

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #1

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Office of Oil and Gas  
WV Div. of Environmental Protection TITLE NUMBER: 38 35  
RULE TYPE: Legislative; CITE AUTHORITY WV Code 22-1-13, 22-1-15, 22B-1-2,  
and 22B-1-2(c)(11)  
AMENDMENT TO AN EXISTING RULE: YES  NO   
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16 9  
TITLE OF RULE BEING AMENDED: Certification of Gas Wells  
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_  
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: July 22, 1997 TIME: 6:00PM

LOCATION OF PUBLIC HEARING: WV Division of Environmental Protection  
#10 McJunkin Road  
Nitro, West Virginia 25143-2506

COMMENTS LIMITED TO: ORAL \_\_\_\_\_, WRITTEN \_\_\_\_\_, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Theodore M. Streit  
WV Div. of Env. Protection  
#10 McJunkin Road  
Nitro, WV 25143-2506

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL





BUREAU OF ENVIRONMENT  
10 McJunkin Road  
Nitro, WV 25143-2506

CECIL H. UNDERWOOD  
GOVERNOR

JOHN E. CAFFREY  
COMMISSIONER

June 18, 1997

Ms. Judy Cooper  
Director, Administrative Law Division  
Office of the Secretary of State  
Capitol Complex  
Charleston, West Virginia 25305

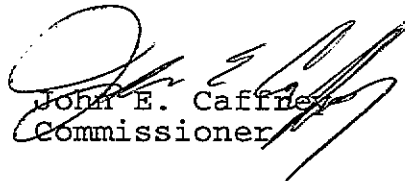
RE: 38CSR16 - "Certification of Gas Well"

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing the above-referenced rule as Notice of Public Hearing/Comment Period.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers at 759-0515.

Sincerely yours,

  
John E. Caffrey  
Commissioner

JEC:cc

Attachment

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Rule Title:** 38CSR16 - Certification of Gas Wells

**A. AUTHORITY:** WV Code 22-1-13, 22-1-15, 22B-1-2, and 22B-1-2(c)(11)

**B. SUMMARY OF RULE:**

Rule governs and applies to proceedings under WV Code 22B-1-2(c)(11) concerning gas wells and implementation of the Natural Gas Policy Act of 1978 and pertinent federal regulations.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

Rule to be repealed because neither statute or procedures in place under oil and gas law.

**D. FEDERAL COUNTERPART REGULATIONS -  
INCORPORATION BY REFERENCE/DETERMINATION  
OF STRINGENCY:**

N/A

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

N/A

*In accordance with §22-1A-1 and 3(c), the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.*

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

*This amendment (or these amendments) to the rule will be reviewed by the Advisory Council during its meeting in July, 1997. Recommendations of the Council and the Director's response to Council's recommendations will be included in the August 1, 1997 filing with the Secretary of State's Office and the Legislative Rulemaking Review Committee.*

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 38CSR16 - Certification of Gas Wells

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WV Division of Environmental Protection - Oil & Gas

Address: #10 McJunkin Road  
Nitro, West Virginia 25143-2506

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

**2. Explanation of above estimates:**

N/A

**3. Objectives of these rules:**

Rule to be repealed because neither statute or procedures in place under oil and gas laws.

Rule Title: 38CSR16 - Certification of Gas Wells

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.


N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

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~~ARTICLE 38~~  
LEGISLATIVE RULES  
DIVISION OF ENERGY  
SECTION OF OIL AND GAS

SERIES 16  
CERTIFICATION OF GAS WELLS

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

~~§38-16-1. General.~~

~~1.1. Scope. This legislative rule shall govern and apply to proceedings under West Virginia Code §22B-1-2(c)(11) concerning gas wells and implementation of the Natural Gas Policy Act of 1978 and pertinent federal regulations.~~

~~1.2. Authority. WV Code §§22-1-13; 22-1-15; 22B-1-2; and 22B-1-2(c)(11).~~

~~1.3. Filing Date. June 12, 1987~~

~~1.4. Effective Date. June 12, 1987~~

~~1.5. Former Rule Superseded. This legislative rule supersedes West Virginia Legislative Rule "Office of Oil and Gas", Department of Mines, Chapter 22-4, Series 5, Part 2, Certification of Gas Wells under the Natural Gas Policy Act of 1978 and Code §22-4-1(a)(c), in effect on July 11, 1985. Such rule was continued in effect pursuant to West Virginia Code §22-1-15 for the benefit of the Division of Energy inasmuch as it pertained to the provisions of the West Virginia Energy Act.~~

~~§38-16-2. Definitions.~~

~~Unless the context in which used clearly requires a different meaning, the definitions contained in West Virginia Code §§22-1-3 and 22B-1-1 shall apply to this rule, in addition to the definition expressly set forth in this Section 2. Each definition adopted by this Section 2, whether statutory or by rule, is for the purpose of implementing the Natural Gas Policy Act of 1978 and is intended to be used in any other context:~~

~~2.1. "West Virginia Code" shall mean the West Virginia Code of 1931, as amended.~~

~~2.2. "FERC" shall mean the Federal Energy Regulatory Commission.~~

~~2.3. "NGPA" shall mean the Natural Gas Policy Act of 1978.~~

~~2.4. "Natural gas" shall mean either natural gas unmixed or any mixture of natural and artificial gas.~~

~~2.5. "Well" shall mean any well for the discovery of production of natural gas, crude oil, or both.~~

~~2.6. "New well" shall mean any well, the surface drilling of which began on or after February 19, 1977, or the depth of which was increased by means of drilling on or after February 19, 1977 to a completion location which is at least one thousand (1,000) feet below the depth of the deepest completion location of such well attained before February 19, 1977.~~

~~2.7. "Old well" shall mean any well other than a new well.~~

~~2.8. "Marker well" shall mean any well from which natural gas was produced in commercial quantities at any time after January 1, 1970 and before April 20, 1977, including a~~

~~well, the depth of which was increased on or after February 19, 1977, to a completion location at least one thousand (1,000) feet below the depth of the deepest completion location to such well attained before February 19, 1977: Provided, that the term "marker well" shall not include a well the surface drilling of which began on or after February 19, 1977.~~

~~2.9. "Reservoir" shall mean any producible natural accumulation of natural gas, crude oil, or both confined by impermeable rock or water barriers, and characterized by single natural pressure system or confined by lithologic or structural barriers which prevent pressure communication.~~

~~2.10. "Completion location" shall mean any subsurface location from which natural gas is being, or has been produced in commercial quantities.~~

~~2.11. "Marker well completion location" or completion location when used with reference to any marker well shall mean any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970 and before April 20, 1977.~~

~~2.12. "Mcf" used with respect to natural gas shall mean 1,000 cubic feet of natural gas measured at a pressure 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.~~

~~2.13. "Btu" shall mean British Thermal Unit.~~

~~2.14. "Month" shall mean a calendar month.~~

~~2.15. "Mile" shall mean a statute mile of five thousand two hundred eighty (5,280) feet.~~

~~2.16. "Jurisdictional agency" shall mean the Section of Oil and Gas of the West Virginia Division of Energy.~~

~~2.17. "Production in commercial quantities" shall mean production of natural gas from a well or reservoir which is either sold and delivered to one other than the operator, or retained by the operator or any owner of the production at severance for beneficial economic use: Provided, that natural gas used for the testing of natural gas wells or for other field uses which are production related, shall not be considered produced in commercial quantities.~~

~~2.18. "Recognized enhanced recover techniques" shall mean processes or equipment, or both, which when performed or installed, increase the ultimate recovery of gas from the well, including mechanical or chemical stimulation of the reservoir formation, and devices installed in the well bore or on the surface: Provided, that normal well maintenance repair or replacement of equipment or facilities do not qualify as enhanced recovery techniques.~~

~~2.19. "Proration unit" shall mean an area around a well as per the following:~~

~~2.19.1. For all shallow wells with a depth less than three thousand (3,000) feet, the proration unit will have a one thousand (1,000) foot radius and shall constitute a proration unit for only the formations for which a well has been completed for production or target formations on wells spudded but not yet completed;~~

~~2.19.2. For shallow wells with a depth of three thousand (3,000) feet or more, the proration unit will have a one thousand five hundred (1,500) foot radius and shall constitute a proration unit for only the formations for which a well has been completed for production or target formations on wells spudded but not yet completed; and~~

~~2.19.3. For all deep wells, the proration unit will be the drilling unit as defined in West Virginia Code §22-8-2(13).~~

**§38-16-3. Filing requirements.**

~~3.1. General requirements.~~

~~3.1.1. No application under this rule will be certified until such time as a copy of Form OP-1, "Operator Registration Form and Designation Form," has been filed.~~

~~3.1.2. All forms promulgated by the Section of Oil and Gas and required by this rule may be replaced by copies of any applicable predecessor form promulgated by the Section of Oil and Gas or by equivalent company or operator forms.~~

~~3.1.3. If an Operator wishes to seek a determination that a well qualifies for more than one (1) category under NGPA, a separate application must be submitted for each category for which a determination is desired.~~

~~3.1.4. Each application must be accompanied by a filing fee of forty dollars (\$40). Where an Operator is submitting several applications at one (1) time, a single check may be submitted for a sum equal to the number of applications multiplied by forty dollars (\$40).~~

~~3.1.5. Such other information as the Section of Oil and Gas may require in order to establish by substantial evidence that the well qualifies for NGPA category for which a determination is sought.~~

~~3.2. New Onshore Wells Under §102 of the NGPA. For each well for which certification is sought under §274.202 of the FERC Regulations implementing the NGPA, the following shall be submitted by the Operator:~~

~~3.2.1. For wells more than 2.5 miles from a marker well:~~

~~3.2.1.1. One (1) copy of FERC Form 121;~~

~~3.2.1.2. One (1) copy of Form WW-6, "Well Plat";~~

~~3.2.1.3. One (1) copy of Form WR-35, "Well Operator's Report of Drilling";~~

~~3.2.1.4. One (1) copy of Form FC-48, "State Application for Well Classification";~~

~~3.2.1.5. One (1) copy of Form FC-51, "Well Classification Form; Wells Drilled More than 2.5 miles from a Marker Well";~~

~~3.2.1.6. A plat to the scale of one inch (1") equals four thousand feet (4,000) produced on some high-quality material, and prepared by a licensed land surveyor or registered engineer, showing all wells within 2.5 miles of the well for which certification is sought and also showing all wells which are producing, or produced after January 1, 1970, natural gas within said 2.5-mile radius and identifying each such well by the last four (4) digits of the API permit number;~~

~~3.2.1.7. A separate sheet tabulating all wells identified on the plat required by Section 3.2.1.6 as to linear distance, depth of the top of the producing formation, and the geological name of the formation;~~

~~3.2.1.8. Electric logs and directional drilling surveys, if performed in the normal course of drilling and completion of the well; and~~

~~3.2.1.9. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~3.2.2. For wells more than one thousand feet (1,000') deeper than a marker well:~~

~~3.2.2.1. One (1) copy of FERC Form 121;~~

~~3.2.2.2. One (1) copy of Form WW-6, "Well Plat";~~

~~3.2.2.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report;~~

~~3.2.2.4. One (1) copy of Form FC-48, "State Application for Well Classification;~~

~~3.2.2.5. One (1) copy of Form FC-52, "Well Classification Form; Wells Drilled More than One Thousand Feet (1,000') Deeper than a Marker Well";~~

~~3.2.2.6. A plat to the scale of one inch (1") equals four thousand (4,000) feet produced on some high quality material and prepared by a licensed land surveyor or registered engineer, showing all wells within 2.5 miles of the well for which certification is sought and also showing all wells which are producing or produced after January 1, 1970, natural gas within said 2.5 radius and identifying each such well by the last four digits of the API permit number; including specific identification of all marker wells within the 2.5 mile radius, and also indicating the deepest completion locations for each such marker well identified on the plat;~~

~~3.2.2.7. A separate sheet tabulating all wells identified on the plat required by section 3.2.2.6, as to linear distance, depth of the top of the producing formation, and the geological name of the formation;~~

~~3.2.2.8. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well.~~

~~3.2.2.9. Satisfactory proof of service that a copy of the complete filing has been served on the first purchase, if known.~~

~~3.2.3. For new onshore reservoir wells:~~

~~3.2.3.1. One (1) copy of FERC Form 121;~~

~~3.2.3.2. One (1) copy of Form WW-6, "Well Plat";~~

~~3.2.3.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";~~

~~3.2.3.4. One (1) copy of Form FC-48, "State Application for Well Classification";~~

~~3.2.3.5. One (1) copy of Form FC-53, "Well Classification Form; New Onshore Reservoir Wells";~~

~~3.2.3.6. Subsurface cross-section charts;~~

~~\_\_\_\_\_ 3.2.3.7. Formation structure map.~~

~~\_\_\_\_\_ 3.2.3.8. A gas analysis;~~

~~\_\_\_\_\_ 3.2.3.9. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well; and~~

~~\_\_\_\_\_ 3.2.3.10. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~\_\_\_\_\_ 3.3. New Onshore Production Wells Under §103 of the NGPA For each well for which certification is sought under §274.204 of the FERC regulations implementing the NGPA, the following shall be submitted by the Operator:~~

~~\_\_\_\_\_ 3.3.1. One (1) copy of FERC Form 121;~~

~~\_\_\_\_\_ 3.3.2. One (1) copy of Form WW-6, "Well Plat"~~

~~\_\_\_\_\_ 3.3.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";~~

~~\_\_\_\_\_ 3.3.4. One (1) copy of Form FC-48, "State Application for Well Classification";~~

~~\_\_\_\_\_ 3.3.5. One (1) copy of Form FC-53, "Well Classification Form; New Production Onshore Wells";~~

~~\_\_\_\_\_ 3.3.6. Sub-surface cross-section charts;~~

~~\_\_\_\_\_ 3.3.7. Formation structure map;~~

~~\_\_\_\_\_ 3.3.8. A gas analysis;~~

~~\_\_\_\_\_ 3.3.9. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well; and~~

~~\_\_\_\_\_ 3.3.10. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~\_\_\_\_\_ 3.4. High Cost Natural Gas Under §107 of the NGPA For each well for which certification is sought under §274.205 of the FERC regulations implementing the NGPA, the following shall be submitted by the Operator.~~

~~\_\_\_\_\_ 3.4.1. One (1) copy of FERC Form 121;~~

~~\_\_\_\_\_ 3.4.2. One (1) copy of Form WW-6, "Well Plat"~~

~~\_\_\_\_\_ 3.4.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";~~

~~\_\_\_\_\_ 3.4.4. One (1) copy of Form FC-48, "State Application for Well Classification";~~

~~\_\_\_\_\_ 3.4.5. One (1) copy of Form FC-55, "Well Classification Form; High Cost Gas";~~

~~\_\_\_\_\_ 3.4.6. Electric logs;~~

~~\_\_\_\_\_ 3.4.7. Directional drilling surveys if made in the ordinary course of drilling and completing the well.~~

~~3.4.8. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~3.5. Stripper Wells under §108 of the NGPA — For each well for which certification is sought under §274.206 of the FERC regulations implementing the NGPA, the following shall be submitted by the Operator:~~

~~3.5.1. One (1) copy of FERC Form 121;~~

~~3.5.2. One (1) copy of Form WAW-6, "Well Plat"~~

~~3.5.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";~~

~~3.5.4. One (1) copy of Form WR-39, "Report of Production", for twelve (12) consecutive months ending within ninety (90) days of the date of application;~~

~~3.5.5. Production records for a period of ninety (90) consecutive days ending within ninety (90) days of the date of application;~~

~~3.5.6. If items required by Section 3.5.4. and 3.5.5. are not available, tax records or verified copies of billing statements for twelve (12) calendar months ending within ninety (90) days of the date of filing;~~

~~3.5.7. If the well for which a determination is sought has produced nonassociated natural gas at an average rate not in excess of sixty (60) Mcf per production day for a ninety (90) day production period ending within ninety (90) days of the date of filing, but such an average rate of production has not been experienced for a twelve (12) month period, the operator shall file as soon as practicable but no later than ten (10) months after the date of application, production records, if available, and if not, tax records or verified copies of billing statements for a twelve (12) month period including any part of the indicated ninety (90) day production period.~~

~~3.5.8. One (1) copy of Form FC-48, "State Application for Well Classification";~~

~~3.5.9. One (1) copy of Form FC-56, "Well Classification Form; Stripper Wells".~~

~~3.5.10. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~3.6. Report of Increase in Production; Enhanced Recovery; Seasonally Affected Wells~~

~~3.6.1. Whenever a well, which had previously received a certification as being qualified as a stripper well, produced nonassociated natural gas at a rate exceeding an average sixty (60) Mcf per production day for any ninety (90) day production period, the operator or purchaser shall file a notice containing the following information with the Administrator:~~

~~3.6.1.1. The names and addresses of the operator and purchaser indicating whether it is the operator or the purchaser who is filing the notice;~~

~~3.6.1.2. Identification of the subject well and accurate records reference to the original determination qualifying the well as a stripper well;~~

~~3.6.1.3. The monthly production reports, tax records or billing statements upon which the notice is based for the period of production in question;~~

~~\_\_\_\_\_ 3.6.1.4. A statement of the production per production day for the period in question.~~

~~\_\_\_\_\_ 3.6.1.5. A statement that all the information contained in the notice is true to the best of his information, knowledge and belief; and~~

~~\_\_\_\_\_ 3.6.1.6. If the notice is filed by a purchaser, a statement that the notice has been served on the Operator.~~

~~\_\_\_\_\_ 3.6.2. An Operator desiring a determination that an increase in production has been the result of enhanced recovery techniques shall file with the Director within thirty (30) days of the date of the notice of an increase in production:~~

~~\_\_\_\_\_ 3.6.2.1. One (1) copy of Form FC 57WV, "Request for Determination that Increased Production is the Result of Enhanced Recovery Techniques", and~~

~~\_\_\_\_\_ 3.6.2.2. One (1) copy of Form FC 48WC, "State Application for Well Classification".~~

~~\_\_\_\_\_ 3.6.3. An operator desiring a determination that a well previously certified to be a stripper well is seasonally affected, shall file with the Director within thirty (30) days of the date of the notice of an increase in production;~~

~~\_\_\_\_\_ 3.6.3.1. One (1) copy of FC 58WC, "Request for Determination of Seasonally Affected Well";~~

~~\_\_\_\_\_ 3.6.3.2. Production records, tax records or billing statements for a period of twenty four (24) months, including the ninety (90) day or twelve (12) month period which is the subject of a notice of an increase of production; and~~

~~\_\_\_\_\_ 3.6.3.3. One (1) copy of Form FC 48WV, "State Application for Well Classification".~~

**~~§38-16-4. Certification procedures.~~**

~~\_\_\_\_\_ 4.1 Initial Action by the Section of Oil and Gas— Upon receipt of an application to certify a well for the maximum lawful price under §§102, 103, 107 or 108 of the NGPA, the Section of Oil and Gas will conduct a review of the submitted data along with other information available to it, and prepare a summary report for the Director. A file number and a determination date will be assigned. One copy of FERC Form 121 and one copy of Form FC-48WC will be mailed to the Operator and the Purchaser (if known) notifying them of the file number, determination date and the date of filing with the Section of Oil and Gas.~~

~~\_\_\_\_\_ 4.2. Periodical Circular—~~

~~\_\_\_\_\_ 4.2.1. The Section of Oil and Gas will publish from time to time, but not less often than monthly, a circular indicating the status of various applications filed under this rule.~~

~~\_\_\_\_\_ 4.2.2. The circular will identify each well by applicant and by a file number which will indicate:~~

~~\_\_\_\_\_ 4.2.2.1. The date received by the Section of Oil and Gas;~~

~~\_\_\_\_\_ 4.2.2.2. The NGPA category for which application is made; and~~

~~\_\_\_\_\_ 4.2.2.3. The Api county and permit number.~~

~~4.2.3. The circular will constitute notice of the following:~~

~~4.2.3.1. That the initial application was complete or incomplete as received;~~

~~4.2.3.2. The scheduled determination date;~~

~~4.2.3.3. The determination made by the Section of Oil and Gas and the date of determination; and~~

~~4.2.3.4. The date on which the determination order was filed with FERC,~~

~~4.3. Notice of Hearing — Notice of all filings for applications for certification under this rule will be filed by the Section of Oil and Gas with the Secretary of State and the Capitol News Media, indicating that interested persons may intervene in the application by filing written comments with the Section of Oil and Gas within fifteen (15) days from the date that the circular is filed with the Secretary of State. If objections are made by any interested person, or by the Section of Oil and Gas, or if the Director determines that other information may be necessary in order to make a determination, a public hearing will be held. On the hearing date, the applicant and all persons who have timely filed objections on or before the date of the hearing will be given an opportunity to present additional evidence.~~

~~4.4. Determination — After a hearing has been held, a determination as to whether the well qualifies for certification will be made by the Director. If no objection is made within the time prescribed by Section 4.3, the Director will make a determination as to whether the well qualifies for certification. A copy of FERC Form 121 and the order will be mailed to the FERC for final review pursuant to §503 of the NGPA.~~

~~4.5. Extra Powers of Director — The Director may also certify or provide a waiver for a well located within a proration unit as defined in Section 2.2.2.16 or any other well sought to be certified under this rule after notice and hearing.~~