

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

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

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

CITE AUTHORITY: W.Va. Code §22C-7-3

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 18, 2009


Authorized Signature

FILED

TITLE 40
PROCEDURAL RULE
OIL AND GAS INSPECTORS' EXAMINING BOARD

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§40-1-1. General.

1.1. Scope. -- These rules shall govern and apply to proceedings under sections one and two of article seven, chapter twenty-two-c and section two, article six of 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 to any other state employees in or out of the Department of Environmental Protection.

1.2. Authority. -- W. Va. Code §22C-7-3.

1.3. Filing Date. -- December 19, 2008.

1.4. Effective Date. -- January 18, 2009.

§40-1-2. Definitions.

2.1. The terms, "chief", "department", "office", and "secretary" have the meanings as set forth in section two, article one, chapter twenty-two of the West Virginia Code.

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

2.3. "Chairman" means the Chairman of the Oil and Gas Inspectors' Examining Board as set out in section three, article seven, chapter 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 filed with the Chief's office six (6) weeks prior to the examination date.

3.2. Upon receipt of all applications the Board will 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.

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, article six, chapter twenty-two of the West Virginia Code and rules promulgated thereunder; and the second part is an oral test where members of the Board will interview the candidates to determine the 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 Secretary a register as provided for in section three, article seven, chapter twenty-two-c of the West Virginia Code.

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

4.1. The Board may make its recommendations concerning compensation of inspectors to the Secretary pursuant to section two, article seven, chapter twenty-two-c of the West Virginia Code.

§40-1-5. Hearings before the Board.

5.1. The provisions of this section apply to the following hearings:

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

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

5.2. All hearings under this section will be initiated by appeal or petition 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:

5.3.a. The petitioner, inspector, supervising inspector, Secretary or Chief, has no right for review;

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

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

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

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5.3.e. The petition or appeal, if all the alleged facts were true, would not warrant removal under section two, article seven, chapter twenty-two-c of the West Virginia Code or revocation of the action taken by the Secretary or 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 Secretary or Chief.

5.5. Filing.

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

5.5.b. How to file - All filing will be accomplished by personal delivery or certified mail.

5.5.c. When filing is effective - Filing is effective upon delivery.

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

5.7. Powers of the presiding officer. -- The presiding officer may:

5.7.a. Administer oaths and affirmations;

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

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

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

5.7.e. Permit discovery depositions;

5.7.f. Regulate the course of a hearing;

5.7.g. Dispose of procedural requests or similar matters;

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

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.

5.9. Conduct of hearing

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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 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 officer. Witnesses shall be examined with courtesy and respect, and their good faith shall be presumed.

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.

5.9.c. 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 directed by a court order.

5.11. Written orders.

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

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

5.11.a.2. A statement of whether the petition or appeal is found to be justified; and

5.11.a.3. A statement of the appropriate action to be taken upon said petition or appeal.

5.11.b. A copy of said order shall be served on all parties of record.



west virginia department of environmental protection

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Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

MEMORANDUM

To: Office of the Secretary of State

From: James Martin
Chief

Date: December 19, 2008

Subject: 40CSR1 – Public Comment Period

The public comment period was from October 7, 2008 to November 14, 2008 pursuant to the Notice filed with the Secretary of State on October 7, 2008 and the agency did not receive any comments.