

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Do Not Mark In This Box

2013 JUL 19 PM 2:59

Form #1

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Fire Marshal TITLE NUMBER: 103

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code 29-3C-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1
Certification of Electrical Inspectors

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: _____ TIME: _____

LOCATION OF PUBLIC HEARING: _____

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

DATE WRITTEN COMMENT PERIOD ENDS: July 24, 2013 TIME: 4:00 p.m.

WRITTEN COMMENTS MAY BE MAILED TO:

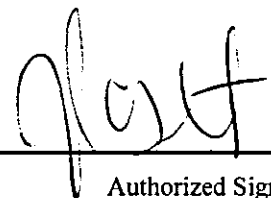
The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Anthony W. Carrico
Acting Fire Marshal

1207 Quarrier Street, 2nd Floor
Charleston, WV 25301

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



Authorized Signature

Statement of Facts and Circumstances for Promulgation of 103-1 Certification of Home Inspectors

The Commission has seen a problem develop where some Electrical Inspectors are not completing their mandatory CE's and are letting their certification expire, and applying for a new one so that they do not have to complete the CE's. The Commission believes that this loophole is closed by the new language included in the rule, and has included a late fee per certification, per year late.

The Commission has increased the initial certification fee by \$25.00 to also help discourage the problem listed above.

Further, a complaint process is set forth in this rule that was previously not included.

The Commission has also increased the mandatory minimum levels of errors and omissions insurance and added a requirement of general liability insurance to be carried by a certified electrical inspector.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Certification of Electrical Inspectors

Type of Rule: Legislative Interpretive Procedural

Agency: State Fire Marshal

Address: 1207 Quarrier Street, 2nd Floor
Charleston, WV 25301

Phone Number: 304-558-2191 Email: anthony.w.carrico@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.

Proposed rule will have little to no impact on revenue or costs

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	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	4,100.00	4,100.00	4,100.00

Certification of Electrical Inspectors

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

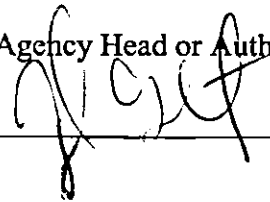
The increase in fees is on new applications only to discourage the practice of certification holders not renewing, but applying for a new certification to avoid continuing education.

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.

N/A

Date: 6/19/13

Signature of Agency Head or Authorized Representative


2013 JUN 19 PM 2:59

**TITLE 103
LEGISLATIVE RULE
STATE FIRE MARSHAL**

**SERIES 1
CERTIFICATION OF ELECTRICAL INSPECTORS**

§103-1-1. General.

1.1. Scope. -- This rule establishes the procedures to be followed to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform electrical inspections of dwellings and other structures through certification by the state fire marshal.

1.2. Authority. -- W. Va. Code §29-3C-4.

1.3. Filing Date. -- ~~March 29, 2004.~~

1.4. Effective Date. -- ~~April 1, 2004.~~

§103-1-2. Definitions.

2.1. "Master electrician" - Means a person who holds a valid Master's Electrician License issued by the state fire marshal and as defined in W. Va. Code §29-3B-2.

2.2. "Electrical work" - Means the installation of wires, conduits, apparatus, fixtures, other appliances, equipment or systems for transmitting, carrying, controlling or using electricity as defined in the scope of the national electrical code.

2.3. "License" - Means a valid and current electrician's license issued by the state fire marshal.

2.4. "Electrical contractor" - Means a person, firm or corporation who engages in the business of electrical work or employs master electricians, journeyman electricians, apprentice electricians or other workers for the construction, alteration or repair of any electrical system as defined in the scope of the national electrical code.

2.5. "Design" - Means to plan or layout electrical systems in sketches or drawings for use by licensed electricians. It includes, but is not limited to, determining the service components of electrical systems, the type and sizes of conductors, circuit breakers and other components of electrical systems necessary to accommodate the demand load.

2.6. "National Electrical Code" - Means the National Electrical Code for licensing of electricians promulgated by the National Fire Protection Association. Copies of the National Electrical Code may be obtained contacting: The National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. 1-800-344-3555.

2.7. "State Fire Marshal" - Means the West Virginia State Fire Marshal and his or her designated representatives.

2.8. "State fire commission" -- Means the state agency composed of the appointed state fire

commissioners and the office of the state fire marshal.

§103-1-3. Classification of Electrical Inspectors.

3.1. Electrical inspectors may be certified in the following three (3) classifications:

3.1.1. – “Class A Electrical Inspector Certification” – This classification authorizes the electrical inspector to perform electrical inspections on one and two family dwellings only;

3.1.2. – “Class B Electrical Inspector Certification” – This classification authorizes the electrical inspector to perform electrical inspections on all structures including but not limited to, one and two family dwellings; and

3.1.3. – “Class C Electrical Inspector Certification” – This classification authorizes the electrical inspector to perform electrical plan reviews and perform electrical inspections on all structures including but not limited to, one and two family dwellings.

§103-1-4. Qualifications for Certification.

4.1. An applicant for an "Electrical Inspector's Certification" shall possess a valid and current Master's Electrician License issued by the state fire marshal. An applicant shall also provide proof that he or she passed the respective tests offered by the National Certification Program for Construction Code Inspectors and administered by Experior, Inc. 2100 NW 53rd Avenue, Gainesville, FL 32653, or its equivalent as determined by the state fire marshal.

4.1.1. For a “Class A Electrical Inspector Certification”, in addition to the electrical licensure requirement, an applicant shall provide proof that he or she passed “Test 2A Electrical One and Two Family Dwelling” of the National Certification Program for Construction Code Inspectors, or its equivalent as determined by the state fire marshal.

4.1.2. For a “Class B Electrical Inspector Certification”, in addition to the electrical licensure requirement, an applicant shall provide proof that he or she passed “Test 2A Electrical One and Two Family Dwelling” and “Test 2B Electrical General” of the National Certification Program for Construction Code Inspectors, or its equivalent as determined by the state fire marshal.

4.1.3. For a “Class C Electrical Inspector Certification”, in addition to the electrical licensure requirement, an applicant shall provide proof that he or she passed “Test 2C Electrical Plan Review”, “Test 2A Electrical One and Two Family Dwelling” and “Test 2B Electrical General” of the National Certification Program for Construction Code Inspectors, or its equivalent as determined by the state fire marshal.

§103-1-5. Procedure for Application.

5.1. Form of Request - Each applicant requesting an electrical inspector's certification under the provisions of this rule shall, as a condition precedent to the issuance of certification, provide the state fire marshal with:

5.1.1. A completed application on forms furnished by the state fire marshal;

5.1.2. Proof of professional liability insurance (errors and omissions) in the amount of not less than ~~two hundred and fifty thousand (\$250,000.00) dollars~~, one million dollars (\$1,000,000.00), and general

liability insurance in an amount not less than seven hundred fifty thousand dollars (\$750,000.00). Proof of renewal shall be forwarded to the state fire marshal's office prior to the expiration date of the policy and shall cover at a minimum the period for which the Electrical Certification is issued;

5.1.3. A copy of a valid West Virginia business license as issued by the West Virginia Department of tax and Revenue; and

5.1.4. Proof of passage of testing as required by section 4 of this rule within the preceeding six years.

5.1.4.5. Any other documentation that the state fire marshal may require to ensure compliance with qualifications for certification.

5.2. The state fire marshal shall deny a certificate to any person who fails to meet the required minimum qualifications and he or she shall also forfeit his or her application fee. Any applicant who attains the minimum requirements at a latter date shall submit to the state fire marshal a new application for certification.

5.3. After review of an application and approval by the state fire marshal and receipt of the certification fee, the state fire marshal shall issue the individual electrical inspector's certification.

§103-1-6. Expiration and Renewal

6.1. Expiration - All electrical inspectors' certifications issued by the state fire marshal expire on the last day of the anniversary month (twelve months) from the date of issuance of the certification. (i.e., license issued on August 15, 2003 will expire on August 30, 2004 and on August 30th each successive year).

6.2. Renewal Fee Required – Any certified electrical inspector, in good standing, may renew his or her certificate prior to the expiration date by submitting the authorized renewal certification fee to the state fire marshal. It is the individual electrical inspector's responsibility to submit his or her certification renewal to the state fire marshal prior to the expiration date.

6.3. Renewal After Expiration – A certified electrical inspector who has not renewed his or her certificate in accordance with the provisions of this rule shall, if the certification has been expired for three years or less, submit a new renewal application to the state fire marshal, along with proof of all required Continuing Education credits, as required under subsection 6.4 of this rule, for the time period of expired certification and for the last certified period. If the certificate has been expired for greater than three years, the applicant shall submit a new application, with proof that the applicant has met the requirements of §§ 103-1-4 and 5 of this rule, the testing having been completed within the last three years and submit the late fee for a period of three years. A person may not perform electrical inspection work during the period of time his or her certification is expired.

6.4. As a condition of renewing any electrical inspector's certificate, the state fire marshal shall require proof of completion of ~~three (3)~~ fourteen (14) Continuing Education Units ~~as defined by the West Virginia Department of Education,~~ or its equivalent, every ~~three years~~ year. A continuing education unit is defined as 1.0 hours for every fifty minutes of instruction, and the class shall be approved by the Fire Marshal. Upon receipt of the required documentation, the state fire marshal shall issue the certification.

6.5. National and state organizations acceptable to offer the required continuing education requirements include but are not limited to the following organizations or their chapters: The International Association of Electrical Inspectors (IAEI); The National Fire Protection Association (NFPA); The National Electrical

Contractor's Association (NECA); Building Officials and Code Administration (BOCA); and any other recognized organization or party that the state fire marshal deems appropriate.

§103-1-7. Fees.

7.1. Certification fee - ~~Fifty (\$50.00)~~ Seventy five (\$75.00) dollar fee per certification.

7.2. Renewal fee - One hundred (\$100.00) dollar fee per certification annually.

7.3. New Application fee – Twenty-five (\$25.00) dollar fee per new application submitted.

7.4. Late renewal fee – Fifty dollar (\$50.00) fee per year late per certification in addition to the renewal fee.

7.4.5. Duplicate certification fee - A person who has lost or had his or her electrical inspector's certification destroyed, may submit a duplicate application fee of ten (\$10.00) dollars payable to the state fire marshal and a notarized statement stating that the certification was lost or destroyed.

§103-1-8. Effect of Noncompliance; Failure to Obtain Certification; Penalty.

8.1. Each day during which a person performs electrical inspections without the required certification or while in non-compliance with any of the provisions of W. Va. Code §§29-3C-1 et seq., after official notice that the work is unlawful, is a separate violation of this rule.

§103-1-9. Responsibilities of the Electrical Inspector.

9.1. Any certified electrical inspector, who has knowledge of violations of any rule of the state fire marshal or any rule of the state fire commission or of the W. Va. Code, shall submit the information, together with available evidence to the state fire marshal.

9.2. A certified electrical inspector shall submit a written report of any findings of his or her electrical inspection to the property owner and other appropriate parties. In addition, the electrical inspector shall include the name and electrician license number of the individuals performing the electrical work.

9.3. A certified electrical inspector shall submit an annual report to the state fire marshal indicating the number, type and locations of electrical inspections performed during the proceeding year. This annual report shall be filed with the state fire marshal no later than the thirty-first day of January of the following year.

9.4. A certified electrical inspector shall comply with all federal, state and local laws, rules and regulations.

~~§103-1-9. Disposition of Complaints.~~

~~—9.1. Enforcement of Certification Requirements - In the course of investigating complaints as authorized under West Virginia Code, the state fire marshal shall determine whether or not the person against whom the complaint has been filed is certified.~~

~~—9.2. Any citizen, law enforcement official or other official of any state, county, or municipal government agency, upon observing an infraction of the certification requirements of W. Va. Code §§29-3C-1 et seq. may file a written complaint with the office of the state fire marshal. The state fire marshal may provide a form~~

~~for this purpose, but a complaint may be filed in any written form. When a complaint is filed with the office of the state fire marshal, that office shall investigate the complaint. In addition to describing the alleged violation which prompted the complaint, the complaint should contain as a minimum the following information:~~

~~9.2.1. The name and address of the certified electrical inspector or applicant against whom the complaint is lodged;~~

~~9.2.2. The date of the alleged unlawful act;~~

~~9.2.3. The nature of the alleged unlawful act; and~~

~~9.2.4. The location of the alleged unlawful act or occurrence.~~

~~9.3. A copy of the complaint sent to the certificate holders or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the certificate holder or applicant to keep the state fire marshal informed of his or her current address. The certificate holder or applicant has 30 days to file a response or appeal petition to the complaint with the state fire marshal's office.~~

~~9.4. After receipt and review of a complaint, the state fire marshal shall cause to be conducted any reasonable inquiry or investigation he or she considers necessary to determine the truth and validity of the allegations set forth in the complaint.~~

§103-1-10. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Certifications of Electrical Inspectors.

The Fire Commission may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Commission, upon satisfactory proof that a licensee has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §29-3C-1 et seq. or the rules of the Fire Commission or Fire Marshal. Further, the Fire Marshal, pursuant to the authority given to him pursuant to section 5 of this rule, may deny an application for license pursuant to the provisions of this rule.

§103-1-11. Disposition of Complaints.

11.1. Any person, firm, corporation, member of the Fire Commission, Fire Marshal, or public officer may make a complaint to the Fire Marshal which charges an electrical inspector with a violation of W. Va. Code §29-3C-1 et seq. or of this rule. The Fire Marshal may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

11.1.1. The name and address of the electrical inspector against whom the complaint is lodged;

11.1.2. The date of inspection;

11.1.3. The name of any person who may have inspected or repaired the electrical work after the alleged incident;

11.1.4. The nature of the alleged violation;

11.1.5. The location of the alleged violation.

11.2. A complaint against a certified home inspector shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §29-3C-1 et seq. or this rule.

11.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Fire Marshal unless the complaint is filed in bad faith or for a malicious purpose.

11.4. The Fire Marshal shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

11.5. The Fire Marshal shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

11.6. Upon receipt of a complaint, the Fire Marshal shall issue one of the following acknowledgments to the complainant:

11.6.1. That the matter will be reviewed by the Fire Marshal;

11.6.2. That the complaint is outside the jurisdiction of the Fire Commission and Fire Marshal, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

11.6.3. That more information will be required in order to adequately review the individual complaint.

11.7. If the Fire Marshal acknowledges the complaint under subsection 11.6.1, or 11.6.3, the Fire Marshal shall send a copy of the complaint, including any supporting documentation, by certified mail to the electrical inspector or applicant in question for his or her written comment, and he or she shall submit a written response to the Fire Marshal within thirty (30) days of the date of such correspondence, or waive the right to do so.

11.8. Requests for comment on complaints sent to electrical inspectors or applicants shall be considered properly served when sent to the last address on file with the Fire Marshal. It is the responsibility of the electrical inspector or applicant to keep the Fire Marshal informed of his or her current address.

11.9. Upon receipt of an electrical inspector's or applicant's comments in response to a complaint, the Fire Marshal shall promptly send a copy of the same, including any supporting documentation, to the complainant.

11.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 11.6.2 of this rule, the Fire Marshal shall cause to be conducted any reasonable inquiry or investigation he or she considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof may, at the discretion of the Fire Marshal, be assigned to a designee, being who shall be a full time employee of the Fire Marshal, or to an ethics investigator, for review and investigation.

11.12. Upon receipt of a complaint the designee or ethics investigator shall, within sixty (60) days, review and investigate the same and provide the Fire Marshal with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the inspection, the records reviewed, and interviews conducted, and a statement of the designee's or ethics investigator's findings and recommendations. The Fire Marshal, the designee or ethics investigator shall, upon request of the Fire Marshal, his designee or ethics investigator, be afforded an opportunity to have an investigation interview with the electrical inspector or applicant in question or any other involved parties, a report of which shall be placed in the investigation file.

11.13. To facilitate the disposition of a complaint, the Fire Marshal, his designee, or ethics investigator, may request any person to attend an informal conference at any time prior to the Fire Marshal entering any order with respect to the complaint. The Fire Marshal, his designee or ethics investigator, shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

11.14. The Fire Marshal may issue subpoenas and subpoenas duces tecum to complete the Fire Marshal's investigation and to determine the truth or validity of complaints. A designee, or ethics investigator may request that the Fire Marshal issue subpoenas or subpoenas duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

11.15. At any point in the course of an investigation or inquiry into a complaint, the Fire Marshal may decide to recommend to the Fire Commission that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a electrical inspector may be sanctioned by the Fire Commission: Provided, that the Fire Marshal, his designee, or an ethics investigator shall make their respective findings and recommendations to the Fire Commission in writing prior to the Fire Commission dismissing the complaint.

11.16. At any point in the course of an investigation or inquiry, the Fire Marshal may recommend to the Fire Commission that there is sufficient evidence to warrant a finding of probable cause that a violation has occurred. The Fire Marshal, his designee, or an ethics investigator shall make their respective findings and recommendations to the Fire Commission in writing to the Fire Commission, and the Fire Commission shall make a determination whether or not probable cause is found to limit or restrict a license, suspend a license or revoke any license issued by the Fire Commission. If the Fire Commission finds probable cause that a violation may have occurred, a Complaint and Notice of Hearing shall be issued by the Fire Commission as more fully set forth in this section, and in 103 CSR 4.

§103-1-12. Appeal of denial of certification.

12.1. Any applicant who has had his or her application for a license denied by order of the Fire Marshal may appeal the order within thirty (30) days of that action to the Fire Commission. Provided, that the appeal shall not include cases in which the Fire Marshal denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination. Any applicant who has had his or her application for license denied by order of the Fire Commission may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-6-1 et seq. and the rules of the Fire Commission.

§103-1-13. Hearing Procedure.

13.1. Any applicant denied a certification who believes such denial was in violation of W. Va. Code §29-3C-1 et seq. and/or this rule shall be entitled to a hearing on the action denying such license.

13.2. Any person who desires a hearing for the reason described in subsection 13.1 of this section must present a written demand for such to the Fire Commission within 30 days of issuance of the Order denying the license.

13.3. When the Fire Commission or his or her authorized designee is presented with such a demand for a hearing, it shall schedule a hearing within forty-five (45) days of receipt by it of such written demand, unless postponed to a later date by mutual agreement.

13.4. Charges may be instituted against any electrical inspector by the Fire Marshal when probable cause exists for believing that the electrical inspector may have engaged in conduct, practices or acts in such condition that his or her certification should be suspended, revoked or otherwise disciplined for one or more of the grounds set forth in W. Va. Code §29-3C-1 et seq. or the Fire Commission's or Fire Marshal's legislative rules. Charges may be based upon information received by way of a verified written complaint filed with the Fire Marshal and further information gathered by the Fire Marshal, his or her designee, or an ethics investigator, in the process of investigating such complaint. Charges may also be based upon information received solely through investigative activities undertaken by the Fire Marshal.

13.5. Charges instituted against an electrical inspector as described in subsection 4 of this section shall be set forth in a Complaint and Notice of Hearing issued in the name of the Fire Commission as the agency of the state regulating the practice of home inspection. Such Complaint and Notice of Hearing shall designate the Fire Commission as the "Complainant", and shall designate the electrical inspector involved in the proceeding as the "Respondent"; shall set out the substance of each offense charged with sufficient particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition complained of therein; and shall state the date, time and place for the hearing.

13.6. Upon receipt of a demand for a hearing described in subsections 1 and 2 of this section, the Fire Commission shall provide the demanding party, with a Complaint and Notice of Hearing issued in the name of the Fire Commission as the agency of the state regulating the practice of home inspection. Such Complaint and Notice of Hearing shall designate the demanding party as the "Complainant" and shall designate the Fire Commission as the "Respondent"; shall set out the substance of each and every reason that the Fire Commission has denied the demanding party a certificate with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue therein; and shall state the date, time and place for the hearing.

13.7. The Fire Commission may amend the charges set forth in a Complaint and Notice of Hearing as it deems proper.

13.8. A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least thirty (30) days prior to the date of hearing.

13.9. Upon written motion received by the Fire Commission no later than twenty (20) days prior to the date of hearing, a more definite statement of the matters charged, or the reasons stated for denial of certification shall be provided to the demanding or charged party or his or her counsel, at least fifteen (15) days prior to the hearing date.

13.10. Hearings shall be conducted as follows:

13.10.1. Any party to a hearing shall have the right to be represented by an attorney-at-law, duly qualified to practice law in the state of West Virginia, or to represent his or herself.

13.10.2. The Fire Commission shall be represented by the West Virginia Attorney General's Office.

13.10.3. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing. Furthermore, the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. However, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible there under may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs

13.10.4. The rules of privilege recognized by the law of this state shall be followed.

13.10.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

13.10.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Fire Commission and, when appropriate, may cross-examine witnesses called by the Fire Commission in support of the charges or in defense of its decision to deny certification.

13.10.7. The hearing shall be held at such time and place as is designated by the Fire Commission, but no hearing shall be conducted unless and until at least thirty (30) days written notice thereof has been served upon the charged or demanding party and/or his or her attorney in person; or if he or she cannot be found, by delivering such notice at his or her last address of record in the Fire Marshal's office and giving information of its purport, to his wife or her husband, or to any other person found there who is a member of his or her family and above the age of sixteen (16) years; or if neither his wife or her husband nor any such person can be found there, and he or she cannot be found, by leaving such notice posted at the front door of such address; or if he or she does not reside in this state, such notice may be served by the publication thereof once a week for three successive weeks in a newspaper published in this state; or such notice may be served by registered or certified mail.

13.10.8. The hearing shall be open to the general public, unless requested to be closed to the public by the electrical inspector or applicant.

13.10.9. The Fire Marshal, his or her employees, Members of the West Virginia State Fire Commission and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided, That no person who testifies at such hearing shall thereafter participate in the deliberations or decisions of the Fire Commission with respect to the case in which he or she testified.

13.10.10. The hearing shall be conducted by a quorum of the Fire Commission, or a hearing officer appointed by the Fire Commission.

13.10.11. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Fire Commission's files. Upon request, a copy of the transcript shall be furnished to any party by the transcriptionist at his or her own expense.

13.10.12. Documentary evidence may be received in the form of copies or excerpts or by

incorporation by reference.

13.10.13. Where a hearing is held upon the instance of the Fire Commission after charges have been brought against a electrical inspector pursuant to subsection 4 and 5 of this section, the Fire Commission shall have the burden of proof and shall present its evidence and/or testimony in support of the charges first.

13.10.14. Where a hearing is held upon demand under the provisions of subsections 1, 2, 3, and 6 of this section, the demanding party shall have the burden of proof and shall therefore be required to present his or her evidence first. The Fire Commission may require the person demanding the hearing to give security for the costs thereof and if the demanding party does not substantially prevail, such costs may be assessed against them in the Order of the Fires Commission, and may be collected by forfeiture of the security posted, by assessment in an Order issued them by the Fire Commission, in a civil action or by other proper remedy.

13.10.15. Following the conclusion of the Fire Commission's presentation of evidence in accordance with subsection 10.13 of this section the Respondent or charged party shall have the right to submit his or her evidence in defense.

13.10.16. Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 10.14 of this section, the Fire Commission shall have the right to offer its evidence in rebuttal.

13.10.17. The Fire Commission may call witnesses to testify in support of its decision to deny licensure to deny a permit or in support of the charges instituted against a electrical inspector; may present such other evidence to support its position; and, may cross-examine witnesses called by the demanding party or charged party in support of his or her position.

13.10.18. All parties shall have the right to offer opening and closing arguments, not to exceed ten (10) minutes for each presentation.

13.10.19. Hearings held by the Fire Commission as a result of charges instituted against a electrical inspector may be continued or adjourned to a later date or different place by the Fire Commission or its hearing officer by appropriate notice to all parties.

13.10.20. Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for continuance must be in writing and received in the office of the Board no later than seven (7) days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting the continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven (7) days from the hearing date may be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of hearing shall be ruled on by the chair of the Fire Commission, or its hearing officer. All other motions for continuance shall be ruled on by the Fire Commission member(s), the member presiding over the hearing, or the hearing officer

13.10.21. All motions related to a case set for hearing before the Fire Commission, except motions for continuance and those made during the hearing, shall be in writing an shall be received in the office of the Fire Commission at least ten (10) days before the hearing. Prehearing motions shall be heard at a prehearing conference or at the hearing prior to the commencement of testimony. The Fire Commission member(s) presiding at the hearing, or the hearing officer, shall hear the motions and the response from the non-moving party and shall rule on such motions accordingly.

§103-1-14. Transcription of Testimony and Evidence.

14.1. All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be recorded by stenographic notes and characters or by mechanical means.

14.2. All recorded materials shall be transcribed. The Fire Commission shall have the responsibility to make arrangements for the transcription of the recorded testimony and evidence, and each party to the hearing shall bear their own expense in obtaining a copy of such transcription.

14.3. Upon the motion of the Fire Commission or any party assigning error or omission in any part of any transcript, the Fire Commission chair or presiding member or hearing officer shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and/or revised as appropriate so as to make it conform to the truth.

14.4. A transcript of the hearing shall be provided to all members of the Fire Commission for review at least ten (10) days before the vote is taken on its decision in any certification disciplinary matter.

§103-1-15. Submission of Proposed Findings of Fact and Conclusions of Law.

15.1. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Fire Commission or hearing officer.

§103-1-16. Conferences; Informal Disposition of Cases.

16.1. At any time prior to the hearing or thereafter, the Fire Commission, or its hearing officer may hold conferences for the following purposes:

16.1.1. To dispose of procedural requests, prehearing motions or similar matters;

16.1.2. To simplify or settle issues by consent of the parties; or,

16.1.3. To provide for the informal disposition of cases by stipulation or agreement.

16.2. The Fire Commission or its hearing officer may cause such conferences to be held on its own motion or by the request of a party.

16.3. The Fire Commission may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into such stipulations and/or agreements without conference.

§103-1-17. Depositions.

17.1. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.

§103-1-18. Subpoenas for Hearings and Depositions.

18.1. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents for hearings or depositions may be issued by any member of the Fire Commission, its hearing officer, or the Fire Marshal.

Such subpoenas shall be issued pursuant to W. Va. Code §29A-5-1(b).

18.2. Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in subsection 1 of this section must be received by the party as specified in subsection 1 no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with W. Va. Code §29A-5-1(b)

§103-1-19. Orders.

19.1. Any final order entered by the Fire Commission following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code §§29A-5-3. Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law.

19.2. The findings of fact and conclusions of law must be approved by a majority of the Fire Commission either by a poll or vote at a meeting, before a final order is entered. A copy of the final order approved by a majority of the Fire Commission shall be served upon the demanding or charged party and/or his or her attorney of record, if any, within ten (10) days after entry by the Fire Commission by personal service or by registered or certified mail.

§103-1-20. Appeal.

20.1. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code § 29A-6-1 et seq.

§103-1-~~19~~ 21. Orders and Decisions of the State Fire Marshal; Appeals and Procedures for Appeals from such Orders or Decisions.

~~19~~ 21.1. State Fire Marshal's Order and Decisions are final and Conclusive - Any order or final written decision of the state fire marshal based upon or made in the course of the administration or enforcement of the provisions of W. Va. Code §§29-3C-1 et seq. based upon or made pursuant to this rule, is final, unless vacated or modified upon review pursuant to the appeal rights and procedures provided by Chapter 29A of the W. Va. Code and this rule.

~~19.2. State Fire Marshal's Order and Decisions Appealed - Any person aggrieved by an order or final written decision of the state fire marshal based upon or made in the course of the administration or enforcement of the provisions of W. Va. Code §§29-3C-1 et seq. or made pursuant to this rule, and who desires to contest the order or written decision may file an appeal from the order or written decision with the state fire commission. Preservation of the right to an appeal and the procedure for the contested case is governed by this section and by W. Va. Code §§29-3C-1 et seq.~~

~~19.3. Appeal Petition - The appeal petition shall be typewritten, styled "Appeal Petition", and the appellant shall submit an original and one (1) copy. It shall be complete in itself so as to fully state the matters contested. No facsimile, telephone call, or similar communication may be regarded as an appeal petition. The petition shall contain and include the following:~~

~~19.3.1. A copy of the order or decision of the state fire marshal being contested;~~

~~19.3.2. A clear and concise assignment of each error which the petitioner alleges to have been~~

~~committed by the state fire marshal in issuing the order or decision with each assignment of error being shown in separately numbered paragraphs;~~

~~10.3.3. A clear and concise statement of the facts upon which the petitioner relies as sustaining his or her assignment of errors;~~

~~10.3.4. The address to which the petitioner desires to have all notices, documents, and the final order of the fire commission mailed;~~

~~10.3.5. The telephone number or numbers where the petitioner can be contacted;~~

~~10.3.6. The names and addresses of all persons having any ownership interest in the property which is the subject of the state fire marshal's order being contested;~~

~~10.3.7. A prayer setting forth the relief sought; and~~

~~10.3.8. The signature of the petitioner.~~

~~10.4. Time Requirement and Manner of Filing Appeal Petition — The petitioner shall submit an appeal petition by personal delivery or mail to the state fire commission within thirty (30) days following service upon the petitioner, or within thirty (30) days following actual receipt if service is not required or for some reason is not made of the order or decision being contested. Any appeal petition shall be sent by certified mail, return receipt requested, and is timely if postmarked within the thirty (30) day period. In the event the appeal petition is not timely filed with the state fire commission, the order or decision of the state fire marshal being contested is final.~~

~~10.5. Copy of Appeal Petition to State Fire Commission — Upon receipt of an appeal petition, the Chairman of the State Fire Commission, through office staff, shall supply a copy of the petition to the State Fire Commission members together with an opinion by the State Fire Marshal regarding the urgency of the matter being contested. If the State Fire Marshal elects to file a response to the appeal petition, he or she shall deliver a copy of the response to the State Fire Commission and a copy to the petitioner.~~

~~10.6. Scheduling Appeal Petition for and Notice of Hearing — The State Fire Commission Chairman through office staff shall schedule a hearing on the appeal petition giving the petitioner and the State Fire Marshal at least ten (10) days written notice of the date, time, and place of the hearing. The notice to the petitioner shall be by personal delivery or by certified mail, return receipt requested, and shall contain a short and plain statement of the matters to be considered at the hearing, and a copy of the State Fire Marshal's response, if any, to the appeal petition. The notice of hearing shall be mailed or personally delivered by the State Fire Marshal no later than thirty (30) days after receipt of the appeal petition. A copy of the notice to the petitioner shall be supplied to the State Fire Marshal. The hearing shall be conducted at a designated location in Charleston, West Virginia, or in the discretion of the State Fire Commission at a location within the county of residence of the petitioner.~~

~~10.7. Authorized Representative — The petitioner may appear individually, or by counsel.~~

~~10.8. Continuances — A motion for continuance may not be granted by the State Fire Commission unless made in writing three (3) days before the hearing or during the hearing, in either case for good and sufficient cause. Upon consideration of a motion for continuance, the urgency of the situation shall be determined and taken into consideration. Conflicting engagements of counsel or the employment of a new counsel are not good grounds for a continuance unless a motion is filed promptly after a notice of hearing has been mailed~~

~~or unless extenuating circumstances are shown, which the State Fire Commission or hearing examiner considers adequate:~~

~~—10.9. Absence of Petitioner or Counsel at the Scheduled Hearing— A hearing by the Fire Commission shall not be delayed or continued due to the absence of the petitioner or his or her legal counsel at a hearing; after service of notice of the time, date, and place of the hearing. The hearing shall proceed and the case shall be submitted for decision on the part of the absent petitioner or petitioners:~~

~~—10.10. Hearing Examiner— Any member of the State Fire Commission may conduct a hearing on an appeal petition and has full authority to conduct the proceedings on an appeal petition, and when acting in that capacity shall be referred to as the hearing examiner. Alternatively, the State Fire Commission may authorize and empower an impartial attorney as a hearing examiner with the specific powers listed in W. Va. Code 29A-5-1(d):~~

~~—10.11. Subpoenas and Subpoenas Duces Tecum:~~

~~—10.11.1. At any hearing held under this section, the State Fire Marshal may require, through the use of subpoenas and subpoenas duces tecum, the testimony of witnesses and the production of documentary evidence may be required. The State Fire marshal may issue subpoenas and subpoenas duces tecum at the request of the petitioner, the hearing examiner or the State Fire Commission:~~

~~—10.11.2. Every subpoena or subpoena duces tecum shall prove service at least five (5) days before the return date of that subpoena, either by personal service made by any person eighteen (18) years of age, or older, or by registered or certified mail. A return acknowledgement signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail:~~

~~—10.11.3. Any party requesting a subpoena or subpoena duces tecum shall see that it is properly served. Service of a subpoena or subpoena duces tecum issued at the insistence of the State Fire Commission is the responsibility of the State Fire Commission:~~

~~—10.11.4. Any public official who serves any subpoena or subpoena duces tecum is entitled to the same fee as a Sheriff who serves a witness subpoena for a circuit court of this state; and fees for the attendance and travel of witness are the same as for witnesses before the circuit courts of this state. All fees shall be paid by the State Fire Commission if the subpoena or subpoena duces tecum is issued at the instance of the Fire Commission. All fees related to any subpoena or subpoena duces tecum issued at the instance of the petitioner or the State Fire Marshal shall be paid by the party requesting the subpoena or subpoena duces tecum:~~

~~—10.11.5. A request for a subpoena or subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay the required fee:~~

~~—10.11.6. Any person receiving a subpoena or subpoena duces tecum issued under this section shall honor the subpoena or subpoena duces tecum as though it were issued by a circuit court of the state, and shall appear as a witness and/or produce the books, records, or papers in response to the subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, upon application by the State Fire Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify in the circuit court:~~

~~—10.12. Evidence.~~

~~—10.12.1. All witnesses appearing at the hearing shall testify under oath or affirmation. Every adverse party has the right of cross-examination of witnesses who testify, and has the right to submit rebuttal evidence.~~

~~—10.12.2. Either party may offer all relevant and material evidence, including papers, records, agency staff memoranda and documents in the possession of the State Fire Commission or the State Fire Marshal to be made part of the record in the case.~~

~~—10.12.3. Except as otherwise in this section, the Hearing Examiner shall follow the rules of evidence as applied in civil cases in the circuit courts of this state in considering the admissibility of evidence. However, when necessary to ascertain certain facts not reasonably susceptible of proof under those rules, the Hearing Examiner may admit reasonably authenticated evidence, except where precluded by the Code or privilege, if it is of a type commonly relied upon by a reasonable prudent person in the conduct of his or her affairs.~~

~~—10.13. Record of Proceedings—All of the testimony, evidence and rulings on admissibility of evidence at any hearing shall be recorded by a certified court reporter. An official record of the hearing shall be prepared by the State Fire Commission. A transcript, shall only be prepared if the Commission's final decision is appealed. The cost of the transcript shall be paid by the party requesting it.~~

~~—10.14. Informal Disposition—At any stage of the proceedings, either party may dispose any contested case by stipulation, agreed settlement, consent order or default.~~

~~—10.15. Decision by the State Fire Commission—Upon the conclusion of the hearing, the person designated by the State Fire Commission as hearing examiner shall prepare a decision supported by findings of fact and conclusions of law affirming, modifying, or vacating the earlier order or decision of the State Fire Marshal. The State Fire Commission may accept, modify, or reject the hearing examiner's decision. If the Commission accepts the hearing examiner's decision it shall sign the decision. If the Commission rejects or modifies the hearing examiner's decision, it shall prepare a written order setting forth findings of facts and conclusions of law. In either event, the order signed by the State Fire Commission shall be final unless vacated or modified upon judicial review of the order. The State Fire Commission shall serve a copy of the order on all parties to the hearing and all attorneys of record, if any, in person or by certified mail, return receipt requested.~~

~~—10.16. Judicial Review—The petitioner or the State Fire Marshal may appeal the decision to the circuit court of the county of residence of the petitioner, if the appeal is filed within thirty (30) days after the date upon which the party was served a copy of the final order or decision of the State Fire Commission. The final order signed by the State Fire Commission is final if the proceedings for judicial review are not instituted within the thirty (30) day period.~~

~~§103-1-11. Responsibilities of the Electrical Inspector:~~

~~—11.1. Any certified electrical inspector, who has knowledge of violations of any rule of the state fire marshal or any rule of the state fire commission or of the W. Va. Code, shall submit the information, together with available evidence to the state fire marshal.~~

~~—11.2. A certified electrical inspector shall submit a written report of any findings of his or her electrical inspection to the property owner and other appropriate parties. In addition, the electrical inspector shall~~

include the name and electrician license number of the individuals performing the electrical work.

~~—11.3. A certified electrical inspector shall submit an annual report to the state fire marshal indicating the number, type and locations of electrical inspections performed during the proceeding year. This annual report shall be filed with the state fire marshal no later than the thirty-first day of January of the following year.~~

~~—11.4. A certified electrical inspector shall submit annually to the state fire marshal a copy of his or her schedule.~~

~~—11.5. A certified electrical inspector shall comply with all federal, state and local laws, rules and regulations.~~