

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 298
94TH GENERAL ASSEMBLY

1110S.04T

2007

AN ACT

To amend chapter 319, RSMo, by adding thereto seventeen new sections relating to blasting and excavation, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 319, RSMo, is amended by adding thereto seventeen new sections, to be known as sections 319.300, 319.303, 319.306, 319.309, 319.312, 319.315, 319.318, 319.321, 319.324, 319.327, 319.330, 319.333, 319.336, 319.339, 319.342, 319.343, and 319.345, to read as follows:

319.300. Sections 319.300 to 319.345 shall be known as the "Missouri Blasting Safety Act". The purpose of sections 319.300 to 319.345 shall be to foster the safe use of explosives in mining and construction by establishing and enforcing consistent statewide industry standards for licensing of blasters and persons using explosives. The provisions of sections 319.300 to 319.345 or any rules or regulations promulgated thereunder shall not be construed to amend, supersede, or conflict with any requirement of federal law or regulation governing the manufacturing, transporting, or storage of explosives.

319.303. As used in sections 319.300 to 319.345, the following terms shall mean:

(1) "Blaster", a person qualified to be in charge of and responsible for the loading and firing of an explosive or explosive material;

(2) "Blast", detonation of explosives;

(3) "Blasting", the use of explosives in mining or construction;

(4) "Blast site", the area where explosives are handled during loading of a bore hole, including fifty feet in all directions from the perimeter formed by loaded holes. A minimum of thirty feet may replace the fifty feet requirement if the perimeter of loaded holes is marked and separated from nonblast site areas by a barrier. The fifty feet or thirty feet distance requirements,

as applicable, shall apply in all directions along the full depth of the bore hole;

(5) "Board", the state blasting safety board created in section 319.324;

(6) "Bore hole", a hole made with a drill, auger, or other tool in which explosives are placed in preparation for detonation;

(7) "Burden", the distance from an explosive charge to the nearest free or open face at the time of detonation;

(8) "Business day", any day of the week except Saturday, Sunday, or a federal or state holiday;

(9) "Deck", charge of explosives separated from other charges by stemming;

(10) "Delay period", the time delay provided by blasting caps which permits firing of bore holes in sequence;

(11) "Detonation", the action of converting the chemicals in an explosive charge to gases at a high pressure by means of a self-propagating shock wave passing through the charge;

(12) "Detonator", any device containing initiating or primary explosive that is used for initiating detonation of another explosive material. A detonator may not contain more than ten grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuse, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps which use detonating cord, nonelectric shock tube, or any other replacement for electric leg wires;

(13) "Explosives", any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite, black powder, pellet powder, initiating explosives, detonators, millisecond connectors, safety fuses, squibs, detonating cord, igniter cord, and igniters; includes explosive materials such as any blasting agent, emulsion explosive, water gel, or detonator. Explosive materials determined to be within the coverage of sections 319.300 to 319.345 shall include all such materials listed in Chapter 40 of Title 18 of the United States Code, as amended, as issued at least annually by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

(14) "Firing", causing explosives to be detonated by the use of a fuse, electric detonator, or nonelectric shock tube;

(15) "Fire Protection official", an authorized representative of a municipal fire department, fire protection district, or volunteer fire protection association for the area where blasting occurs;

(16) "Fugitive from justice", any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term shall also include any person who has been convicted of any crime and has fled to avoid case disposition;

(17) "Initiation system", components of an explosive charge that cause the charge to detonate, such as primers, electric detonators, and detonating charge;

(18) "Loading", placing of explosives in a hole in preparation for detonation;

(19) "Local government", a city, county, fire protection district, volunteer fire protection association, or other political subdivision of the state;

(20) "Person using explosives", any individual, proprietorship, partnership, firm, corporation, company, or joint venture that is required to hold authority to receive or use explosives under statutes or regulations administered by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives and who employs licensed blasters;

(21) "Scaled distance", a value determined by dividing the linear distance, in feet, from the blast to a specified location, by the square root of the maximum weight of explosives, in pounds, to be detonated in any eight millisecond period;

(22) "Seismograph", an instrument that measures ground vibration and acoustic effects;

(23) "Spacing", the distance between adjacent bore holes;

(24) "Stemming", inert material that is placed above explosives that have been placed in a blast hole in preparation for detonation or vertically between columnar decks of explosives that have been placed in a hole in preparation for detonation;

(25) "Uncontrolled structure", any dwelling, public building, school, church, commercial building, or institutional building, that is not owned or leased by the person using explosives, or otherwise under the direct contractual responsibility of the person using explosives.

319.306. 1. Any individual who uses explosives in Missouri shall obtain a blaster's license, except those exempted in subsection 18 of this section. A person using explosives shall not be required to hold a blaster's license, but all blasting on behalf of a person using explosives shall be performed only by licensed blasters. Applications for a blaster's license or renewal of a blaster's license shall be on a form designated by the Missouri division of fire safety, and shall contain the following:

(1) The applicant's full name;

(2) The applicant's home address;

(3) The applicant's date of birth;

(4) The applicant's sex;

(5) The applicant's physical description;

(6) The applicant's driver's license number;

(7) The applicant's current place of employment;

(8) A listing of any other blasting license or certification held by the applicant, to include the name, address, and phone number of the regulatory authority that issued the license or certification;

(9) Any other information required to fulfill the obligations of sections 319.300 to 319.345.

2. Any individual who has met the qualifications set forth in subsection 4 of this section may apply for a blaster's license.

3. An applicant for a blaster's license shall submit an application fee and two copies of the applicant's photograph with the application submitted to the division of fire safety. The amount of such fee shall be established by rule promulgated by the division of fire safety. The fee established by rule shall be no greater than the cost of administering this section, but shall not exceed one hundred dollars.

4. An applicant for a blaster's license shall:

- (1) Be at least twenty-one years of age;
- (2) Not have willfully violated any provisions of sections 319.300 to 319.345;
- (3) Not have knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive in connection with the application;
- (4) Have familiarity and understanding of relevant federal and state laws relating to explosives materials;
- (5) Not have been convicted in any court of, or plead guilty to, a felony;
- (6) Not be a fugitive from justice;
- (7) Not be an unlawful user of any controlled substance in violation of chapter 195, RSMo;
- (8) Except as provided in subsections 11 and 13 of this section, have completed an approved blaster's training course that meets the requirements of subsection 14 of this section and has successfully passed the licensing examination under the provisions of subdivisions (1) to (5) of subsection 15 of this section;
- (9) Have accumulated at least one thousand hours of experience directly relating to the use of explosives within two years immediately prior to applying for a blaster's license and shall provide signed documentation from an employer, supervisor, or other responsible party verifying the applicant's experience;
- (10) Not have been adjudicated as mentally defective; and
- (11) Not advocate or knowingly belong to any organization or group that advocates violent action against any federal, state, or local government, or against any person.

5. Any individual holding a blaster's license under the provisions of this section shall promptly notify the division of fire safety if he or she has had any change of material fact relating to any qualification for holding a blaster's license.

6. If the division of fire safety finds that the requirements for a blaster's license have been satisfied, a license shall be issued to the applicant.

7. A blaster's license shall expire three years from the date of issuance. To qualify for a renewal of a blaster's license, an individual will be required to provide documentation of completing eight hours of training in an explosives-related course of instruction that is approved by the division of fire safety, at least half of which shall have been completed within the year prior

to renewal. The remainder of such training for renewal of the license may be acquired at any time during the three-year period that a license is valid. Additional training beyond an accumulated eight hours during any three-year period is not valid for more than one subsequent renewal of the license.

8. Each license issued under the provisions of this section shall provide documentation to the license holder in the form of a letter or letter-sized certificate and a card that is approximately two inches by three inches in size. Each shall specify a unique license number, the name of the individual, his or her driver's license number, the individual's photograph, the blaster's license's effective date and its expiration date, and any other record-keeping information needed by the division of fire safety. In addition, the card form of the license shall contain a photographic image of the license holder.

9. Each individual required to have a blaster's license shall keep at least one form of license documentation on his or her person or at the site of blasting and shall provide documentation that he or she has a currently valid license to a representative of the division of fire safety upon a written or verbal request. No enforcement action shall be taken against any individual that cannot comply with such a request so long as the division of fire safety's records provide documentation that the individual has a valid blaster's license.

10. (1) A blaster's license issued under the provisions of this section may be suspended or revoked by the division of fire safety upon substantial proof that the individual holding the license has:

- (a) Knowingly failed to monitor the use of explosives as provided in section 319.309;
- (b) Negligently or habitually exceeded the limits established under section 319.312;
- (c) Knowingly or habitually failed to create a record of blasts as required by section 319.315;
- (d) Had a change in material fact relating to their qualifications for holding a blaster's license as described in subsection 4 of this section;
- (e) Failed to advise the division of fire safety of any change of material fact relating to his or her qualifications for holding a blaster's license; or
- (f) Knowingly made a material misrepresentation of any information by any means of false pretense, deception, fraud, misrepresentation, or cheating for the purpose of obtaining training or otherwise meeting the qualifications of obtaining a license.

(2) The division of fire safety shall provide any notice of suspension or revocation, as provided in subdivision (1) of this subsection, in writing, sent by certified mail to the last known address of the holder of the license. The notice may also be verbal, but this does not eliminate the requirement for written notice. Upon receipt of a verbal or written notice of suspension or revocation from the division of fire safety, the individual holding the license shall immediately surrender all copies of the license to a representative of the division of fire safety and shall

immediately cease all blasting activity.

(3) The individual holding the license may appeal any suspension or revocation to the state blasting safety board established under section 319.324 within forty-five days of the date written notice was received. The division of fire safety shall immediately notify the chairman of the board that an appeal has been received and a hearing before the board shall be held. The board shall consider and make a decision on any appeal received by the division of fire safety within thirty days of the date the appeal is received by the division of fire safety. The board shall make a decision on the appeal by majority vote of the board and shall immediately notify the licensee of its decision in writing. The written statement of the board's decision shall be prepared by the division of fire safety or its designee and shall be approved by the chairman of the board. The approved statement of the board's decision shall be sent by certified mail to the last known address of the holder of the license.

11. Any individual whose license has been expired for a period of three years or less shall be required to successfully pass the examination as provided in subdivisions (1) to (5) of subsection 15 of this section and attend the eight hours of training required for renewal of a license as minimum qualifications for submitting an application for reinstatement of the license. Any individual whose license has been expired for a period of more than three years shall meet the qualifications set forth in subsection 4 of this section, including completing twenty hours of training and passing the examination, prior to applying for a blaster's license.

12. A license may be granted to applicants who within the last three years have held a valid license or certification from any other source if all of the qualifications for obtaining the license or certification meet or exceed the provisions of this section. It is the duty of the division of fire safety to investigate the qualifications required for obtaining a license or certification from any other source. Licenses or certification held prior to the effective date of the rule required by subsection 19 of this section shall be deemed to meet requirements for this subsection, provided that they meet requirements of the rule.

13. A license may be granted upon the application of an individual employed as a blaster on or before December 31, 2000, and who has accumulated one thousand hours of training or education pertaining to blasting and experience working for a specific person using explosives within two years immediately prior to applying for a license. The application shall include a statement of hours of experience in the form of an affidavit signed by the person using explosives who has employed or contracted with the blaster for the preceding two years. Such applicant also shall meet the requirement of subdivisions (1), (2), (3), (4), (5), (6), (7), (10), and (11) of subsection 4 of this section. Any individual granted a license under this subsection shall be limited to blasting performed for the person using explosives submitting the affidavit required by this subsection. Such licensee shall meet the requirements for continuing training required by subsection 7 of this section.

14. (1) The division of fire safety or its authorized agent shall offer annually at least two courses of instruction that fulfill the training requirement of qualifying for a blaster's license and two courses that fulfill the training requirement for renewal of a blaster's license. In addition, any person may apply to the division of fire safety for approval of a course of instruction that meets the training requirement of obtaining a blaster's license or renewal of a blaster's license. The application shall include a description of the qualifications of the instructor, a description of instructional materials to be used in the course, and an outline of the subject matter to be taught, including minimum hours of instruction on each topic. The division of fire safety shall review the application regarding the knowledge and experience of proposed instructors, the total hours of training and the adequacy of proposed training in subject matter with regard to the provisions of sections 319.300 to 319.345. If the division of fire safety determines that training proposed by the applicant is adequate, a letter of approval shall be issued to the applicant. The letter of approval shall be effective for a period of three years. If at any time the division of fire safety determines that an approved training course no longer meets the standards of this section, the letter of approval may be revoked with written notice. The division of fire safety or any person providing a course of instruction may charge an appropriate fee to recover the cost of conducting such instruction.

(2) To be approved by the division of fire safety, a blaster's training course shall contain at least twenty hours of instruction to prepare attendees for obtaining a blaster's license the first time, or eight hours of instruction to prepare attendees for obtaining a license renewal.

(3) Any person providing training in a course of instruction approved by the division of fire safety shall submit a list of individuals that attended any such course to the division of fire safety within ten business days after completion of the course.

(4) The division of fire safety shall maintain a current list of persons who provide approved training and shall make this list available by any reasonable means to professional and trade associations, labor organizations, universities, vocational schools, and others upon request.

15. (1) The division of fire safety shall approve a standard examination or examinations for the purpose of qualifying an individual to obtain a blaster's license. Each individual taking the examination shall pay a fee to the division of fire safety, or the division's agent, that is established by rule. Testing fees shall be no greater than what is required to administer the testing provisions of this section and shall not exceed fifty dollars per test.

(2) Except as provided in subsection 11 of this section, no individual shall be allowed to take an examination for purposes of obtaining a blaster's license unless that individual has completed a training course approved by the division of fire safety. The individual must have completed an approved course of instruction as provided in subdivision (1) of subsection 14 of this section no longer than two years prior to taking the examination. The examination may be administered by any person approved to provide a course of instruction, as provided in

subdivision (1) of subsection 14 of this section, at the site of instruction, provided that any such examination may, at the discretion of the state fire marshal, be conducted under the supervision of the division of fire safety. The division of fire safety may also administer such examinations at other times and locations.

(3) Standards for passing the examination shall be set by the division of fire safety by rule.

(4) The division of fire safety or its authorized agent shall provide a written statement within thirty days to the individual taking the examination as to whether that individual passed or failed.

(5) Any individual failing to pass the examination may retake the examination within six months without having to complete an additional approved course of instruction. If the individual fails the second examination, the person must complete another course of instruction as required in subdivision (1) of subsection 14 of this section before taking the examination again. No limit will be placed on how many times any individual may take the examination, subject to the provisions of this subdivision of this subsection.

(6) Individuals having previously taken an approved blaster's training course, and passed an approved examination, and having taken an approved blaster's renewal training course, or that have obtained a blaster's license as provided in subsections 12 and 13 of this section are eligible for renewal of a blaster's license after meeting the requirements of subsection 7 of this section. The fee for renewal of a license shall be the same as the fee specified in subsection 3 of this section.

16. No individual shall load or fire explosives or direct, order, or otherwise cause any individual to load or fire explosives in this state unless that individual has a valid blaster's license or is under the direct supervision and responsibility of an individual having a valid blaster's license. For purposes of this section, "direct supervision" means the supervisor is physically present on the same job site as the individual who is loading or firing explosives. An individual without a blaster's license who is loading or firing explosives while under the direct supervision and responsibility of someone having a blaster's license shall not be in violation of sections 319.300 to 319.345.

17. Persons found guilty of loading or firing explosives, or directing, ordering, or otherwise causing any individual to load or fire explosives in this state without having a valid blaster's license, or that loads and fires explosives without being under the direct supervision and responsibility of an individual holding a blaster's license as provided in sections 319.300 to 319.345, shall be guilty of a class B misdemeanor for the first offense or a class A misdemeanor for a second or subsequent offense. Any individual convicted of a class A misdemeanor under the provisions of sections 319.300 to 319.345 shall be permanently prohibited from obtaining a blaster's license in this state.

18. The requirement for obtaining a blaster's license shall not apply to:

(1) Individuals employed by universities, colleges, or trade schools when the use of explosives is confined to instruction or research;

(2) Individuals using explosive materials in the forms prescribed by the official U.S. Pharmacopoeia or the National Formulary and used in medicines and medicinal agents;

(3) Individuals conducting training or emergency operations of any federal, state, or local government including all departments, agencies, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties or functions;

(4) Individuals that are members of the armed forces or any military unit of Missouri or the United States who are using explosives while on official training exercises or who are on active duty;

(5) Individuals using pyrotechnics, commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes;

(6) Individuals using small arms ammunition and components thereof which are subject to the Gun Control Act of 1968, 18 U.S.C., Section 44, and regulations promulgated thereunder;

(7) Any individual performing duties in underground mines regulated by 30 CFR Part 48, Subpart A, 30 CFR Part 57, or performing duties in coal mining regulated by 30 CFR Part 75, and 30 CFR Part 77 of the Code of Federal Regulations, as amended, or using explosives within an industrial furnace;

(8) Any individual having a valid blaster's license or certificate issued under the provisions of any requirement of the U.S. government in which the requirements for obtaining the license or certificate meet or exceed the requirements of sections 319.300 to 319.345;

(9) Individuals using agricultural fertilizers when used for agricultural or horticultural purposes;

(10) Individuals handling explosives while in the act of transporting them from one location to another;

(11) Individuals assisting or training under the direct supervision of a licensed blaster;

(12) Individuals handling explosives while engaged in the process of explosives manufacturing;

(13) Employees, agents, or contractors of rural electric cooperatives organized or operating under chapter 394, RSMo; and

(14) Individuals discharging historic firearms and cannon or reproductions of historic firearms and cannon.

19. The division of fire safety shall promulgate rules under this section to become effective no later than July 1, 2008. Any individual loading or firing explosives after the effective date of such rule shall obtain a license within one hundred eighty days of the effective date of such rule. Any experience or training prior to the effective date of such rule that meets the standards established by the rule shall be deemed to comply with this section.

319.309. 1. Any person using explosives in the state of Missouri shall calculate the scaled distance to the nearest uncontrolled structure. If more than one uncontrolled structure is the same approximate distance from the blast site, then the person using explosives may select one representative structure for calculation of scaled distance.

2. For the purposes of this section, the term "uncontrolled structure" shall not apply to the following:

(1) Buildings in a state of disrepair or neglect which are not being used as a permanent residence;

(2) Noncommercial storage sheds;

(3) Temporary structures;

(4) Any unoccupied mobile recreational vehicle, trailer, or camper;

(5) Agricultural barns, storage sheds, and animal shelters;

(6) Any building on mine property that is owned by the mine operator or contained on property leased by the mine operator.

3. In any instance when the scaled distance value is fifty-five or less, any person using explosives, except as provided in section 319.321, shall use at least one seismograph calibrated to the manufacturer's standard for use to record the ground vibration and acoustic levels that occur from the use of such explosives or explosive materials. When measuring ground vibration and acoustic levels, the seismograph shall be placed in the proximity of the nearest uncontrolled structure or, at the option of the person using explosives, closer to the blast site. If more than one uncontrolled structure is the same approximate distance from the blast site, then the person using explosives may select one representative structure for placement of the seismograph.

4. Any person using explosives who is voluntarily using a seismograph calibrated to the manufacturer's standard for use for all blasting is exempt from the requirements of this section.

319.312. 1. (1) Any person using explosives in the state of Missouri in which monitoring with a seismograph is required, as provided in section 319.309, shall comply with ground vibration limits based on the U.S. Bureau of Mines Report of Investigations 8507, Appendix B.

(2) In lieu of the ground vibration limit established in subdivision (1) of this subsection, the person using explosives may submit a written request to the division of fire safety to use an alternate compliance method. Such written request shall be supported by sufficient technical information, which may include but not be limited to, documented approval of such method by other federal, state, or local political subdivisions which regulate the use of explosives. Upon submittal by the person using explosives of a request to use an alternate compliance method, the state blasting safety board shall issue a written determination as to whether the technical information submitted provides sufficient justification for the alternate method to be used as a method of demonstrating compliance with the provisions of this section.

2. Any person using explosives in the state of Missouri in which monitoring with a

seismograph is required, as provided in section 319.309, shall limit acoustic values from blasting to one hundred thirty-three decibels using a two hertz flat response measuring system based on the Office of Surface Mining Regulation 816.67(b)(1)(i).

319.315. 1. Seismograph recordings of the ground vibration and acoustic levels created by the use of explosives, when required by section 319.309, shall be retained for at least three years. Such recordings shall be made available to the division of fire safety within twenty-four hours of a request by any representative of the division of fire safety. Each seismograph recording and the accompanying records shall include the:

- (1) Maximum ground vibration and acoustics levels recorded;**
- (2) Specific location of the seismograph equipment, its distance from the detonation of the explosives, the date of the recording, and the time of the recording;**
- (3) Name of the individual responsible for operation of the seismograph equipment and performing an analysis of each recording; and**
- (4) Type of seismograph instrument, its sensitivity and calibration signal or certification date of the last calibration.**

2. When seismograph recordings of the use of explosives are required by section 319.309, a record of each such use of explosives shall be made and retained for at least three years. The record shall be completed by the end of the business day following the day in which the explosives were detonated. Such records shall be made available to the division of fire safety, upon request, within twenty-four hours of the request. Each record shall include the:

- (1) Name of the person using the explosives;**
- (2) Location, date, and time of the detonation;**
- (3) Name of the licensed blaster responsible for use of the explosives;**
- (4) Type of material blasted;**
- (5) Number of bore holes, burden, and spacing;**
- (6) Diameter and depth of bore holes;**
- (7) Type of explosives used;**
- (8) Weight of explosives used per bore hole and total weight of explosives used;**
- (9) Maximum weight of explosives detonated within any eight millisecond period;**
- (10) Maximum number of bore holes or decks detonated within any eight millisecond period;**
- (11) Initiation system, including number of circuits and the timer interval, if a sequential timer is used;**
- (12) Type and length of stemming;**
- (13) Type of detonator and delay periods used, in milliseconds;**
- (14) Sketch of delay pattern, including decking;**
- (15) Distance and scaled distance, if required under the provisions of 319.309, to the**

nearest uncontrolled structure;

(16) Location of the nearest uncontrolled structure, using the best available information.

3. If the type of blasting being recorded by a seismograph does not involve bore holes, then the record required in subsection 2 of this section shall contain the:

(1) Name of the person using the explosives;

(2) Location, date, and time of the detonation;

(3) Name of the licensed blaster responsible for use of the explosives;

(4) Type of material blasted;

(5) Type of explosives used;

(6) Weight of explosives used per shot and total weight of explosives used;

(7) Maximum weight of explosives detonated within any eight millisecond period;

(8) Initiation system, including number of circuits and the timer interval, if a sequential timer is used;

(9) Type of detonator and delay periods used, in milliseconds;

(10) Sketch of delay pattern;

(11) Distance and scaled distance, if required under the provisions of section 319.309, to the nearest uncontrolled structure;

(12) Location of the nearest uncontrolled structure, using the best available information.

4. It shall be the duty of each licensed blaster and each person using explosives to assure that the requirements of this section are met. Any person using explosives shall provide properly calibrated seismographic equipment at the closest practical proximity to the nearest uncontrolled structure, or at the option of the person using explosives the seismograph equipment may be located nearer to the blast site on an approximate line between the nearest uncontrolled structure and the blast site. Licensed blasters shall create the record required in subsections 2 and 3 of this section and provide such record to the person using explosives, who shall be responsible for maintaining records required in this section.

319.318. 1. Any person using explosives shall comply with the provisions of this section.

2. Provisions of federal law and regulation regarding the manufacturing, transportation, distribution, and storage of explosives shall be enforced by the appropriate federal agency and shall not be subject to enforcement under sections 319.300 to 319.345.

3. Within sixty days after the effective date of sections 319.300 to 319.345, each person using explosives or intending to use explosives in Missouri shall register with the division of fire safety. Any person using explosives who is not required to register on the effective date, who subsequently uses explosives in Missouri, shall register with the division of fire safety prior to first using explosives in Missouri. The initial registration shall state the name of the person, address, telephone number, facsimile number, e-mail address, and name of the principal individual having responsibility for supervision of the use of explosives. A fee of two hundred dollars shall be

submitted with the initial registration.

4. Each person using explosives that is required to register under subsection 3 of this section shall by January thirty-first of each year after registering file an annual report with the division of fire safety for the preceding calendar year.

(1) The initial annual report shall only include that portion of the preceding calendar year after the date the person became subject to the requirement to register under subsection 3 of this section.

(2) The report shall include:

(a) Any change or addition to the information required in subsection 3 of this section;

(b) The name and address of the distributors from which explosives were purchased;

(c) The total number of pounds of explosives purchased for use in Missouri and the total number of pounds actually used in Missouri during the period covered by the report. Persons required to report annually shall maintain records sufficient to prove the accuracy of the information reported.

(3) The person using explosives shall submit with the annual report a fee per ton, as established under this section, based on the amount of explosives used in Missouri. If the report of total pounds used results in a portion of a ton, the cumulative total of the fee shall be rounded to the nearest ton. The fee shall be five hundred dollars plus one dollar and fifteen cents per ton of explosives used. The fee per ton authorized under this subdivision may be adjusted by rule provided the fee shall not exceed two dollars per ton. The state blasting safety board shall review the fee schedule on a biennial basis and approve or disapprove adjustments in fees by rule.

5. (1) The division of fire safety may audit the records of any person using explosives required to report annually under subsection 4 of this section to determine the accuracy of the number of pounds of explosives reported. In connection with such audit, the division of fire safety may also require any distributor of explosives to provide a statement of sales during the year to persons required to report under subsection 4 of this section.

(2) It shall be a violation of sections 319.300 to 319.345 to fail to register or report as required by subsection 3 of this section or knowingly report false information in the reports required under subsections 3 and 4 of this section. The state fire marshal may issue a notice of violation under section 319.333 for failure to register or report or for knowingly reporting false information in the reports required by subsections 3 and 4 of this section. The notice of violation shall be subject to the same procedures and rights of appeal as established in sections 319.324, 319.327, and 319.333.

(3) Any person who fails to register or report or who knowingly reports false information in the reports required under subsections 3 and 4 of this section shall be subject to a civil penalty not exceeding two thousand dollars for the first offense or a penalty not exceeding five thousand dollars for a second or subsequent offense. Fees for use of explosives not reported shall also be

paid.

6. It shall be a violation of sections 319.300 to 319.345 for any person using explosives to:

(1) Engage in blasting other than by a licensed blaster or an individual working under the direct supervision of a licensed blaster;

(2) Fail to calculate the scaled distance, conduct monitoring of vibration and noise levels, and conduct record keeping as required by sections 319.300 to 319.345;

(3) Fail to carry a minimum of one million dollars in commercial general liability insurance.

7. The state fire marshal may issue a notice of violation for any violation of subsection 6 of this section which shall be subject to the same procedures and rights of appeal as established in sections 319.324, 319.327, and 319.333.

8. A violation of subsection 6 of this section shall be subject to a civil penalty not exceeding two thousand dollars for the first offense or a penalty not exceeding five thousand dollars for a second or subsequent offense.

319.321. Sections 319.309, 319.312, 319.315, and 319.318 shall not apply to:

(1) Universities, colleges, or trade schools when confined to the purpose of instruction or research;

(2) The use of explosive materials in the forms prescribed by the official U.S. Pharmacopoeia or the National Formulary and used in medicines and medicinal agents;

(3) The training or emergency operations of any federal, state, or local government including all departments, agencies, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties or functions;

(4) The use of explosives by the military or any agency of the United States;

(5) The use of pyrotechnics, commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes;

(6) The use of small arms ammunition and components thereof which are subject to the Gun Control Act of 1968, 18 U.S.C., Section 44, and regulations promulgated thereunder. Any small arms ammunition and components thereof exempted by the Gun Control Act of 1968 and regulations promulgated thereunder are also exempted from the provisions of sections 319.300 to 319.345;

(7) Any person performing duties using explosives within an industrial furnace;

(8) The use of agricultural fertilizers when used for agricultural or horticultural purposes;

(9) The use of explosives for lawful demolition of structures;

(10) The use of explosives by employees, agents, or contractors of rural electric cooperatives organized or operating under chapter 394, RSMo; and

(11) Individuals discharging historic firearms and cannon or reproductions of historic firearms and cannon.

319.324. 1. The state blasting safety board is hereby created and assigned to the division of fire safety under the state fire marshal. There shall be seven members of this board, as appointed by the governor, with the advice and consent of the senate, to be comprised of:

(1) One representative of a municipality or county governed by sections 319.300 to 319.345 who serves in the capacity of director of public works or a similar position;

(2) One representative of a person using explosives that is engaged in mining that is subject to the requirements of section 319.300 to 319.345;

(3) One representative of a person using explosives that is engaged in construction;

(4) One person who is in the business of providing contract blast monitoring services;

(5) Two persons who manufacture or distribute explosives; and

(6) The state fire marshal or his or her designee.

2. Each board member shall serve for a term of six years, except for the members initially appointed one term shall be for one year, one term shall be for two years, one term shall be for three years, one term shall be for four years, one term shall be for five years, and one term shall be for six years. Members appointed and serving shall serve until their successor is named and shall be eligible for reappointment. The state fire marshal or his or her designee shall be a standing member of the board and shall have the power to vote.

3. Members of the board shall serve without compensation but may be reimbursed by the division of fire safety for reasonable and necessary expenses. Meetings of the board shall be held in facilities arranged by the division of fire safety. Hearings of the board may be held at a location in Missouri agreed upon by the state fire marshal and the chairman of the board. Upon agreement by the licensee, the state fire marshal, and the chairman of the state blasting safety board, hearings may be conducted by conference call.

4. The board shall annually by January thirty-first elect a chairman from one of the members other than the state fire marshal or his or her designee. The chairman shall be elected by majority vote of the board and shall preside over all meetings and hearings and perform any specific duties set out in sections 319.300 to 319.345.

5. The state fire marshal or his or her designee shall perform the duties of secretary of the board.

6. The board shall meet as needed at the call of the chairman or upon written notice by the state fire marshal. The board shall meet at least once each calendar year.

7. It shall be the duty of the board to:

(1) Advise the state fire marshal in the development of application and registration forms, training and examinations, and setting fees for the filing of required applications, registrations, and reports;

(2) Approve or disapprove any examination for licensing of blasters;

(3) Hold hearings and make decisions by majority vote upon appeals under subsection 10

of section 319.306 and upon notices of violation under subsection 7 of section 319.318 or section 319.333;

(4) Approve or disapprove any rule proposed by the division of fire safety for the administration of sections 319.300 to 319.345;

(5) Advise or assist the division of fire safety in any other matter regarding administration or enforcement, within the scope and requirements of sections 319.300 to 319.345.

8. For any matter upon which a hearing is held under subdivision (3) of subsection 7 of this section, any referral of a notice of violation or request for criminal or civil enforcement action or injunctive relief shall be made by the state fire marshal to the attorney general or a prosecuting attorney, only upon a majority vote by the board.

319.327. 1. It shall be the duty of the division of fire safety to:

(1) Develop and distribute all forms, certificates, and printed material necessary for carrying out duties relating to applications, registrations, training, testing, and licensing required by sections 319.300 to 319.345;

(2) Publish, distribute, and administer an examination that tests the knowledge of applicants for a blaster's license in the safe and proper use of explosives. The examination may be given to applicants by representatives of the division of fire safety, by persons approved by the division of fire safety to provide training under section 319.306, or by other persons designated by the division of fire safety;

(3) Upon approval by majority vote of the state blasting safety board, promulgate any rule necessary for carrying out the purposes of sections 319.300 to 319.345. No rule promulgated by the state fire marshal shall duplicate, amend, supersede, or conflict with the provisions of any statute, regulation, or policy established by:

(a) The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

(b) Chapter 40 of Title 18 of the United States Code, as amended;

(c) The U.S. Department of Transportation;

(d) The federal Mine Safety and Health Administration; or

(e) The federal Occupational Safety and Health Administration;

(4) Investigate possible violations of sections 319.300 to 319.345 upon the complaint of any citizen that believes explosives are being used in such a way to endanger the public's safety or property, or upon any cause for the state fire marshal to believe that a violation is occurring. To conduct such investigations, the state fire marshal shall assign adequately trained personnel within the division of fire safety to inspect blasting sites, examine records and seismograph recordings, inspect blaster's licenses, inspect registration and reporting records required by section 319.315, or determine if any other provision of sections 319.300 to 319.345 has been violated. Such inspectors shall be employees of the division of fire safety and may act on a full-time or part-time basis. Any such inspector shall meet the requirements of section 319.306 for

being licensed as a blaster in the state of Missouri;

(5) Receive and provide information and assistance, in cooperation with local governments, federal agencies, and agencies of other states, in administration and enforcement of sections 319.300 to 319.345 and similar laws, regulations, and requirements in other jurisdictions.

2. The division of fire safety may enforce any provision of sections 319.300 to 319.345 by referral of violations to the attorney general or a prosecuting attorney and may seek criminal penalties, civil penalties, and may seek injunctive relief as authorized by sections 319.300 to 319.345. Any violation of sections 319.300 to 319.345, other than loading or firing explosives in violation of subsection 16 of section 319.306 which shall be subject to penalties under such section, shall be subject to a civil penalty not exceeding two thousand dollars for the first offense or a penalty not exceeding five thousand dollars for a second or subsequent offense. For any matter upon which a hearing is held under subdivision (3) of subsection 7 of section 319.324, any referral of a notice of violation or request for enforcement action shall be made by the state fire marshal to the attorney general or a prosecuting attorney, only upon a majority vote by the board.

319.330. There is hereby created in the state treasury the "Missouri Explosives Safety Act Administration Fund", which shall consist of all fees collected under sections 319.300 to 319.345, appropriations of the general assembly, federal grants, and private donations. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, RSMo, the state treasurer may approve disbursements. Upon appropriation, money in the fund shall be used solely for the administration of sections 319.300 to 319.345. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund except that, at the end of each biennium and after all statutorily or constitutionally required transfer of funds have been made, the state treasurer shall transfer the balance in the fund, except for gifts, donations, bequests, or money received from a federal source, created in this section in excess of two hundred percent of the fund's previous fiscal year's expenditures into the state general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund. The state fire marshal shall submit a report to the state blasting safety board and the public each year that describes the revenue created by fees established under the provisions of sections 319.300 to 319.345 and how the revenue was expended to enforce the provisions of sections 319.300 to 319.345, including the number of employees used and activities performed.

319.333. Any individual or person using explosives who the state fire marshal or his or her representative determines, upon substantial evidence, to be in violation of sections 319.300 to 319.345 may be issued a notice of violation by the division of fire safety. Any hearings regarding suspension or revocation of a blaster's license shall be conducted under the provisions of subsection 10 of section 319.306, rather than the provisions of this section. Any notice of violation

of any provision of sections 319.300 to 319.345 shall be in writing and shall state the section or sections violated and the circumstance of the violation, including date, place, person involved, and the act or omission constituting the violation. The notice shall also inform the person receiving the notice of the right to request a hearing before the state blasting safety board for any violation, except for the violation of failure to hold a blasting license as required by section 319.306 for which no appeal may be made. The recipient may request a hearing within forty-five days of the date the notice was received. If a hearing is requested, the state fire marshal shall immediately inform the chairman of the board. The person receiving the notice, the state fire marshal, and the chairman of the board shall establish a mutually acceptable date and place for the hearing, which in no case shall be more than thirty days after the hearing was requested. The hearing shall be conducted as an uncontested case, although the person or the state fire marshal may be represented by an attorney. Within fifteen days of such hearing, the board shall notify the person of its decision on the appeal, which may include upholding, modifying, or disapproving the notice of violation. The board's action upon the appeal shall be decided by majority vote. If the notice of violation is upheld by the board, in whole or part, upon a separate majority vote of the board, the person may be referred for enforcement action as provided in section 319.327.

319.336. Any individual aggrieved by any official action of the state blasting safety board or the division of fire safety affecting their license status, including revocation, suspension, failure to renew, or refusal to grant a license may seek a determination thereon by the administrative hearing commission under the provisions of section 621.045, RSMo.

319.339. 1. Any person using explosives within Missouri shall notify the division of fire safety in writing or by telephone at least two business days in advance of first using explosives at a site where blasting has not been previously conducted. If blasting will be conducted at an ongoing project, such as a long term construction project, or at a permanent site, such as a mine, the person shall only be required to make one notice to the division of fire safety in advance of the first use of explosives.

2. The notice required by this section shall state the name, address, and telephone number of the person using explosives, the name of the individual responsible for supervision of blasting, the date or approximate period over which blasting will be conducted, the location of blasting by street address, route, or other description, and the nature of the project or reason for blasting.

3. This section shall not apply to any blasting required by a contract with any agency of the state of Missouri, any federal agency, or any political subdivision.

319.342. 1. Any person using explosives that will conduct blasting within the jurisdiction of a municipality shall notify the appropriate representative of the municipality in writing or by telephone at least two business days in advance of blasting at that location. An appropriate representative shall be deemed to be the city's public works department, code enforcement official, or an official at the main office maintained by the municipality. In any area where

blasting will be conducted, whether in a municipality or in an unincorporated area, the person using explosives also shall notify the appropriate fire protection official for the jurisdiction where blasting will occur, which may be a city fire department, fire protection district, or volunteer fire protection association. The notice required by this section shall state the name, address, and telephone number of the person using explosives, the name of the individual responsible for supervision of blasting, the date or approximate period over which blasting will be conducted, the location of blasting by street address, route, or other description, and the nature of the project or reason for blasting. If blasting will be conducted at an ongoing project, such as a long term construction project, or at a permanent site, such as a surface mine, the person shall only be required to make one notice to the municipality or appropriate fire protection official in advance of the first use of explosives. Any such ongoing projects or permanent sites in existence at the time of the effective date of sections 319.300 to 319.345 shall not be required to provide notice as described in this subsection.

2. Any person using explosives which will conduct blasting within the jurisdiction of a municipality shall notify the owner or occupant of any residence or business located within a scaled distance of fifty-five from the site of blasting prior to the start of blasting at any new location. One notification by mail, telephone, printed notification posted prominently on the premises or the property of the owner or occupant of the residence or business, or delivered in person to any such owner or occupant meets the requirements of this subsection. A municipality may provide the name, last known address, and telephone number of the owners or occupants of any residence or business that may be located within the scaled distance of fifty-five from the site of blasting to the person using explosives upon request.

3. Any municipality or county may by ordinance or order:

(1) Require that a permit be obtained in addition to the notice required by subsection 1 of this section, with such application for permit being due no more than ten days prior to the first use of explosives;

(2) Require that the application for the permit contain specific information about the type of explosives to be used and their storage location at the site where used;

(3) Require the applicant to demonstrate an acceptable plan for signage or other means of informing the public of blasting in proximity to public streets or highways and any request for temporary closing of streets or routing of traffic;

(4) Specify the times of day blasting may be conducted, which shall not be less than eight consecutive hours on any day of the week except the ordinance or order may prohibit blasting on Sunday unless approved by the municipality or county upon application by the person using explosives;

(5) Require that the applicant submit proof that the person using explosives is registered with the division of fire safety and that blasting will be conducted by a licensed blaster;

(6) Require that the applicant submit proof of commercial general liability insurance in an acceptable amount, which shall be no less than one million dollars and no more than five million dollars;

(7) Require that the applicant make at least three documented attempts to contact the owner of any uncontrolled structures within a scaled distance of thirty-five from the blast site in order to conduct a preblast survey of such structures. A preblast survey is not required if the owner of any such structure does not give permission for a survey to be conducted;

(8) Enact any other provision necessary to carry out the provisions of the ordinance or order, including the conditions under which the permit may be suspended or revoked or appropriate fines may be imposed for failure to obtain a permit or violations of the permit.

4. A permit for blasting under a municipal or county ordinance or order authorized by subsection 3 of this section shall be granted by the municipality or county upon satisfying the requirements of the ordinance or order and upon the applicant's payment of a reasonable fee to cover the administration of the permit system.

5. Any authorized representative of a municipality, county or an appropriate fire protection official may:

(1) Require any person using explosives to show proof that he or she is registered with the division of fire safety and blasting is being conducted by an individual that is licensed under the provisions of section 319.306;

(2) Request and be allowed access to the site of blasting by the person using explosives and shall be allowed to observe blasting from a safe location as designated by the blaster;

(3) Examine records of blasting required to be maintained by sections 319.309 and 319.315. However, no municipality, county, or fire protection official shall require a person using explosives or a blaster to surrender such records or a copy of such records to the municipality or fire protection official except as necessary under an investigation of the blaster's violation of a municipal or county permit;

(4) Report suspected violations of section 319.300 to 319.345 to the division of fire safety.

6. Except for any ordinance or order of any county with a charter form of government and with more than one million inhabitants, no provision of a municipal ordinance or county ordinance or order in effect on August 28, 2007, or which may be adopted at a future date by a city or county may preempt, amend, exceed, or conflict with the provisions of sections 319.300 to 319.342 nor any rule promulgated by the state fire marshal under section 319.327. Neither shall any existing or future municipal ordinance or county ordinance or order preempt, amend, exceed, or conflict with the provisions of any statute, regulation, or policy established by:

(1) The United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

(2) Chapter 40 of Title 18 of the United States Code, as amended;

- (3) The United States Department of Transportation;**
- (4) The federal Mine Safety and Health Administration; or**
- (5) The federal Occupational Safety and Health Administration.**

7. Subsections 1, 2, and 3, of this section shall not apply to any blasting required by a construction contract with any agency of the state of Missouri, any federal agency, or any political subdivision.

8. Nothing in this section shall preempt the rights and remedies afforded by the general assembly or common law to persons damaged by blasting.

319.343. The provisions of subsection 6 of section 319.342 in regard to the provisions of sections 319.300 to 319.342 or any rule promulgated by the state fire marshal thereunder shall not apply to an ordinance, order, permit, or regulation in effect as of January 1, 2007, which regulates the use of explosives at the site of a quarry in any county with a charter form of government and with more than two hundred fifty thousand but fewer than three hundred fifty thousand inhabitants. For purposes of this section, quarry shall include any place where rock, ore, stone, or similar materials are excavated for sale or off-premises use. A quarry shall not include the removal or relocation of rock, stone, or earth incidental to the construction of residential, commercial, or industrial buildings. Nothing in this section shall be construed to exempt any person loading or firing explosives in any county governed by this section from meeting the licensing requirements of section 319.306 and paying licensing fees under that section. Neither shall this section be construed to exempt any person using explosives in any county defined by this section from registering with and reporting to the division of fire safety under section 319.318 and paying all registration and reporting fees under that section.

319.345. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 319.300 to 319.345, shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove or annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

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