERTIFICATION**

### **5.1 General**

In certain circumstances, suspension or revocation of an individual's coal mining certification may be warranted. In no circumstances will any action to suspend a person's certification be taken without good cause shown for taking such an action, including:

- (1) consideration of the facts or circumstances that may warrant such action, including an opportunity for the certified person to present facts and explain circumstances on his or her own behalf; and,
- (2) giving the certified person a reasonable opportunity to comply with all lawful requirements, except in cases of reckless actions or conduct that demonstrates a serious disregard for health and safety. (34-22-107(3) and 34-22-107(4))
- (3) The Director or Office may take immediate action to temporarily suspend a certification, pending the outcome of a hearing before the Board, in circumstances where:
  - (a) the office has reasonable grounds to believe and finds that the certificate holder has been guilty of deliberate and willful violation of applicable mining law; or
  - (b) where it is imperatively necessary for safety in mines; for example, where the health and safety of other individuals may be compromised by not doing so.
- (4) Written notice of such action, together with the reasons therefore, shall be promptly given to the certificate holder and to the operator of any coal mine at which the certificate holder is employed.

### **5.2 Types of Suspension**

The type and duration of suspension shall be determined by the Office or Board on a case by case basis and may include consideration of the following:

- (1) Temporary Suspension for a Prescribed Period:
  - (a) is a suspension period having a predetermined beginning and end, which may not necessarily be effective immediately. Such a suspension may require



completion of additional or refresher training to be satisfactorily completed before reinstatement of certification is considered. (34-22-107(4))

- (2) Immediate and Indefinite Suspension:
  - (a) is a suspension pursuant to an emergency order as set forth in Section 24-4-105(12) of the Colorado APA, pending a full evidentiary hearing and final determination by Board, or
  - (b) a suspension pending outcome of a revocation process. (24-4-105(12))

### **5.3 Conditions or Conduct for Consideration of Suspension or Possible Revocation**

The Board or Office may commence a proceeding for consideration of suspension or revocation of an individual's certification upon:

- (1) a request by the Office or Board, and the Board's own motion for good cause shown (34-22-107(2));
- (2) filing with the Office or Board, a signed and sworn complaint, stating good cause for the Office or Board to conduct an investigation of the complaint (34-22-107(2)), or;
- (3) evidence showing a reason to believe that the certified individual engaged in falsification of information on certification applications, documents used to establish qualifications, or mine records. (24-4-104(13)(a) and 34-22-107(6)(d))

### **5.4 Authority to Suspend or Revoke State Certification**

- (1) The Board may suspend or revoke certification in accordance with Colorado law and these rules. No certification shall be revoked by the Board, except where the Board finds, in writing, based on evidence of a hearing record, that the person is guilty of (34-22-107(2)):
  - (a) Reckless disregard of applicable mining law (34-22-107(6)(a-d)); or
  - (b) Reckless disregard for compliance with health and safety standards; or
  - (c) Demonstrated incompetence in the mine which endangers life or property;
  - (d) Intentional withholding or altering of mine examination information or reports where life and property is endangered.
- (2) The Board shall decide on a case-by-case basis whether a person whose certificate has been revoked may subsequently be issued a certificate, and the duration of the revocation period, and such decision shall be written in the notice of revocation. (34-22-107(9))

### **5.5 Process of Suspending and/or Revoking Certification**

The following process shall be followed in suspension or revocation of certification, except in cases where the Board has issued an emergency order to suspend certification as provided in 24-4-105(12).

- (1) The Board shall consider evidence presented through one or more of the provisions of Rule 5, conduct its own investigation of the circumstances or complaint, and determine if there is just cause to begin a process. (34-22-107(6))
- (2) If just cause is determined, the Board shall give written notice by certified mail of the intent to suspend and/or revoke certification. Such notice shall include:
  - (a) Facts, conduct or circumstances warranting such action
  - (b) That the Board has just cause and reason to believe that such actions are necessary
  - (c) The date of a hearing before the Board, set no sooner than 60 days after the date of the notice. (34-22-107(7))
- (3) The Board may consider a request from the certified individual who has been notified, as provided in Rule 5.5(2), for either:
  - (a) a waiver of 60 day notice to effect an expedited hearing before the Board,
  - (b) or an extension of the hearing date, to allow the individual sufficient time to gather information and/or seek legal representation.

#### **5.6 Non-eligibility for Employment in Other Certified Positions**

A person shall be considered as non-eligible for examination or employment in any certified position, allowed by these rules, during any period of suspension or revocation.

### **RULE 6: PROCESS FOR RECERTIFICATION, AFTER LAPSE OR LOSS OF CERTIFICATION**

#### **6.1 General**

Following expiration, lapse, suspension or revocation of a certification, the following process shall be used for consideration of whether a person is eligible for application to and recertification by the Board.

#### **6.2 Request for Recertification**

The person seeking recertification must submit a written request to the Board, and state the circumstances substantiating the request. On a case-by-case basis, the Board will consider such requests and notify the applicant in writing of the Board's decision, and whether or not the applicant must re-examine for the certified position.

- (1) In the case of a lapsed certification, on a case-by-case basis the Board may consider reinstatement, with or without partial or complete re-examination.
- (2) If the case of a suspended or non-absolute revocation of certification, the Board may schedule a meeting with the individual, and/or the employer to discuss the circumstances leading up to the suspension or revocation, and the situation and circumstances that exist at the current time of the Board's consideration of the request.

### **6.3 Consideration of a Request to Reinstate or Recertify**

- (1) Following a suspension, the Board may reinstate the individual's certification by motion of the Board, or order recertification through re-examination.
- (2) Following a revocation or suspension requiring reexamination, the applicant shall follow the Board's regular application process as set forth in Rule 3.

### **6.4 Denial of Request**

- (1) If the Board denies the person's request, the Board shall provide the person with a Board order stating the reasons for denial.
- (2) Denials by the Board are appealable, as set forth in Section 24-4-106, (1995 Replacement Vol. and 1996 Cumulative Supp.).

## **RULE 7: DUE PROCESS: HEARINGS AND APPEALS BEFORE THE BOARD**

### **7.1 General**

All persons subject to compliance with CFR Title 34, Articles 20 through 24, and these rules shall be entitled to due process in determining compliance or non-compliance, as provided in the APA and other applicable Colorado law, including but not limited to such considerations as:

- (1) Unless the Board has issued an emergency order as set forth in Section 24-4-105(2) C.R.S., (1995 Replacement Vol. and 1996 Cumulative Supp.) to immediately suspend and individual's certification, an initial notification shall be given by the Board of a reason to believe or probable cause of non-compliance with these rules (24-4-105(12)):
  - (a) Notice of any hearing conducted by the Board, at which the Board will consider possible suspension or revocation of an individual's certification, must be given no less than 60 days prior to such hearing. (24-4-104)
- (2) Expediency in resolving any actions taken against the person,
- (3) Right of due process, including:
  - (a) Opportunities to present written data, views, arguments in response to the possible violation,
  - (b) Formal hearing and judicial review as provided in 24-4-106 C.R.S., (1995 Replacement Vol., 1996 Cumulative Supp.).
- (4) Right to request alternative methods of resolution or restitution.

## **RULE 8: CHANGE OF NAME – LEGAL EFFECT**

Any statute enacted prior to or on August 9, 2006 changing the name of the Division of Minerals and Geology to the Division of Reclamation, Mining and Safety, shall not impair the legal status or effect of any and all permits, permit obligations, financial warranties, performance warranties, contracts, property rights and/or any other obligations or legal relationships that were entered into between any entity or individual and the Division of Minerals and Geology prior to the name change. All such obligations will

remain legally binding and shall not be impaired by any such name change. Any statute enacted after August 9, 2006 changing the name of the Division of Reclamation, Mining and Safety to any other name, shall not impair the legal status or effect of any and all permits, permit obligations, financial warranties, performance warranties, contracts, property rights and/or any other obligations or legal relationships that were entered into between an entity or individual and the Division of Reclamation, Mining and Safety prior to such name change. All such obligations will remain legally binding and shall not be impaired by any such name change.