

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

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia State Fire Commission TITLE NUMBER: 87

CITE AUTHORITY: W.Va. Code 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 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 RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Christina F. Morris, Rep/able
Authorized Signature WSDMARS

**TITLE 87
LEGISLATIVE RULES
STATE FIRE COMMISSION**

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**SERIES 7
STANDARDS FOR THE CERTIFICATION AND CONTINUING EDUCATION OF
MUNICIPAL, COUNTY, AND OTHER PUBLIC SECTOR BUILDING CODE
OFFICIALS, BUILDING CODE INSPECTORS AND PLANS EXAMINERS**

OFFICE WEST VIRGINIA
DEPARTMENT OF STATE

§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.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule. -- This legislative rule repeals and replaces 87CSR7 “Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code Officials, Building Code Inspectors and Plans Examiners” filed May 7, 2009 and effective July 1, 2009.

§87-7-2. Definitions.

2.1. “Code Enforcement Department” means a division of any municipality, county or other governmental entity which has adopted and enforces the State Building Code.

2.2. “Code Official” is a person who oversees and administers the Code Enforcement Department in a municipality, county or other local government entity that has lawfully adopted the State Building Code. In this role, the person may typically supervise one or more Deputy Code Officials, and other administrative and technical staff employed by the Code Enforcement Department. The Code Official: a) examines construction documents to ascertain compliance with provisions of the State Building Code, and/or b) performs field inspections to determine compliance with approved plans and code requirements, and/or c) enforces the relative administrative provisions of the State Building Code such as supervising building code inspectors or plans examiners, issues building permits, occupancy permits, notices of violations and orders, and initiates compulsory process.

2.3. “Continuing education” means additional training and education that is attained or pursued subsequent to initial certification by the State Fire Commission.

2.4. "Continued Education Unit" or CEU" means a unit of measurement for each instructional unit of approved continuing education. 50 minutes of instruction shall equate to 0.1 unit of CEU credit.

2.5. "Deputy Code Official" is a person who: a) examines construction documents to ascertain compliance with provisions of the State Building Code, and/or b) performs field inspections to determine compliance with approved plans and code requirements, and c) enforces the relative administrative provisions of the State Building Code under the authority of the Code Official. Though this person may possess the qualifications of a Code Official, they work under the supervision, authority, and control, of the Code Official as the chief executive officer of the Code Enforcement Department.

2.6. "Discipline" is a particular category of the ICC codes (*i.e.* building, plumbing, mechanical, electrical, property maintenance) in which the individual is certified under this rule.

2.7. "ICC" refers to the International Code Council.

2.8. "Inspector" refers to a class of certifications issued by the State Fire Commission in various disciplines. An Inspector's duties include examining construction sites and building locations to ensure they are constructed or maintained in accordance with the State Building Code and the adopted applicable ICC codes relative to the situation. An Inspector may issue a report of the condition or circumstance to the Code Official for further action.

2.9. "Plans Examiner" refers to a class of certifications issued by the State Fire Commission in various disciplines. A Plans Examiner's duties include reviewing construction documents submitted as part of a permitting or compliance review to determine their compliance with the State Building Code and the adopted applicable ICC codes relative to the situation. A Plans Examiner may issue a report of the findings and conclusions of the review to the Code Official for further action.

2.10. "State Building Code" refers to the code authorized by W.Va. Code §29-3-5b and adopted by the West Virginia State Fire Commission in the Commission's rule, State Building Code, W.Va. Code R. §87-4-1 *et seq.* (87CSR4), including all provisions and all codes and standards incorporated by reference in the rule.

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

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

§87-7-3. Certification of Code Officials, Inspectors and Plans Reviewers.

3.1. Categories and Qualifications for Certification - The State Fire Commission may issue Certification to an individual within the following categories upon a sufficient showing that the person possesses these designated qualifications:

3.1.a. Code Official - the State Fire Commission may issue certification for a Code Official in a specific category to an applicant who receives a passing grade in all of the examinations required for that category, or in the alternative, one who is licensed to practice in this State as an Architect or Professional Engineer. The following category of examinations will be approved:

- 3.1.a.1. Building Code Official - successful completion of the training and examination necessary to be certified as a building code official, residential building code inspector, commercial building inspector, or building plans examiner by the International Code Council; *or* may complete an equivalent certification by an examination authority accepted by the State Fire Commission.
- 3.1.a.2. Plumbing Code Official - successful completion of the training and examination necessary to be certified as a residential plumbing inspector, or commercial plumbing inspector, or plumbing plans examiner by the International Code Council; *or* an equivalent certification by an examination authority accepted by the State Fire Commission.
- 3.1.a.3. Mechanical Code Official - successful completion of the training and examination necessary to be certified as a residential mechanical inspector, or commercial mechanical inspector, or mechanical plans examiner by the International Code Council; *or* an equivalent certification by an examination authority accepted by the State Fire Commission.
- 3.1.a.4. Electrical Code Official - successful completion of the training and examination necessary to be certified as a residential electrical inspector, or commercial electrical inspector, or electrical plans examiner by the International Code Council; *or* an equivalent certification by an examination authority accepted by the State Fire Commission.
- 3.1.a.5. Property Maintenance Code Official - successful completion of the training and examination necessary to be certified as a property maintenance and housing inspector by the International Code Council; *or* an equivalent certification by an examination authority accepted by the State Fire Commission.
- 3.1.a.6.i. *Provided*, a Property Maintenance Code Official certification shall only be permitted in a local jurisdiction which has adopted solely the International Property Maintenance Code (“IPMC”).
- 3.1.a.6.ii. *Provided*, any police officer(s), employed by a local jurisdiction, shall be permitted to enforce provisions of the property maintenance code pertaining to general property maintenance issues (high grass, rubbish and garbage, *etc.*) without certification. Such officer(s) shall not cite violations relating to any structure(s) intended for human occupancy.

3.1.b. Inspector – the State Fire Commission will issue certification for an Inspector in a specific category to an applicant who receives a passing grade in all of the examinations required for that category, or in the alternative, one who is licensed to practice in this State as an Architect or Professional Engineer. The following category of examinations will be approved:

- 3.1.b.1. Residential Building Inspector – B1 Residential Building Inspector.
- 3.1.b.2. Commercial Building Inspector – B2 Commercial Building Inspector.
- 3.1.b.3. Residential Electrical Inspector – E1 Residential Electrical Inspector and hold a valid WV Master Electrician’s License.
- 3.1.b.4. Commercial Electrical Inspector – E2 Commercial Electrical Inspector and hold a valid WV Master Electrician’s License.
- 3.1.b.5. Residential Mechanical Inspector – M1 Residential Mechanical Inspector.
- 3.1.b.6. Commercial Mechanical Inspector – M2 Commercial Mechanical Inspector.
- 3.1.b.7. Residential Plumbing Inspector – P1 Residential Plumbing Inspector.
- 3.1.b.8. Commercial Plumbing Inspector – P2 Commercial Plumbing Inspector.
- 3.1.b.9. Property Maintenance and Housing Inspector – 64 Property Maintenance and Housing Inspector.
- 3.1.b.10. Other Inspector Certifications – 21 Accessibility Inspector; C1 Floodplain Inspector; 47 Reinforced Concrete Inspector; 92 Prestressed Concrete Inspector; 84 Structural Masonry Inspector; 86 Spray-applied Fireproofing Inspector; S1 Structural Steel and Bolting Inspector; S2 Welding Inspector; EC Soils Inspector; DR Disaster Response Inspector; and 77 Commercial Energy Inspector.

3.1.c. Plans Examiner – the State Fire Commission will issue certification for a Plans Examiner in a specific category to an applicant who receives a passing grade in all of the examinations required for that category, or in the alternative, one who is licensed to practice in this State as an Architect or Professional Engineer. The following category of examinations will be approved:

- 3.1.c.1. Building Plans Examiner – B3 Building Plans Examiner.

3.1.c.2. Residential Building Plans Examiner – R3 Residential Building Plans Examiner.

3.1.c.3. Electrical Plans Examiner – E3 Electrical Plans Examiner and hold a valid WV Master Electrician’s License.

3.1.c.4. Mechanical Plans Examiner – M3 Mechanical Plans Examiner.

3.1.c.5. Plumbing Plans Examiner – P3 Plumbing Plans Examiner.

3.2. Any person holding valid certification as a building code official, building code inspector, or building code plans reviewer under the provisions of W.Va. Code R. 87-7-1 *et seq.*, effective July 1, 2016, whose administrative activities are limited thereunder to fewer than all five categories listed in subdivisions 3.1.a.1-5, may acquire certification and licensing for the remaining category or categories by demonstration of the qualifications established in subsection 3.1. of this section.

3.3. Application for certification(s) 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 \$75.00.

3.4.a. Applicants seeking certification(s) by the State Fire Commission shall be subject to the required fee of \$75.00 for each class of certifications (*i.e.* \$75.00 for one or all qualifying Code Official certification(s); \$75.00 for one or all qualifying Inspector certifications; and/or \$75.00 for one or all qualifying Plans Examiner certification(s).)

§87-7-4 Continuing Education Requirements

4.1. In order to maintain certification and qualify for renewal of the license, each code official, inspector, or plans examiner, or any person certified and licensed as any combination thereof, shall complete a minimum of 0.5 continuing education units in courses approved by the State Fire Commission during each year for a total of 1.5 units acquired prior to the renewal date.

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

4.2.a. The following instruction providers are deemed presumptively approved by the State Fire Commission: the ICC; the National Conference of States on Building Codes and Standards; a Federal, Commonwealth or State agency as it relates to building codes; an accredited academic institution as it relates to building codes; a model code organization or its accredited local chapter (WVCOA); a trade association representing design professionals or the construction industry; a national standards writing organization; and/or an association serving or representing state municipalities as it relates to building codes.

§87-7-5 Renewal of Certification and License

5.1. Every person certified and licensed under this rule shall renew his or her certification(s) 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 licensed under this rule. Not less than 60 days prior to the expiration of a certification, the State Fire Marshal shall notify the person by mail 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 \$75.00.

5.3.a. Applicants seeking renewal of certification(s) by the State Fire Commission shall be subject to the required fee of \$75.00 for each class of certifications (*i.e.* \$75.00 for one or all qualifying Code Official certification(s); \$75.00 for one or all qualifying Inspector certifications; and/or \$75.00 for one or all qualifying Plans Examiner certification(s).)

§87-7-6 Probationary Employment of Uncertified Code Officials, Inspectors and Plans Examiners

6.1. An uncertified person shall be granted a probationary status for a period not to exceed two (2) years, during which the certification requirements of subsection 3.2. shall be satisfied. Upon proof of qualification for certification as required by subsection 3.2, the individual shall be certified in the respective categories listed in Section 3 of this Rule.

6.2. During the period of probationary status, the individual must submit to the State Fire Commission a report of the person's status in completing testing in the ICC disciplines. This report must be made within ninety (90) days of the grant of probationary status and every ninety (90) days thereafter through the period of probation. Failure to comply with this condition may result in the revocation of the probationary status.

6.3. Not less than ninety (90) days prior to the expiration of the probationary period granted, an individual may request an extension of the probationary period. The State Fire Commission may, upon good cause shown, extend the period of probationary status for not more than six (6) months during which the individual must present monthly reports of their status in obtaining proper certification. Failure to comply with this condition may result in revocation of the probationary status.

6.4. In the event a probationary status or request for extension of probationary status is denied by the State Fire Marshal, the individual 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 decision.

§87-7-7 Denial, Suspension, or Revocation of Certifications; Other Fees

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

7.1.a. failure to provide sufficient or complete documentation;

7.1.b. providing false documentation;

7.1.c. making any misrepresentation in the process of application for certification or renewal of certification;

7.1.d. failure to comply with the continuing education requirements;

7.1.e. failure to submit full payment of certification fees or renewal of certification fees;
or

7.1.f. failure to submit an application within the time periods provided by this rule.

7.1.g. upon satisfactory proof that a certification holder or applicant has been convicted of a felony.

7.1.h. willfully departed from accepted standards of conduct in violation of the rules of the State Fire Commission or State Fire Marshal; or

7.1.i. willfully violated any federal, state or local law, rule or regulation, while acting in his or her official capacity as a Code Official, Inspector or Plans Examiner.

7.2. The State Fire Commission may assess a late payment fee for any application submitted after the filing deadline according to the following schedule: \$50 for an application submitted less than fifteen (15) days after the filing deadline, \$100.00 for an application submitted fifteen (15) to thirty (30) days after the deadline, and \$200 for an application submitted more than thirty (30) days after the filing deadline.

7.3 If a person fails to renew his or her certification within sixty (60) days of the date of expiration, that person is not entitled to a renewal and shall reapply as a new applicant for certification.

§87-7-8. Local Code Enforcement Departments; Annual Reports

8.1 Any municipality, county or local governmental entity, adopting and enforcing the State Building Code shall have a designated Code Enforcement Department.

8.1.a. A Code Enforcement Department must employ a certified Code Official as the administrator of the organization. The Code Official may supervise one or more Deputy Code Officials, and other administrative and technical staff employed by the Code Enforcement Department.

8.2. A person may not be employed or serve as a code official, code plans examiner or inspector unless that person is certified in his or her respective category by the State Fire Commission.

8.2.a. Any certified law enforcement officer(s) employed by a local jurisdiction may be permitted to enforce provisions of the property maintenance code pertaining to general property maintenance issues (high grass, rubbish and garbage, *etc.*) without certification. However, such officer(s) may not cite violations relating to any structure(s) intended for human occupancy.

8.3. The Code Official shall submit an annual report to the State Fire Commission indicating the number of employees in their respective code enforcement 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.

8.4. This annual report shall be filed with the State Fire Commission no later than the thirtieth day of June of each year.

8.5. Conflict of Interest. No employee or person who contracts for services within the jurisdictional area of a Code Enforcement Department shall perform services for any department which would require that person or employee to exercise authority or make an evaluation of any work furnished by him or by a private contractor that employs him or with which he has a financial interest. Further, such employee or person shall not engage in conduct that is prohibited or considered a conflict of interest pursuant to the respective ICC code.

8.5. The State Fire Commission may deny, suspend, or revoke, any certification or application for certification for any violation of this section.

§87-7-9. Complaints; Determination of Probable Cause.

9.1. The State Fire Marshal, or his or her designee, shall be empowered with the authority of investigating and administratively handling any complaint filed alleging a violation of sections 7 and/or 8 of this rule.

9.2. Any person, firm, corporation, member of the State Fire Commission, State Fire Marshal, or public officer, upon observing an infraction of the requirements of Section 7 or 8 of this rule 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.

9.3. To the extent possible, the complaint should describe the alleged violation which prompted the complaint, including any of the following information:

9.3.1. The name and address of the certified individual or applicant against whom the complaint is lodged;

9.3.2. The date of the alleged unlawful act;

9.3.3. The nature of the alleged unlawful act; and

9.3.4. The location of the alleged unlawful act.

9.4. The State Fire Marshal shall maintain a separate file for each complaint received, and each file shall have a number assigned to it. The individual that is the subject of the Complaint shall be deemed and hereinafter referred to as the "Respondent".

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

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

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

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

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

9.7. If the State Fire Marshal acknowledges the complaint under subsection 9.6.1, or 9.6.3, the State Fire Marshal shall send a copy of the complaint, including any supporting documentation, by certified mail to the Respondent for his or her written comment. If the acknowledgement falls under 9.8.2, the State Fire Marshal may, in his/her discretion, notify the Respondent with a copy of the complaint and inform the Respondent that the complaint is being dismissed for lack of jurisdiction and no further action is necessary by the Respondent.

9.8. If the matter is being further reviewed or investigated pursuant to subsection 9.6.1, or 9.6.3, the State Fire Marshal shall afford the Respondent an opportunity to 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.

9.8.1. 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.

9.9. After acknowledgement of a complaint under subdivision 9.6.1 or 9.6.3, 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. At his or her discretion, the State Fire Marshal may assign a designee to inquire or investigate the complaint.

9.9.1. If a complaint is assigned to a designee, the designee shall timely review and investigate the complaint. Upon completion of the inquiry/investigation, the designee shall provide the State Fire Marshal with a written 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.

9.9.2. During the course of the inquiry/investigation, the designee shall provide an update to the State Fire Marshall at least every sixty days (60) about the status and anticipated duration of the investigation. The State Fire Marshal may direct or cease certain activities of the designee in order to facilitate a timely resolution of the inquiry/investigation.

9.10. The State Fire Marshal, or designee, may issue subpoenas and subpoenas *duces tecum* to complete the State Fire Marshal's investigation and to determine the truth or validity of complaints.

9.11. As part of any inquiry or investigation, the Respondent shall be afforded an opportunity to have an investigative interview which, at the discretion of the State Fire Marshal (or designee), may be recorded and transcribed by a court reporter. A copy of such recording or transcription shall be placed in the investigation file.

9.12. Notwithstanding subdivision 9.11, to facilitate the disposition of a complaint, the State Fire Marshal, or 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.

9.13. Upon completion of the inquiry/investigation by the State Fire Marshal (or designee), the State Fire Marshal shall make a recommendation to the State Fire Commission as to the disposition of the complaint. The State Fire Marshal, or designee, shall make his or her respective written findings and recommendations known 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.

9.13.1. 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 certified individual or applicant may be sanctioned by the State Fire Commission: *Provided*, that the State Fire Marshal or designee shall make their respective findings and recommendations to the State Fire Commission in writing prior to the State Fire Commission dismissing the complaint.

9.13.2. 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.

9.14. If the State Fire Commission finds probable cause that a violation may have occurred, a Formal Complaint setting forth a statement of violations, along with a Notice of Hearing, shall be issued by the State Fire Commission. The administrative procedures governing the Complaint and Hearing are more fully set forth in Series 9 of Title 87 (W.Va. C.S.R. § 87-9-1 *et seq.*)

§87-7-10. Appeal of denial of certification; hearings; evidence.

10.1. Any person who desires to appeal a decision or Order 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.

§87-7-11. Orders.

11.1. 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.

11.2. The findings of fact and conclusions of law must be approved by a majority of the State 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 State 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.

11.3. State Fire Commission'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.

§87-7-12. Appeal.

12.1. 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.*