



State of West Virginia

Department of Mines

Charleston 25305

JOHN D. ROCKEFELLER, IV.
Governor

WALTER
Direc

TO: All Persons Interested in Procedural Rules
of the Mine Inspector's Examining Board of
the Department of Mines.

FROM: James F. Wallington, Attorney
West Virginia Department of Mines

SUBJECT: PROPOSED RULES AND REGULATIONS GOVERNING
PROCEDURES BEFORE THE MINE INSPECTOR'S
EXAMINING BOARD.

DATE: September 9, 1982

This notice of proposed rulemaking is filed pursuant to West Virginia Code §29A-3-4. The purpose of these procedural rules is to outline the general organization of the Mine Inspector's Examining Board; to explain the procedures for examinations and roster of candidates for the position of mine inspector; and to outline procedures for the suspension and removal of mine inspectors from office. The Mine Inspector's Examining Board is authorized to promulgate these rules pursuant to West Virginia Code §22-1-12.

Interested persons may obtain copies of these proposed procedural rules and submit written comments, suggestions, data and objections thereto stating the grounds for such objections to George Fumich, Chairman of the Mine Inspector's Examining Board, c/o West Virginia Department of Mines, Room 153-E, State Capitol, Charleston, West Virginia 25305. Written comments, suggestions, data and objections must be received no later than October 15, 1982.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 9/9/82

WEST VIRGINIA ADMINSTRATIVE REGULATIONS

DEPARTMENT OF MINES

CHAPTER 22-4

SERIES _____

(1982)

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INSPECTOR'S EXAMINING BOARD

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I N D E X

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DEPARTMENT OF MINES

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SUBJECT: RULES AND REGULATIONS GOVERNING PROCEDURES BEFORE THE MINE
INSPECTOR'S EXAMINING BOARD

Section 1 GENERAL PROVISIONS

1.01 Scope, Construction and Applicability.

(a) The procedures and rules of practice set forth herein shall govern and apply to proceedings before the Mine Inspector's Examining Board pursuant to Section 12, Article 1, Chapter 22 of the Code of West Virginia, 1931, as amended.

(b) In any proceeding initiated prior to the effective date of these Rules, the provisions hereof shall govern and apply to all activities in such proceedings conducted after the effective date of these Rules.

(c) These Rules shall be liberally construed to secure the just, prompt, and inexpensive conduct and determination of all proceedings before the Board consistent with adequate consideration of the issues involved.

(d) On any procedural question not regulated by these Rules, the pertinent provisions of the Administrative Procedures Act shall apply.

1.02 Authority

These rules are promulgated pursuant to the authority of Section 12, Article 1, Chapter 22 of the Code; and Article 3, Chapter 29A of the Code.

1.03 Effective Date.

These rules were promulgated on the ____ day of _____, 1982, and

become effective on the ____ day of _____, 1982.

1.04 Filing Date.

These rules were filed in the Office of the Secretary of State on the ____ day of _____, 1982.

1.05 Definitions.

All terms used in these rules, not defined herein, shall have the meanings set forth in Section 1, Article 1, Chapter 22 of the Code.

Section 2 MEETINGS

2.01 Meeting of the Board.

The Mine Inspector's Examining Board shall meet at least once each year to formulate and approve the annual report for submission as required by the Code. Other meetings shall be called by the Chairman of the Board, with written notice to all members at least five (5) days in advance, when there is business at hand to warrant such meetings. All meetings shall be held at the Department of Mines Conference Room, 1615 Washington Street, East, Charleston, West Virginia unless another meeting place is agreed upon by unanimous consent of the Board.

Section 3 EXAMINATIONS AND ROSTER OF CANDIDATES

3.01 Time of examinations.

Examinations shall be held during the last week of July each year and at other times when necessary to replenish the roster of eligible candidates as required by the provisions of Article 1, Chapter 22 of the Code.

3.02 Conduct of examinations.

(a) Examinations shall be held in a manner designed to permit each applicant equal and fair opportunity to qualify. Anonymity of appli-

cants shall be observed on written examinations. Examinations shall be conducted so as to eliminate any possible charge or opportunity of favoritism and in accordance with ethical considerations applicable to competitive examinations.

(b) Each examination paper submitted shall be reviewed by at least two members of the Board who shall concur in the grade given. Oral examinations of applicants shall be given by at least two members of the Board who shall concur in the grade given. A Board member may disqualify himself from participating in the oral examination of any applicant.

(c) All candidates shall be given a written and an oral examination.

(d) Candidates with accepted applications on file with the secretary of the Board will be called, with reasonable notice, to take the written examination at such times as the examinations are scheduled by the Board. To facilitate grading of papers and assembly of records, oral examinations will be deferred until a subsequent date to be determined by the Board.

3.03 Grading; minimum scores.

(a) The Board shall assign a total value of seven hundred and fifty (750) grade points to the written examination and two hundred and fifty grade points to the oral examination. It will be necessary for an applicant to earn a minimum of nine hundred (900) grade points for the entire examination to qualify as eligible for appointment as an electrical inspector. All applicants seeking to be eligible for appointment as a mine inspector shall earn a minimum of eight hundred (800) grade points for the entire examination.

(b) Applicants for appointment as an electrical inspector

earning a total score of six hundred and fifty (650) or more grade points on the written examination shall be notified on not less than fourteen (14) days written notice, to take the oral examination at such time as may be designated by the Board. Applicants for appointment as an electrical inspector earning less than six hundred and fifty (650) grade points on written examinations will not be eligible to take the oral examination, such ineligibility does not disqualify the applicant from taking the written examination at a future scheduled examination time.

(c) Applicants for appointment as mine inspectors earning a total score of five hundred and fifty (550) or more grade points on the written examination shall be notified, on not less than fourteen (14) days written notice, to take the oral examination at a time designated by the Board. Applicants for appointment as mine inspectors earning less than five hundred and fifty (550) grade points on written examinations will not be eligible to take the oral examination and shall be notified by letter to that effect. Such failure to qualify for the oral examination does not disqualify the applicant from taking the written examination at a future scheduled examination.

3.04 Review of individual scores; records.

Specific scores will not be divulged at any time to the applicant or other persons except as prescribed below:

(a) Examination papers and records become the property of the Board and an examinee's record may be reviewed only by the examinee at a regularly called meeting of the Board, in the presence of a quorum of the Board members. The examinee shall file a written request with the secretary of the Board at least fourteen (14) days in advance of the rescheduled meeting at which such review of the examination record desired.

(b) The records of all examinees shall be maintained by the secretary of the Board for a period of four (4) years following the examination. At the end of such period, the records of all examinees not obtaining employment as an inspector shall be disposed of in accordance with the regulations of the Department of Finance and Administration relating to confidential personnel records.

(c) Under no circumstances shall copies of previous examinations be furnished to any person by the Board or by any Board member. At the conclusion of each examination, all copies of the questions used shall be destroyed except the file copies to be retained by the secretary of the Board as required by the Code. Courtesy exchanges with other public agencies may be made on a confidential basis with the consent of the Board.

3.05 Retesting to improve score.

Eligible candidates, as established on the basis of a previous examination, desiring to take a subsequent examination for the purpose of improving their position on the rosters, may do so by making a new application. Such a re-application by an eligible candidate shall strike such candidate from the roster. The grade earned on the previous examination shall be stricken and only the grade on the subsequent examination shall be considered for placement on the roster. If after such re-application and re-examination, an applicant fails to achieve the required minimum grade point score, the previous ranking on the roster shall not be reinstated.

3.06 Roster of eligible candidates.

At the conclusion of each examination the Board shall submit to the Director revised rosters of eligible candidates for the positions of mine inspector, mine electrical inspector, mine safety instructor and

non-coal mine inspector. Such roster shall include eligible candidates established by previous examinations in their proper relative positions as determined by the grades earned on such previous examinations.

Section 4 SUSPENSION AND REMOVAL OF MINE INSPECTORS

4.01 Suspension of mine inspectors from office.

The Director of the Department of Mines, after reasonable notice in writing to a permanent mine inspector stating specific reason therefore, may suspend such mine inspector without compensation for a period not exceeding thirty days in any calendar year. The mine inspector shall be allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the Director. The reasons and the reply shall be filed as a public record with the Department of Mines. Reasonable advance notice to the mine inspector of such suspension shall be at the discretion of the Director when the public interests are best served by withholding such notice or the cause of suspension is gross misconduct.

4.02 Appeals from suspension.

Mine inspectors shall have the right to appeal to the Mine Inspectors' Examining Board for relief from suspension from office by the Director. Such appeal shall be in writing and must be postmarked no later than ten (10) calendar days after receipt of notice of suspension. A mine inspector must provide in the appeal request substantial factual information including a specific recitation of the grounds for such appeal. The appeal shall be transmitted to the Director who shall docket the appeal request. The Director shall set a formal hearing before the Board within sixty (60) calendar days after receipt of the appeal. In advance of the hearing, the Director shall furnish copies

of the appeal to all members of the Board and the Inspector-at-Large of the Division of the Department of Mines where the mine inspector-appellant is assigned. The mine inspector-appellant shall receive reasonable advance notification of the time and place of the hearing.

4.03 Procedure for removal of mine inspector from office.

(a) The Director of the Department of Mines may initiate proceedings for the removal of a permanent mine inspector by filing a verified petition with the Mine Inspectors' Examining Board stating particular facts warranting such removal as set forth in Chapter 22, Article 1, Section 11(e) of the Code of West Virginia, 1931, as amended. The Board shall promptly notify the charged mine inspector to appear before it at a hearing. Such notice shall be given at least fifteen days prior to such hearing. A copy of the petition and the procedural rules of the Board shall be attached to such notice and served upon the charged mine inspector.

(b) The mine inspector so charged may act in his or her own behalf or may be represented by legal counsel or other personal representative during all stages of any proceeding before the Board.

(c) The mine inspector may respond in writing to the charges of the Director. Such response must be received by the Board within ten (10) calendar days of the receipt of the Director's petition and must contain specific admissions or denials of all charges therein.

4.04 Hearings on appeals of suspension or petition for removal of mine inspectors.

(a) The mine inspector and the Director shall have the right to present witnesses and give evidence before the Board. Technical rules of evidence shall not apply at such hearings. At any such hearing, the Director shall bear the burden of going forward with evidence to

establish that the suspension or requested removal was not arbitrary or capricious and was for good cause. The Director also bears the burden of persuasion and such burden shall remain with the Director throughout every stage of such hearing.

(b) Continuances of a hearing may be granted by the Board only for good cause shown.

(c) The Chairman of the Mine Inspectors' Examining Board may:

- (1) Administer oaths and affirmations.
- (2) Subpoena witnesses and require production of any books, papers, records, or other documents relevant or material to the inquiry.
- (3) Rule upon offers of proof and receive relevant evidence.
- (4) Direct or authorize taking of oral depositions under oath or affirmation by any person.
- (5) Permit limited discovery.
- (6) Dispose of procedural requests or similar matters.
- (7) Hold conferences for the settlement or simplification of the issues with the consent of the affected parties.
- (8) Deny any continuance except for good cause.
- (9) Adopt any other method for the gathering of sworn evidence which affords the Director and any interested person due process of law and fair opportunity to present and make a record of evidence.
- (10) Take any other action in connection with such hearing authorized by law.

4.05 Decisions.

(a) Within thirty (30) calendar days after the hearing, the

Board shall report its decision in writing to the Director and the mine inspector. In appeals of suspended mine inspectors, if the Board finds that the action complained of was taken by the Director without good cause, the mine inspector shall be reinstated to his or her former position or a position of like status without loss of pay for the period of suspension. If the Board finds that the suspension period was too severe but was with good cause, it may provide for such other remedy or remedies as may be deemed appropriate and in the best interests of the parties. The Board may sustain the Director's decision of suspension of mine inspectors.

(b) In cases where the Director petitions the Board for removal of a mine inspector, the Board shall either sustain the Director's charges and remove the mine inspector from office, or the Board may find removal unwarranted.

4.06 Applicability of suspension and removal procedures.

Section 4 of the foregoing rules which is applicable to the suspension and removal of mine inspectors is likewise applicable to the suspension and removal of mine safety instructors and mine electrical inspectors.