

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Oil and Gas Inspectors' Examining Board TITLE NUMBER: 40

RULE TYPE: Procedural CITE AUTHORITY: W.Va. Code §22C-7-3

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Matters Pertaining to the Rules and Regulations Dealing with Oil and Gas
Inspectors' Examining Board

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 14, 2008 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Department of Environmental Protection
Office of Oil and Gas
601 57th Street, SE
Charleston, WV 25304
Attention: James Martin

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: Matters Pertaining to the Rules and Regulations Dealing with Oil and Gas Inspectors' Examining Board

A. AUTHORITY: W.Va. Code §22C-7-3

B. SUMMARY OF RULE:

The rule governs proceedings of the Oil and Gas Inspectors' Examining Board under W.Va. Code §22C-7-1 et seq.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

West Virginia Code Chapter 22C, Article 7, Section 3, directs the Oil and Gas Inspectors' Examining Board to promulgate this rule. The proposed revisions will update the rule to reflect changes in code references, changes in agency organizational structure , and provide greater consistency with statutory language.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Matters Pertaining to the Rules & Regulations Dealing with Oil and Gas Inspectors' Examining Board

Type of Rule: Legislative Interpretive Procedural

Agency: Oil and Gas Inspectors' Examining Board

Address: 601 57th Street, SE
Charleston, WV 25304

Phone Number: 304-926-0450 Email: James.A.Martin@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The revisions to this rule will have no impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title:

Matters Pertaining to the Rules & Regulations Dealing with Oil and Gas Inspectors' Examining Board

3. Explanation of above estimates (including long-range effect):

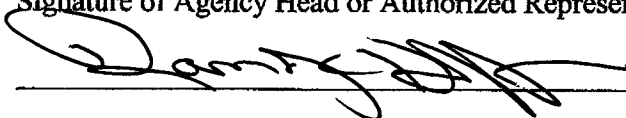
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 10/7/08

Signature of Agency Head or Authorized Representative



**TITLE 40
PROCEDURAL RULE
OIL AND GAS INSPECTORS' EXAMINING BOARD**

**SERIES 1
MATTERS PERTAINING TO THE RULES AND REGULATIONS
DEALING WITH OIL AND GAS INSPECTORS' EXAMINING BOARD**

§40-1-1. General.

1.1. Scope. -- These rules set forth herein shall govern and apply to proceedings under sections one and two of article ~~thirteen~~seven, chapter ~~twenty-two-c~~ and section two, article ~~one-six~~ of chapter ~~twenty-two-b~~ chapter ~~twenty-two~~ of the West Virginia Code concerning Oil and Gas Inspectors, their testing and appointment, salary and compensation and their removal. They are not applicable for to any other state employees in or out of the ~~Division of Energy~~Department of Environmental Protection.

1.2. Authority. -- W. Va. Code ~~'22-13-3 & 29A-3~~ §22C-7-3.

1.3. Filing Date. -- ~~October 9, 1990.~~

1.4. Effective Date. -- ~~October 9, 1990.~~

1.5. Forms -- ~~A copy of any forms currently used under or required by these regulations may be obtained from the Division of Energy.~~

§40-1-2. Definitions.

2.1. ~~Statutory definitions.~~ -- ~~As used in these regulations, the~~The terms "Director", "Division" or "Division of Energy," "Section of Oil and Gas" or "Office" shall ~~be~~ "chief", "department", "office", and "secretary" have the meanings as set forth in section ~~onetwo~~two, article one, chapter ~~twenty-two-b~~twenty-two of the West Virginia Code.

2.2. "Commissioner" means the Commissioner of the Division of Energy as defined in subsection three, section one b, article one, chapter twenty-two of the West Virginia Code.

~~2.3.2.~~ "Board" means Oil and Gas Inspectors' Examining Board created in section three, article ~~thirteen~~seven, chapter ~~twenty-two~~ twenty-two-c of the West Virginia Code.

2.4. "Code" means the West Virginia Code of 1931, as amended.

~~2.5.2.3.~~ "Chairman" means the Chairman of the Oil and Gas Inspectors' Examining Board as set out in section three, article ~~thirteen~~seven, chapter ~~twenty-two~~twenty-two-c of the West Virginia Code.

§40-1-3. Application.

3.1. Applicants for examination must complete an application form, and such form shall be ~~in the~~ Director's filed with the Chief's office six (6) weeks prior to the examination date.

3.2. Upon receipt of all applications the Board will ~~contact~~inform each applicant by first class mail at the address on the application form at least two (2) weeks prior to the examination as to whether the applicant is eligible to take the examination. (~~See 22-13-2~~)

3.3. Examinations will be given on the first Thursday in May unless the number of applicants warrants another examination or unless there is a need to qualify additional candidates for a depleted register.

3.4. Applicants who fail to appear at their scheduled examination may appear at the next succeeding examination only, and upon missing two (2) consecutive examinations must reapply.

3.5. Examination content. -- The examination will consist of two parts. The first part is a two (2) hour written examination covering the principles and practice of oil and gas operations in West Virginia including but not limited to, but including article onesix, chapter twenty-two-twenty-two of the West Virginia Code and ~~regulations-rules~~ promulgated thereunder; and the second part is an oral test where members of the Board will interview the candidates to determine the ~~candidates~~candidates' ability to carry out the functions of an oil and gas inspector.

3.6. Passing grade. -- The passing grade the Board requires for the examination is seventy percent (70%).

3.7. Failure of examination. -- An applicant who fails the examination may be reexamined in accordance with subsection 3.3; Provided, That after three (3) failures the applicant has to wait two (2) full years before taking the examination again.

3.8. Within two (2) weeks after an examination each participant will be notified as to his or her score, by first class mail at the address on the application.

3.9. As soon as all tests are graded, the Board will certify to the ~~Director and Commissioner~~Secretary a ~~roster-register~~ as provided for in section three, article ~~thirteenseven, chapter twenty-two~~twenty-two-c of the West Virginia Code.

§40-1-4. Compensation for inspectors and supervising inspectors.

~~4.1. The Director shall review each inspector's performance annually and forward to the Board his evaluation.~~

~~4.2. The Board, at its next regularly scheduled (non-examination) meeting will review the Director's evaluations.~~

~~4.3-4.1. The Board will submit~~may make its recommendations concerning compensation of inspectors to the Commissioner so as to effectively reward those inspectors who have shown meritorious serviceSecretary pursuant to section two, article seven, chapter twenty-two-c of the West Virginia Code.

~~4.4. Any inspector is entitled to be present at the review of the Director's recommendations.~~

§40-1-5. Hearings before the ~~board~~Board.

~~5.1. Hearings on the following are subject to this section~~The provisions of this section apply to the following hearings:

5.1.a. Petitions brought by ~~the Commissioner or the Director for the removal of an inspector~~ citizens for the removal of an inspector under section two, article ~~thirteenseven~~, chapter ~~twenty-two~~twenty-two-c of the West Virginia Code;

5.1.b. Appeals by inspectors of ~~suspension orders made by the Director~~ level two grievances and suspensions or dismissals made by the Chief under section two, article one, chapter ~~twenty-two~~twenty-two-c of the West Virginia Code; and

5.1.c. Appeals of the striking of any candidate's name from the register by ~~the Commissioner or the Director~~ Secretary under section one, article ~~thirteenseven~~, chapter ~~twenty-two~~twenty-two-c of the West Virginia Code.

5.2. All hearings under this section will be initiated by appeal or petition and ~~the petitioner will state his or her allegation that if proved to be true and correct will warrant the removal under section two, article thirteen, chapter twenty-two of the West Virginia Code or revocation of the actions taken by the Director or Commissioner pursuant to sections one and two, article seven, chapter twenty-two-c.~~

5.3. Summary disposition. -- At the time of filing, the Board may summarily dispose of the petition on any of the following grounds:

~~(a)~~5.3.a. The petitioner, inspector, supervising inspector, ~~Director~~ Secretary or ~~Commissioner~~ Chief, has no right for review;

~~(b)~~5.3.b. The Board lacks jurisdiction over the petition or appeal so filed;

~~(c)~~5.3.c. The petitioner or appellant has failed to appear at the time and place for the hearing;

~~(d)~~5.3.d. The petitioner or appellant has withdrawn or abandoned the request for a hearing; and

~~(e)~~5.3.e. The petition or appeal, if all the alleged facts were true, would not warrant removal under section two, article ~~thirteenseven~~, chapter ~~twenty-two~~twenty-two-c of the West Virginia Code or revocation of the action taken by the ~~Director~~ Secretary or ~~Commissioner~~ Chief. When the Board summarily disposes of a petition or appeal it shall notify all interested parties in writing.

5.4. Notice to interested parties. -- Notice will be sent to all Board members, petitioners, appellants and persons named in the petition or appeal by registered mail. Such notice shall contain a copy of the petition or appeal, and the time, date and place of the hearing, which date shall not be less than fifteen (15) days and not more than thirty (30) days after receipt of the petition or appeal by the ~~Director~~ Secretary or Chief.

5.5. Filing.

~~(a)~~5.5.a. Where to file - Any petitions or appeals filed will be filed with the ~~Director~~ Secretary or Chief at 1615 Washington Street East, Charleston, WV 25314 ~~the Office of Oil and Gas 601 57th Street SE, Charleston, WV 25304.~~

~~(b)~~5.5.b. How to file - All filing may will be accomplished by personal delivery or first class certified mail.

~~(c)~~5.5.c. When filing is effective - Filing is effective upon delivery.

5.6. Presiding officer. -- The Chairman or any other member ~~in the Chairman's absence~~ selected by the Board pursuant to section two, article seven, chapter twenty-two-c shall preside over ~~every~~ any hearing conducted pursuant to this section.

5.7. Powers of the presiding officer. -- The ~~officer~~ presiding officer ~~over every hearing subject to the rules of this section,~~ may:

~~(a)~~ 5.7.a. Administer oaths and affirmations;

~~(b)~~ 5.7.b. Issue subpoenas in accordance with the ~~provision~~ provisions of section one, article five, chapter twenty-nine-a of the West Virginia Code;

~~(c)~~ 5.7.c. Rule upon offers of proof and receive relevant evidence;

~~(d)~~ 5.7.d. Permit evidentiary depositions to be taken and read as in civil actions in the circuit courts of this state;

~~(e)~~ 5.7.e. Permit discovery depositions;

~~(f)~~ 5.7.f. Regulate the course of a hearing;

~~(g)~~ 5.7.g. Dispose of procedural requests or similar matters;

~~(h)~~ 5.7.h. Hold conferences for the settlement or simplification of the issues with the consent of the parties; and

~~(i)~~ 5.7.i. Take any other action in connection with such hearing authorized by law.

5.8. Representation at hearings. -- At hearings held pursuant to this section, any party may represent himself or herself or be represented by an individual of his or her choice. ~~In addition, any party has the right to be represented.~~

5.9. Conduct of hearing

~~(a)~~ 5.9.a. Conduct of attorneys and individuals before the Board shall be the same as required of attorneys before the Circuit Courts of the State of West Virginia. Any person testifying in response to a subpoena or subpoena duces tecum issued by a ~~Presiding~~ presiding Officer ~~officer~~ and any person testifying in support of a petition or in opposition thereto shall be required to do so under oath or affirmation administered by the ~~Presiding~~ presiding Officer ~~officer~~. Witnesses shall be examined with courtesy and respect, and their good faith shall be presumed.

~~(b) Smoking shall not be permitted in the hearing room during session or during recess.~~

~~(c)~~ 5.9.b. Electronic recording of any hearing is prohibited except as may be required by the Board for preserving a record thereof for the use of the Board in connection with the matter being heard. The taking of photographs in or broadcasting of proceedings from any hearing room is prohibited.

~~(d)~~ 5.9.c. ~~At the presiding officer's discretion, or on motion of any party, a~~ A transcript of testimony

shall be taken and preserved as part of the permanent record. Parties may examine the official transcript.

5.10. Hearings held confidential. -- Hearings under this procedure will be held confidential unless so released by the person named in the petition or ~~requested~~directed by a court order.

5.11. Written orders.

~~(a)~~5.11.a. Within thirty (30) days after the conclusion of a hearing the ~~Presiding Officer~~Board shall consider the evidence and any proposals and issue a written order which ~~should~~will include:

~~(1)~~5.11.a.1. A copy of the petition or appeal;

~~(2)~~5.11.a.2. A statement of whether the petition or appeal is found to be ~~true or false~~justified; and

~~(3)~~5.11.a.3. A statement of the appropriate action ~~that should~~to be taken upon said petition or appeal.

~~(b)~~5.11.b. A copy of said order shall be served on all ~~interested~~ parties of record.