

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

Form #3

Do Not Mark In This Box

FILED

2014 JUL -1 P 3:29

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Fire Commission TITLE NUMBER: 87

CITE AUTHORITY: 29-3-5b(d)

AMENDMENT TO AN EXISTING RULE: YES  NO

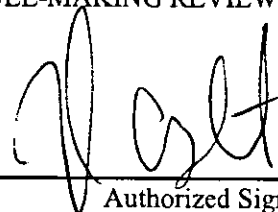
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: "Standards for the Certification and Continuing Education of Municipal,  
County and Other Public Sector Building Code Officials, Building Code  
Inspectors and Plans Examiners"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 7/1/2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Fire Commission, 1207 Quarrier Street, Charleston, WV 25301

LEGISLATIVE RULE TITLE: "Standards for the Certification and Continuing Education of Municipal, County and Other Public Sector Building Code Officials, Building Code Inspectors and Plans Examiners"

1. Authorizing statute(s) citation 29-3-5b(d)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
5/23/14

b. What other notice, including advertising, did you give of the hearing?  
State Fire Commission/State Fire Marshal's Website  
Meeting with West Virginia Code Officials Assoc. Rep's  
Correspondence by Code Officials Assoc. to members seeking input

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
6/24/14

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

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- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

State Fire Marshal, 1207 Quarrier Street, Charleston, WV 25301

Chairman. State Fire Commission, 1207 Quarrier Street, Charleston, WV 25301

Office of the Attorney General, 812 Quarrier St., 2nd Floor, Charleston, WV 25301

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- g. **IF DIFFERENT FROM ITEM 'F'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

5/23/14 through 6/24/14 at 4:00 p.m.

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**"STANDARDS FOR THE CERTIFICATION AND CONTINUING EDUCATION OF MUNICIPAL, COUNTY, AND OTHER PUBLIC SECTOR BUILDING CODE OFFICIALS, BUILDING CODE INSPECTORS AND PLANS EXAMINERS" 87CSR7**

The purpose of amending the existing legislative rule is to revise the continuing education requirements to come into conformity with all other continuing educational units for other certifications of the Commission; to clarify certifications for building inspectors removing confusion for certification holders; clarifying the probationary period requirements for the applicant; requiring reporting duties of the employers of these certification holders; providing uniform process to disposing of complaints consistent with other areas regulated by the Commission.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: STANDARDS FOR THE CERTIFICATION AND CONTINUING EDUCATION OF MUNICIPAL, COUNTY, AND OTHER PUBLIC SECTOR BUILDING CODE OFFICIALS, BUILDING CODE

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Fire Commission

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

Phone Number: 304-558-2191 Email: src1@wvago.gov

**Fiscal Note Summary**

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

Agency anticipates the rule change will have no alteration in fiscal impact.

**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.

Effect of Proposal	FISCAL YEAR		
	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	8,000.00	0.00	8,000.00
Personal Services	2,000.00	0.00	2,000.00
Current Expenses	6,000.00	0.00	8,000.00
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	5,400.00	0.00	5,400.00

Rule Title: \_\_\_\_\_

Rule Title:

STANDARDS FOR THE CERTIFICATION AND CONTINUING EDUCATION OF MUNICIPAL,  
COUNTY, AND OTHER PUBLIC SECTOR BUILDING CODE OFFICIALS, BUILDING CODE  
INSPECTORS AND PLANS EXAMINERS

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

Agency anticipates the rule change will have no alteration in fiscal impact.

### 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: 5/23/14

Signature of Agency Head or Authorized Representative

\_\_\_\_\_

TITLE 87  
LEGISLATIVE RULES  
STATE FIRE COMMISSION

FILED  
2009 JUL -1 P 3:30

SERIES 7

STANDARDS FOR THE CERTIFICATION AND CONTINUING EDUCATION OF WEST VIRGINIA  
MUNICIPAL, COUNTY, AND OTHER PUBLIC SECTOR BUILDING CODE OFFICIALS, BUILDING CODE INSPECTORS AND PLANS EXAMINERS

§87-7-1. General.

1.1. Scope. -- This rule establishes the requirements for the certification, continuing education and training of municipal, county and other public sector building code officials, building code inspectors and building code plans examiners to ensure compliance with the State Building Code.

1.2. Authority. -- W. Va. Code §29-3-5b(e)(d).

1.3. Filing Date. -- May 7, 2009.

1.4. Effective Date. -- July 1, 2009.

§87-7-2. Definitions.

2.1. "Building code inspector" is a person who conducts inspections and examinations of buildings in the process of construction or renovation to ascertain the level of compliance with the state building code. Building code inspectors are categorized as either "Multi-person Jurisdiction Building Code Inspector" or "Single person Jurisdiction Building Code Inspector."

2.1.1. ~~"Multi-person Jurisdiction Building Code Inspector" is a person who conducts building code inspections in a multi-person building code department and/or in a specific building inspection discipline(s) within a particular jurisdiction. A building code inspector shall not have the authority through his or her certification to administer a building code department in a municipality, county or other local government entity, or be capable of supervising one or more other building code inspectors, plans examiners, or other administrative and technical staff employed by the building code department.~~

2.1.2. ~~"Single Person Jurisdiction Building Code Inspector" is a person who conducts building code inspections as the only building inspector conducting all building inspections in all disciplines within a particular jurisdiction. A building code inspector shall only be empowered to administer such disciplines of the ICC in which he or she has certification by the State Fire Commission.~~

2.2. "Building code official" is a person who oversees and administers the building code department in a municipality, county or other local government entity that has lawfully adopted the state building code. In this role, the person supervises one or more building code inspectors, plans examiners, and other administrative and technical staff employed by the building code department.

2.2.1. A building code official shall only be empowered to administer such disciplines of the ICC in which he or she has certification by the State Fire Commission.

2.3. "Building code plans examiner" is a person who examines and reviews construction or renovation plans and drawings for compliance with the requirements of the state building code.

2.3.1. A building code plans examiner shall only be empowered to administer such disciplines of the ICC in which he or she has certification by the State Fire Commission.

2.4. "Continuing education" means additional training and education that is attained or pursued subsequent to initial certification by the State Fire Commission. Continuing Education Unit ("CEU") is a unit of measurement for each instructional unit. 50 minutes of instruction shall equate to 1 unit of CEU credit.

2.5. "Department" means a division of any municipality, county or other governmental entity which has adopted and enforces the State Building Code.

2.6. "State Fire Commission" means the thirteen (13) appointed members of the West Virginia State Fire Commission.

2.7. "State Fire Marshal" refers to the West Virginia State Fire Marshal and his or her designated representatives.

2.8. "ICC" refers to the International Code Council, currently headquartered in at 500 New Jersey Avenue, N.W., 6th Floor, Washington, D.C. 20001.

2.9. "State building code" refers to the code authorized by W.Va. §29-3-5b and adopted by the West Virginia State Fire Commission in the Commission's rule, State Building Code, 87CSR4, including all provisions and all codes and standards incorporated by reference in the rule.

### **§87-7-3. Certification of Building Code Officials, Plans Examiners and Inspectors.**

3.1. A person may not be employed by a municipality, county, or local government, or serve as a public building code official, building code plans examiner or building code inspector, unless that person is certified in his or her respective category by the State Fire Commission.

3.2. Categories and Qualification for Certification. -- The State Fire Commission may certify an individual in the following classifications or categories upon a sufficient showing that the person possesses these designated qualifications:

3.2.a. Building Code Official. -- To be certified as a 'Building Code Official' a person must:

3.2.a.1. Complete the following courses:

3.2.a.1.A. 01 CBO Legal & Management and 02 CBO Technology; or

3.2.a.1.B. 01 CBO Legal & Management and B1 Residential Building Inspector, B2 Commercial Building Inspector, M1 Residential Mechanical Inspector, E1 Residential Electrical Inspector, E2 Commercial Electrical Inspector, P1 Residential Plumbing Inspector and P2 Commercial Plumbing Inspector; or

3.2.a.2. Be certified as a Certified Building Code Official (CBCO) by successfully completing the following examinations: B1 Residential Building Inspector; B2 Commercial Building Inspector; B3 Residential Plans Examiner; 01 Legal and Management; and 02 CBO Technology; or

3.2.a.3. Complete an equivalent certification by an examination authority accepted by the State Fire Commission; or

3.2.a.4. Be licensed by the State of West Virginia as a Professional Engineer or ~~Professional Registered~~ Registered Architect.

3.2.b. Building Code Plans Examiner.

3.2.b.1. ~~s~~Successful completion of the B3 Building Plans Examiner examination administered by the International Code Council;

3.2.b.2. ~~a~~An equivalent certification by an examination authority accepted by the State Fire Commission; or

3.2.b.3. ~~H~~icensure to practice in this state as a Registered West Virginia Professional Engineer or ~~Professional~~ Registered Architect; and

3.2.c. ~~Multi-person Jurisdiction~~ Building Code Inspector -- successful passage of the ICC examination(s) required in the discipline or inspection category assigned, as listed below:

3.2.c.1. Building Inspector (planning, footings and foundations, floor construction, wall construction and coverings, roof/ceiling construction and penetrations) -- B1 Residential Building Inspector, or B2 Commercial Building Inspector, or B3 Building Plans Examiner, or R3 Residential Plans Examiner;

3.2.c.2. Electrical Inspector -- E1 Residential Electrical Inspector, or E2 Commercial Electrical Inspector, or E3 Electrical Plans Examiner and hold a valid West Virginia Masters Electricians License;

3.2.c.3. Mechanical Inspector -- M1 Residential Mechanical Inspector, or M2 Commercial Mechanical Inspector, or M3 Mechanical Plans Examiner;

3.2.c.4. Plumbing Inspector -- P1 Residential Plumbing Inspector, or P2 Commercial Plumbing Inspector, or P3 Plumbing Plans Examiner;

3.2.c.5. Accessibility Inspector/Plans Examiner -- 21 Accessibility Inspector/Plans Examiner;

3.2.c.6. Property Maintenance & Housing Inspector -- 64 Property Maintenance & Housing Inspector;

3.2.c.7. Floodplain Inspector -- C1 Coastal and Floodplain Construction Inspector;

3.2.c.8. Reinforced Concrete Inspector -- 47 Reinforced Concrete Special Inspector;

3.2.c.9. Prestressed Concrete Inspector -- 92 Prestressed Concrete Special Inspector;

3.2.c.10. Structural Masonry Inspector -- 84 Structural Masonry Special Inspector;

3.2.c.11. Sprayed Fireproofing Inspector -- 86 Spray-applied Fireproofing Special Inspector;

3.2.c.12. Structural Steel Inspector -- S1 Structural Steel and Bolting Special Inspector;

3.2.c.13. Welding Inspector -- S2 Structural Welding Special Inspector;

3.2.c.14. Soils Inspector -- EC Soils Special Inspector;

3.2.c.15. Disaster Response Inspector -- DR Disaster Response Inspector;

3.2.c.16. Commercial Energy Inspector -- 77 Commercial Energy Inspector; or

3.2.c.17. Licensure to practice as a Registered West Virginia Professional Engineer or Registered Architect.

~~3.2.d. Single person Jurisdiction Building Code Inspector — successful passage of the following ICC examinations:~~

~~3.2.d.1. B1 Residential Building Inspector, B2 Commercial Building Inspector, B3 Building Plans Examiner or R3 Residential Plans Examiner; and~~

~~3.2.d.2. E1 Residential Electrical Inspector, E2 Commercial Electrical Inspector or E3 Electrical Plans Examiner and licensure as a West Virginia Master Electrician; and~~

~~3.2.d.3. M1 Residential Mechanical Inspector, M2 Commercial Mechanical Inspector or Mechanical Plans Examiner; and~~

~~3.2.d.4. P1 Residential Plumbing Inspector, P2 Commercial Plumbing Inspector or P3 Plumbing Plans Examiner; or~~

~~3.2.d.5. an equivalent certification by an examination authority accepted by the State Fire Commission; or~~

~~3.2.d.6. licensure to practice in this state as a Professional Engineer or Professional Architect.~~

3.3. Application for certification shall be made in writing to the State Fire Commission upon forms designated or prescribed by the State Fire Marshal.

3.4. ~~The fee for certification is \$50.00~~ is seventy-five dollars (\$75.00) per certification.

#### **§87-7-4. Continuing Education Requirement.**

4.1. In order to maintain a certification and qualify for the renewal of the certification, each building code official, building code plans examiner and building code inspector shall complete a minimum of 15 CEU credits approved by the State Fire Commission for each certification over the preceding three (3) calendar years from the original certification or renewal ~~continuing education units annually in courses approved by the State Fire Commission. A continuing education unit is equivalent to 10 hours of instruction as approved by the State Fire Commission.~~

4.2. The State Fire Commission shall establish building code training provider standards, curriculum or subject matter standards, trainer qualifications and reporting requirements for continuing education programs.

**§87-7-5. Renewal of Certification.**

5.1. Every building code official, building code plans examiner, and building code inspector shall renew his or her certification every three years. A certification is not valid for a period greater than three years.

5.2. The State Fire Marshal may designate the forms to be used for application for renewal of certification and shall make them available to all persons certified under this rule. Not less than sixty (60) days prior to the expiration of a certification, the State Fire Marshal shall notify the person by mail or by electronic means approved by the State Fire Commission of the pending expiration and provide that person with copies of the forms required to apply for renewal of the certification.

5.3. The fee for renewal of the certification is ~~\$50.00~~ Seventy five dollars (\$75.00) per certification annually.

5.4. The fee for late renewal is fifty dollars (\$50.00) per year per certification in addition to the renewal fee.

5.5. Renewal After Expiration – A certified building code official, building code plans examiner, and/or building code 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 (3) years or less, submit a renewal application to the State Fire Marshal, along with proof of all required Continuing Education credits, as required under 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 (3) years, the applicant shall submit a new application, with proof that the applicant has met the requirements of this rule and that the testing has been completed within the last three years, and submit the late fee for a period of three years. A person may not perform building code official, building code plans examiner, and/or building code inspector work during the period of time his or her certification is expired.

5.6. Each day during which a person performs work as a building code official, building code plans examiner, and/or building code inspector, without the required certification, or while in non-compliance with any of the provisions of W. Va. Code §§29-3-5b et seq., after official notice that the work is unlawful, is a separate violation of this rule.

**§87-7-6. Responsibilities of the Building Code Officials, Plans Examiners and Inspectors.**

6.1. Any certified building code official, building code plans examiner, and/or building code 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 West Virginia Code, shall submit the information, together with available evidence to the State Fire Marshal.

6.2. A building code official, building code plans examiner, and/or building code inspector, shall provide written notice of the findings of his or her work to the property owner and other appropriate parties. In the notice, the building code official, building code plans examiner, and/or building code inspector shall include, at a minimum, the date and time of the property examination, the alleged deficiencies or violations, the specific code(s) relied upon for the finding of deficiencies or violations, and the appropriate hearing or appeal process of the violations, if any.

6.3. A building code official, building code plans examiner, and/or building code inspector shall submit an annual report to the State Fire Marshal indicating the number, type and locations of building code inspections and/or plan reviews performed during the preceding 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.

6.4. A building code official, building code plans examiner, and/or building code inspector shall comply with all federal, state and local laws, rules and regulations.

**§87-7-7. Responsibilities of Cities, Counties and Local Government.**

7.1. Certifications under this Rule are earned by, granted to, required of, and are a condition of employment for each building code official, building code inspector and building code plans examiner, employed by a municipality, county or local governmental entity, adopting and enforcing the State Building Code.

7.2. Any municipality, county or local governmental entity, adopting and enforcing the State Building Code, shall submit an annual report to the State Fire Marshal indicating the number of employees in their respective building code department, their job title, whether the employee is or is not certified by the State Fire Commission in their respective discipline, as well as a verification that the entity has adopted the current version of the State Building Code. The municipality, county or local governmental entity, shall also report what ICC codes are being enforced respectively.

7.3 This annual report shall be filed with the State Fire Marshal no later than the thirty-first day of January of the following year. The report may be completed by the building code official, or any other agent of the municipality, county or local governmental entity with signature authority.

**§87-7-6 8. Alternative for Probationary Employment of Uncertified Officials.**

6 8.1. Upon a showing notifying the State Fire Commission that there is a lack of certified persons available to serve a municipality, county or other local government entity as a building code official, building plans examiner or building code inspector, that government body may request that the State Fire Commission grant the entity provisional status for up to two years, during which the local government entity may employ uncertified persons to serve in those positions. that municipality, county or local governmental entity may request that an employed, or potentially employed person, be granted probationary certification status for a period not to exceed two (2) years. At or before the expiration of the provisional status, those persons shall obtain the necessary qualifications for certification and be certified by the State Fire Commission, or the local government entity shall hire certified individuals for the building code positions. During this probationary period, the municipality, county or local governmental entity, or the probationary building code employee, shall submit quarterly updates to the State Fire Commission, which will provide a status update of the individual's progress in obtaining certification.

6 8.2. The State Fire Marshal Commission may grant an extension of probationary status based on extenuating circumstances approved by the State Fire Commission, which are not in conflict with the intent of these rules. In no event shall an entity receive any extension or combination of extensions of provisional status greater than two (2) years in length.

6 8.3. In the event a request for an extension of probationary status is denied by the State Fire Marshal, a government entity may request an administrative hearing pursuant to the provisions of W. Va. Code §29A-5-1 et. seq. with the State Fire Commission within thirty (30) days after receipt of the State Fire Marshal's decision.

**§87-7-7 9. Denial, suspension or revocation of certification; other fees.**

7 9.1. The State Fire Commission may deny, suspend, or revoke, any certification or application for certification for any of the following grounds:

- 7 9.1.a. failure to provide sufficient or complete documentation;
- 7 9.1.b. providing false documentation;
- 7 9.1.c. making any misrepresentation in the process of application for certification or renewal of certification;
- 7 9.1.d. failure to comply with the continuing education requirements;
- 7 9.1.e. failure to submit full payment of certification fees or renewal of certification fees; or
- 7 9.1.f. failure to submit an application within the time periods provided by this rule.
- 9.1.g. upon satisfactory proof that a certification holder or applicant has been convicted of a felony.
- 9.1.h upon satisfactory proof that a certification holder or applicant has engaged in conduct, practices or acts constituting negligence in his or her professional capacity.
- 9.1.i. willfully departed from accepted standards of conduct in violation of the rules of the State Fire Commission or State Fire Marshal; or
- 9.1.j. willfully violated any federal, state or local law, rule or regulation, while acting in his or her official capacity as a building code official, building plans examiner or building code inspector.

~~7.2. The State Fire Commission may assess a late payment fee for any renewal application submitted after the filing deadline according to the following schedule: \$50 for an application submitted less than fifteen days after the deadline, \$100 for an application submitted fifteen to thirty days after the deadline and \$200 for an application submitted more than thirty days after the filing deadline.~~

~~7.3. If any person fails to renew his or her certification within sixty days of the date of expiration of his or her certification, that person is not entitled to a renewal and shall reapply as a new applicant for certification. The fee for reapplication for failure to renew within sixty days of expiration shall be \$250, plus the \$50 certification application fee, as required in section 7.2 of this rule.~~

~~7.4. Any person denied certification or whose certification is suspended or revoked by the State Fire Commission may request an administrative hearing pursuant to West Virginia Code § 29A-5-1 et seq.~~

#### **§87-7-10. Disposition of Complaints.**

10.1. The State Fire Marshal, or his or her designee, shall be empowered with the authority of investigating any complaint filed under Section 9 of this rule.

10.2. Any person, firm, corporation, member of the Fire Commission, State Fire Marshal, or public officer, upon observing an infraction of the requirements of W. Va. Code R. §87-7-9 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:

10.2.1. The name and address of the building code official, building plans examiner or building code inspector, or applicant against whom the complaint is lodged;

10.2.2. The date of the alleged unlawful act;

10.2.3. The nature of the alleged unlawful act; and

10.2.4. The location of the alleged unlawful act.

10.3. 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.

10.4. 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.

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

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

10.7. The State Fire Marshal shall maintain a separate file for each complaint received, and each file shall have a number assigned to it.

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

10.8.1. That the matter will be reviewed by the State Fire Marshal;

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

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

10.9. If the State Fire Marshal acknowledges the complaint under subsection 10.8.1, or 10.8.3, the State Fire Marshal shall send a copy of the complaint, including any supporting documentation, by certified mail to the building code official, building plans examiner or building code inspector or applicant in question for his or her written comment, and he or she shall submit a written response to the State Fire Marshal within thirty (30) days of the date of such correspondence, or waive the right to do so.

10.10. Requests for comment on complaints sent to building code official, building plans examiner or building code inspector or applicants shall be considered properly served when sent to the last address on file with the State Fire Marshal. It is the responsibility of the certification holder or applicant to keep the State Fire Marshal informed of his or her current address.

10.11. Upon receipt of a building code official, building plans examiner or building code inspector or applicant's comments in response to a complaint, the State Fire Marshal shall promptly send a copy of the same, including any supporting documentation, to the complainant.

10.12. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 10.8.2 of this rule, the State 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 State Fire Marshal, be assigned to a designee.

10.13. Upon receipt of a complaint the designee shall, within sixty (60) days, review and investigate the same and provide the State 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 findings and recommendations. The State Fire Marshal or the designee shall be afforded an opportunity to have an investigation interview with building code official, building plans examiner or building code inspector or applicant in question or any other involved parties, a report of which shall be placed in the investigation file.

10.14. To facilitate the disposition of a complaint, the State Fire Marshal, his designee, may request any person to attend an informal conference at any time prior to the State Fire Marshal entering any order with respect to the complaint. The State Fire Marshal, or the designee, shall give notice of the conference, which 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.

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

10.16. At any point in the course of an investigation or inquiry into a complaint, the State Fire Marshal may decide to recommend to the State 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 building code official, building plans examiner or building code inspector or applicant may be sanctioned by the State Fire Commission: *Provided*, that the State Fire Marshal or his designee shall make their respective findings and recommendations to the State Fire Commission in writing prior to the State Fire Commission dismissing the complaint.

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

#### **§87-7-11. Appeal of denial of certification; hearings; evidence.**

11.1. Any person who desires to appeal a decision or Order of the State Fire Marshal may appeal the

decision or Order pursuant to the provisions contained in Series 9 of Title 87 of the West Virginia Code of State Rules. The taking of evidence and hearing procedures shall be made in conformity therewith.

**§87-7-12. Orders.**

12.1. Any final order entered by the State 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.

12.2. 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.

12.3. 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 §29-3-5b 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.

**§87-7-13. Appeal.**

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