



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Fire Marshal

TITLE-SERIES: 103-03

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Supervision of Fire Protection Work

CITE STATUTORY AUTHORITY: W. Va. Code 29-3D-4

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/28/2022 11:59 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This legislative rule governs certification, fees, examinations, training, powers and duties of the West Virginia State Fire Marshal and penalties for violations in accordance with W. Va. Code 29-3D, et seq.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This updated rule adds a sunset provision to the rule. This rule updates the definition for "journeyman sprinkler fitter". This updated rule removes the "Sprinkler Fitter In Training" requirements. This rule changes the qualifications to obtain licensure. This rule makes changes to the effect of non-compliance with provisions of the rule. The rule changes the authority of the State Fire Marshal to deny an application for certification, place a certification upon probation, limit or restrict a certification, suspend a certification or revoke any certification based upon specific authority given in statute. This updated rule makes changes to the appeals and hearing processes.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Brandolyn N Felton-Ernest -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 103
LEGISLATIVE RULE
STATE FIRE MARSHAL

SERIES 3
SUPERVISION OF FIRE PROTECTION WORK

§103-3-1. General.

1.1. Scope. -- This legislative rule governs certification, fees, examinations, training, powers and duties of the West Virginia State Fire Marshal and penalties for violations in accordance with W. Va. Code § 29-3D et seq.

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

1.3. Filing Date. -- ~~April 9, 2015.~~

1.4. Effective Date. -- ~~July 1, 2015.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2028.

§103-3-2. Application and Enforcement.

2.1. Application. This legislative rule applies to the West Virginia State Fire Marshal and all persons, materials and transactions governed or otherwise defined under coverage of the Supervision of Fire Protection Work, W. Va. Code §29-3D et seq.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia State Fire Marshal.

2.3. Interagency Agreements. The West Virginia State Fire Marshal may enter into an interagency agreement with the Commissioner of Labor for the mutual purpose of enforcing the provisions of this rule.

§103-3-3. Definitions.

3.1. "Agent Suppression System" shall mean systems discharging chemicals or gases, and as further defined in this rule by type of system.

3.2. "Certified Person" shall mean a person that has been certified by an organization recognized by the state fire marshal through a formal certification program or by an equipment manufacturer that has a certification program accepted by the state fire marshal.

3.3. "Combination Fire/Smoke Damper" shall mean a device that meets both fire damper and smoke damper definitions.

3.4. "Damper" shall mean a fire damper, smoke damper, or combination fire/smoke damper.

3.5. "Damper Work" means to install, test, maintain, or repair a damper.

3.6. "Engineered Systems" shall mean those agent suppression systems requiring individual calculation and design to determine the flow rates, nozzle pressures, pipe size, area or volume protected by each nozzle, quantities of agent, number and type of nozzles, and their placement in a specific system.

3.7. "Engineered Suppression Systems Installer" means a person certified by the respective manufacturer to install, alter, extend, maintain, layout or repair an engineered suppression system. This shall not include the fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

3.8. "Engineered Suppression Systems Technician" means a person certified by a manufacturer to maintain or repair an engineered suppression system. This shall not include the fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

3.9. "Fire Damper" means a device installed in an air distribution system, designed to close automatically upon detection of heat, to interrupt migratory airflow, and to restrict the passage of flame. Fire dampers are classified for use in either static systems or for dynamic systems, where dampers are rated for closure under airflow.

3.10. "Fire Protection Damper Technician" means a person certified to install, test, maintain, or repair a damper.

3.11. "Fire Protection Damper Technician In-Training" means a person with interest in and an aptitude for performing installation, maintenance, or repair work to a damper as defined by this rule, but who alone is not capable or authorized to perform damper work unless directly supervised by a Fire Protection Damper Technician.

3.12. "Fire Protection Technician" means the following technicians required to be licensed under the provisions of this rule: portable fire extinguisher technician, pre-engineered suppression systems technician, and sprinkler-based fire protection layout technician.

3.13. "Fire Protection Worker" means a person engaged in the installation, alteration, extension, maintenance, or testing of all piping, materials and equipment inside a building, including the use of shop drawings prepared by a fire protection layout technician, in connection with the discharge of water, other special fluids, chemicals, or gases, and backflow preventers for fire protection for the express purpose of extinguishing or controlling fire. Fire protection worker includes fire protection damper technician, fire protection damper technician in training, journeyman sprinkler fitter, sprinkler fitter in training, portable fire extinguisher technician, pre-engineered suppression systems installer, pre-engineered suppression systems technician, and sprinkler-based fire protection layout technician.

3.14. "Fire Protection System" means any fire protection suppression device or system designed, installed and maintained in accordance with the applicable National Fire Protection Association (NFPA) codes and standards, but does not include public or private mobile fire vehicles.

3.15. "Fire Protection Work" shall mean the installation, alteration, extension, maintenance, or testing of all piping, materials and equipment inside a building, including the use of shop drawings prepared by a fire protection layout technician, in connection with the discharge of water, other specialty fluids, chemicals, or gases, and backflow preventers for fire protection for the express purpose of extinguishing or controlling fire.

3.16. ~~"Journeyman Sprinkler Fitter" means a person qualified by at least ten thousand (10,000) hours of work experience installing, adjusting, repairing sprinkler based fire protection systems, and piping for engineered systems; and who is competent to instruct and supervise the fire protection work of a sprinkler fitter in training.~~ "Journeyman sprinkler fitter" means a person qualified by at least 2,000 hours of work experience installing, adjusting, repairing, and dismantling fire protection systems and who is competent to instruct and supervise fire protection work: *Provided, That current license renewal exemptions to examinations apply.*

3.17. "Layout" shall mean the preparation of shop drawings used in the installation of fire protection systems in either commercial or residential occupancies implementing engineering contract documents using applicable codes and standards.

3.18. "NFPA" means "National Fire Protection Association", 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. The standards and requirements as set out and as published by the NFPA as listed in this rule, have the same force and effect as if set out verbatim in this rule.

3.19. "NICET" means the National Institute for Certification in Engineering Technologies. The standards and requirements as set out and as published by the NICET as listed in the rule, have the same force and effect as if set out verbatim in this rule.

3.20. "Portable Fire Extinguisher Technician" means a person certified in accordance with NFPA 10 to install, maintain, repair and certify portable fire extinguishers as defined by NFPA 10.

3.21. "Pre-Engineered Suppression Systems Installer" means a person certified by the respective manufacturer to install, alter, extend, maintain, layout, or repair a pre-engineered suppression system. This shall not include the fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

3.22. "Pre-Engineered Suppression Systems Technician" means a person certified to maintain or repair an pre-engineered suppression system. This shall not include the fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

3.23. "Pre-Engineered Systems" shall mean those agent suppression systems having predetermined flow rates, nozzle pressures, and quantities of extinguishing agent. These systems have the specific pipe

size, maximum and minimum pipe lengths, flexible hose specifications, number of fittings, and number and types of nozzles prescribed by a testing laboratory. The maximum and minimum pipe lengths and the number of fittings shall be permitted to be expressed in equivalent feet of pipe. The hazards protected by these systems are specifically limited as to type and size by a testing laboratory, based on actual fire tests. Limitations on hazards that are permitted to be protected by these systems and piping and nozzle configurations are contained in the manufacturer's listed installation and maintenance manual, which is part of the listing of the system.

3.24. "Sprinkler-Based Fire Protection Layout Technician" is an individual who has achieved National Institute for Certification in Engineering Technologies (NICET) Level III or higher certification, and who has the knowledge, experience, and skills necessary to layout fire protection systems based on engineering design documents.

~~3.25. "Sprinkler fitter in training" means a person with interest in and an aptitude for performing fire protection work, but who alone is not capable of performing such work, and who has fewer than ten thousand (10,000) hours of experience installing, adjusting, repairing sprinkler based fire protection systems and piping for engineered systems.~~

~~3.26.~~ 3.25. "Sprinkler Systems" shall mean for fire protection purposes, an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards, discharging water or a combination of water and chemicals, and for the purposes of this rule as further defined in NFPA 13.

~~3.27.~~ 3.26. "State Fire Marshal" shall mean the West Virginia State Fire Marshal.

~~3.28.~~ 3.27. "Supervision" shall mean for the purposes of this rule, the availability of a higher classification to be located on the work-site. All work required to be supervised shall be inspected upon the completion of the fire protection work performed.

~~3.29.~~ 3.28. "Single Family Dwelling" means a building which is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

§103-3-4. Adoption of Standards.

4.1. National standards. For the enforcement of this rule the NICET and NFPA codes and standards as cited in this rule are hereby incorporated by reference and shall have the same force and effect as if set out in verbatim in this rule.

4.2. State standards. W. Va. Rule 87CSR1 et seq. "State Fire Code".

§103-3-5. ~~Certification~~ License Required; Exemptions.

5.1. A person may not perform fire protection work in this state without a license issued under this rule.

5.2. Effective January 1, 2016, a person performing or offering to perform damper work in this state shall have a license issued by the State Fire Marshal, in accordance with this rule.

5.2.a. Provided, that a person may not be licensed to perform damper work in this state without first being licensed as a HVAC technician pursuant to the provisions of article sixteen, chapter twenty-one of the Code of West Virginia.

5.3. These licensure requirements do not apply to:

5.3.a. A person who personally performs fire protection work or damper work on a single family dwelling owned or leased, and occupied by that person;

5.3.b. A person who performs fire protection work or damper work at any manufacturing plant or other industrial establishment as an employee of the person, firm, or corporation operating the plant or establishment;

5.3.c. A person who, while employed by a public utility or its affiliate, performs fire protection work in connection with the furnishing of public utility service;

5.3.d. A person who performs fire protection work while engaging in the business of installing, altering, or repairing water distribution or drainage lines outside the foundation walls of a building, public, or private sewage treatment, or water treatment systems including all associated structures or buildings, sewers, or underground utility services;

5.3.e. A person who performs fire protection work while engaged in the installation, extension, dismantling, adjustment, repair, servicing, or alteration of a heating, ventilation and air condition (HVAC) system, air-veyor system air exhaust system, or air handling system; or

5.3.f. A person who performs fire protection work at a coal mine that is being actively mined or where coal is being processed.

5.4. A person shall not present, call, or represent him or herself as able to perform fire protection work unless licensed in accordance with the provisions of this rule.

5.5. Sprinkler based fire protection systems installation shop drawings shall be prepared by, or under the supervision of, a licensed sprinkler based fire protection layout technician and shall bear the name, signature, assigned license number and NICET certification number of the responsible fire protection layout technician.

§103-3-6. Minimum Qualifications for Licensure.

6.1. The State Fire Marshal shall certify any applicant for a license who:

6.1.a. Is at least eighteen years of age;

6.1.b. Submits an application on forms provided by the State Fire Marshal;

6.1.c. Submits ~~a copy of the required written examination scores reflecting a score of seventy percent (70%) or more; or submits~~ copies of current certificates of competency pertaining to their respective license(s); and

6.1.d. Pays the application fee(s).

~~6.2. On or before July 1, 2016, the State Fire Marshal may certify an applicant for a Fire Protection Damper Technician or Fire Protection Damper Technician In Training license without written examination if the applicant:~~

~~6.2.a. Is at least eighteen years of age;~~

~~6.2.b. Submits an application on forms provided by the State Fire Marshal;~~

~~6.2.c. Provides acceptable documentation or a sworn affidavit which demonstrates he or she meets the minimum experience requirements for the fire protection damper technician or fire protection damper technician in training classifications requested; and~~

~~6.2.d. Pays the application fee.~~

~~6.3.~~ 6.2. A license issued under this rule is valid throughout the state, is not assignable or transferable, and is valid for a period not to exceed three (3) years from the date on which it was issued.

§103-3-7. Certifications, Examinations Required.

7.1. All persons desiring a sprinkler based fire protection layout technician license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal and include documentation that the individual has achieved NICET Level III or higher certification in the appropriate classification.

7.2. All persons desiring an engineered suppression systems installer license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal along with all copies of all pertinent certifications from specific manufacturers authorizing the applicant to install, alter, extend, maintain, or repair their systems. Applicants must also demonstrate a minimum of two-thousand (2,000) hours of consecutive work experience.

7.3. All persons desiring an engineered suppression systems technician license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal authorizing the applicant to maintain or repair engineered suppression systems. Applicants

must demonstrate a minimum of five hundred (500) hours of consecutive work experience or certification approved by the state fire marshal.

7.4. All persons desiring a pre-engineered suppression systems installer license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal along with all copies of all pertinent certifications from specific manufacturers authorizing the applicant to install, alter, extend, maintain, or repair their systems.

7.5. All persons desiring a pre-engineered suppression systems technician license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal authorizing the applicant to maintain or repair pre-engineered suppression systems.

7.6. All persons desiring a portable fire extinguisher technician license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal, along with all copies of all pertinent certifications demonstrating certification in accordance with NFPA 10 which authorizes the applicant to install, maintain or certify portable fire extinguishers complying with NFPA 10.

~~7.7. All persons desiring a fire protection damper technician license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal along with all copies of all relevant licensure(s) as a HVAC technician pursuant to the provisions of article sixteen, chapter twenty one of the Code of West Virginia, and shall pass a test developed by the state fire marshal on HVAC Fire Safety.~~

~~7.7.a. The State Fire Marshal shall not require a fire protection damper technician in training to produce documentation of hours previously worked, but shall require the fire protection damper technician in training to produce documentation that he or she is enrolled in a training program. All businesses employing fire protection damper technicians in training shall produce, upon request from the State Fire Marshal, an official listing of all fire protection damper technicians in training currently employed. Fire protection damper technicians in training shall be supervised by a licensed fire protection damper technician. A licensed fire protection damper technician shall not supervise more than one (1) fire protection damper technicians in training at any one time.~~

~~7.8.~~ 7.7. All persons desiring a sprinkler fitter license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal and include documentation they have at least ~~ten thousand (10,000)~~ two thousand (2000) hours of work experience installing, adjusting and repairing sprinkler based fire protection systems ~~and show he or she has passed a written examination. The contents of the examination shall be based on the standards adopted under section four of this rule.~~

~~7.9. The State Fire Marshal shall provide for the written examination of all sprinkler fitter license applicants.~~

~~7.9.a. The State Fire Marshal may:~~

~~7.9.a.1. Contract with a private testing agent to conduct the written examination. The private testing agent shall charge an examination fee, in an amount approved by the State Fire Marshal, not to exceed two hundred fifty dollars. The applicant shall pay all examination fees directly to the testing agent; or~~

~~7.9.a.2. Develop a written examination process to include a fees schedule not to exceed the actual cost of administering the examinations. The license applicant shall pay all fees directly to the State Fire Marshal in advance of the examination.~~

~~7.9.b. The minimum passing score is a score of seventy (70%) percent for each examination.~~

~~7.9.c. An applicant who fails the examination may request, and the private testing agent or the State Fire Marshal shall provide the applicant with an analysis of his or her performance on the failed examination. An applicant who fails the examination shall be afforded the opportunity to be re-examined after thirty (30) days and upon the submission of a new application and the payment of the fees required.~~

~~7.10. The state fire marshal shall not require a sprinkler fitter in training to produce documentation of hours previously worked, but shall require the sprinkler fitter in training to produce documentation that he or she is enrolled in a training program. All businesses employing sprinkler fitters in training shall produce, upon request from the State Fire Marshal, an official listing of all sprinkler fitters in training currently employed. Sprinkler fitters in training shall be supervised by a licensed journeyman sprinkler fitter. A journeyman sprinkler fitter shall not supervise more than two (2) sprinkler fitters in training at any one time.~~

7.8. Occupational license reciprocity, other authorization to practice.

7.8.a. Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application, if all the following apply:

7.8.a.1. The person holds a valid occupational license or other authorization to practice in another state in a lawful occupation with a similar scope of practice and with education, experience, and examination requirements for licensure or authorization to practice similar to those of this state, as determined by the board in this state;

7.8.a.2. The person has held the occupational license or other authorization to practice in the state where he or she holds a valid license or other authorization to practice for at least one year;

7.8.a.3. The person has met all educational and examination requirements for occupational licensure or other authorization to practice in the state where he or she holds a valid license;

7.8.a.4. The person is in good standing with the board in every other state where he or she holds a valid license;

7.8.a.5. The person has established residency as a West Virginia resident as

defined by §11-21-7(a) of this code;

7.8.a.6. The person does not have a disqualifying criminal record as determined by the board in this state;

7.8.a.7. The person has never had his or her license or other authorization to practice revoked by the board in another state because of negligence or intentional misconduct related to the person's work in the occupation;

7.8.a.8. The person did not surrender an occupational license or other authorization to practice because of negligence or intentional misconduct related to the person's work in the occupation in another state;

7.8.a.9. The person does not have a complaint, allegation, or investigation pending before a board in another state. If the person has a complaint, allegation, or investigation pending, the board in this state shall not issue or deny an occupational license or other authorization to practice to the person until the complaint, allegation, or investigation is resolved; and

7.8.a.10. The person pays all applicable fees and meets all applicable bonding requirements in this state.

7.8.a.11. If West Virginia requires an occupational license to lawfully work in a profession, and another state does not issue an occupational license for the same profession and instead issues another authorization to practice, West Virginia shall issue an occupational license to the person if the person otherwise satisfies subsection (a) of this section.

7.8.a.12. Any person issued a license under this article must comply with all relevant continuing education requirements to renew a license established by the board and any other rule promulgated by the board as required in §29-33-8 of this code.

7.9. Notwithstanding any other law, the board shall issue an occupational license or other authorization to practice to a person upon application based on work experience in another state, if all the following apply:

7.9.a.1. The person worked in a state that does not use an occupational license or other authorization to practice that regulates a lawful occupation, but this state uses an occupational license or other authorization to practice that regulates a lawful occupation with a similar scope of practice, as determined by the board;

7.9.a.2. The person worked for at least two years in the lawful occupation and has acquired experience demonstrating knowledge and proficiency in the occupation similar to that which may be achieved through compliance with the education and examination requirements to practice of this state, as determined by the board;

7.9.a.3. The person has taken and passed any required national examinations to lawfully practice the occupation or use a title in connection with an occupation in another state; and

7.9.a.4. The person satisfies §29-33-3(a)(5), §29-33-3(a)(6), and §29-33-3(a)(10) of this code.

7.10 State law examination.

7.10.a. A board may require a person to pass a jurisprudential examination specific to relevant West Virginia laws that regulate the occupation if an occupational license or other authorization to practice in this state requires a person to pass such examination for original licensure.

7.10.b. "Board" means a government agency, board, department, or other government entity that regulates a lawful occupation and issues an occupational license or other authorization to practice to an individual.

§103-3-8. Expiration and Renewal.

8.1. Expiration -- All fire protection licenses issued by the State Fire Marshal expire on the last day of the anniversary month from the month of issuance of the license. The expiration date will coincide with the duration of the license period; provided for the purpose of efficient management of licensure, for a fire protection damper technician or fire protection damper technician in training license granted prior to July 1, 2016, the State Fire Marshal may extend the duration of licensure at no cost to the licensee for up to twelve (12) months beyond the term of the license.

8.2. Upon receipt of a renewal application on a form provided by the State Fire Marshal and payment of a renewal fee, the State Fire Marshal shall renew the license for a period not to exceed three (3) years. It is the individual license holder's responsibility to submit his or her license renewal to the State Fire Marshal prior to the expiration date.

8.3. Renewal after expiration -- A license holder who has not renewed his or her license in accordance with the provisions of this rule shall submit a new application to the State Fire Marshal following the requirements of section 6 of this rule.

8.4. The State Fire Marshal may mail license renewal notifications in a timely manner, to each license holder.

§103-3-9. Denial, Suspension, Revocation, or Reinstatement of License.

9.1. The State Fire Marshal may deny, suspend, revoke, or reinstate a license.

~~9.2. A violation of W. Va. Code §29-3D-1 et seq. or this rule is grounds for the denial, suspension, revocation, or refusal to reinstate a license and permits the State Fire Marshal to impose disciplinary action. Provided, that no disciplinary action against a licensee may be imposed without a proper prior notice as served under W. Va. Code §56-2-1, and an opportunity for a hearing held before the State Fire Marshal or his or her designee under the provisions of W. Va. Code §29A-5-1, et seq, the Administrative Procedures Act. At the hearing, the licensee shall be provided the opportunity to present evidence in person, by counsel or both. After the hearing, if the State Fire Marshal finds a violation of this rule has occurred, the State Fire Marshal may impose any disciplinary action permitted in this rule.~~

~~9.3. The State Fire Marshal may suspend or revoke the license of a licensee who performs fire~~

~~protection work in violation of W.Va. Code §29-3D-1 et seq. or this rule. The State Fire Marshal may reinstate the license upon satisfactory proof that the licensee is in full compliance with W.Va. Code §29-3D-1 et seq. and this rule.~~

9.2. The State Fire Marshal may deny a license to any applicant who fails to comply with the rules established by the State Fire Marshal, or who lacks the necessary qualifications. When considering whether an applicant possesses the qualifications for a license, the State Fire Marshal shall consider whether an applicant's prior criminal convictions bear a rational nexus on the license being sought.

9.2.a. The State Fire Marshal may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the State Fire Marshal shall consider at a minimum:

9.2.b. The nature and seriousness of the crime for which the individual was convicted;

9.2.c. The passage of time since the commission of the crime;

9.2.d. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

9.2.e. Any evidence of rehabilitation or treatment undertaken by the individual.

9.2.f. Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, the State Fire Marshal shall permit the applicant to apply for initial licensure if:

9.2.g. A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

9.2.h. The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

9.2.i. The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the State Fire Marshal.

9.2.j. An individual with a criminal record who has not previously applied for licensure may petition the State Fire Marshal at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual's criminal record to enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.

9.3 The State Fire Marshal may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend or revoke a licensee's license if:

9.3.a. The license was granted upon an application or documents supporting the application which materially misstated the terms of the applicant's qualifications or experience;

9.3.b. The licensee subscribed or vouched for a material misstatement in his or her application for licensure; or

9.3.c. The licensee incompetently or unsafely performs fire protection work or damper work

9.4. Each licensed fire protection worker shall carry proof of valid licensure on his or her person during the performance of fire protection work.

9.5. A person whose license has been revoked may apply for a new license one year after the date of the revocation.

§103-3-10. Effect of Noncompliance; Failure to Obtain Certification; Penalty.

10.1. Each day during which a person performs fire protection work without the required certification or while in noncompliance with any of the provisions of W.Va. Code §29-3D-1 et seq. or this rule, after official notice that the work is unlawful, is a separate violation of this rule. On and after January 1, 2009, a person performing or offering to perform fire protection work without a license issued by the State Fire Marshal, is subject to a citation.

10.1.a. Any person continuing to engage in fire protection work after the issuance of a citation is subject to the following penalties:

(1) For the first offense, a fine of not less than \$200 nor more than \$1,000;

(2) For the second offense, a fine of not less than \$500 nor more than \$2,000; and

(3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than \$5,000.

10.1.b. Each day after a citation is given that a person continues to perform, or an employer continues to authorize a person to perform, fire protection work, which is not exempt by the provisions of §29-3D-3 of this code, is a separate offense and punishable accordingly.

10.1.c. The State Fire Marshal may institute proceedings in the circuit court of Kanawha County or the county where the alleged violation of the provisions of this article occurred or are now occurring to enjoin any violation of any provision of this article.

10.1.2. A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire Marshal.

10.1.3. The State Fire Marshal shall be represented in all such proceedings by the Attorney General or his or her assistants.

10.1.4 Any person adversely affected by an action of the State Fire Marshal may appeal the action pursuant to the provisions of chapter §15A-10 of this code.

§103-3-11. Disposition of Complaints.

11.1. Enforcement of Certification Requirements -- In the course of investigating complaints as authorized under W.Va. Code §29-3D-1 *et seq.*, the State Fire Marshal shall determine whether or not the person against whom the complaint has been filed is certified under W.Va. Code §29-3D-1 *et seq.*

11.2. 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 §29-3D-1 *et seq.* or 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. 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 shall contain as a minimum the following information:

11.2.a. The name and address of the certified person or applicant against whom the complaint is lodged;

11.2.b. The date of the alleged unlawful act;

11.2.c. The nature of the alleged unlawful act; and

11.2.d. The location of the alleged unlawful act or occurrence.

11.3. 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.

11.4. 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.

§103-3-12. Orders and Decisions of the State Fire Marshal; Appeals and Procedures for Appeals from such Orders or Decisions.

~~12.1. All persons governed by this rule are subject to the provisions of Section 13 of the Fire Commission's rule, Fire Code, 87CSR1, as it relates to the State Fire Marshal's orders and decisions and the procedures for appealing those orders and decisions.~~

12.1. The State Fire Marshal shall deny, limit, suspend, or revoke a license issued if the provisions of this article, or if the rules promulgated pursuant to this article or §15A-11-1 *et seq.* of this code are violated.

12.1.a. Before any such license is denied, limited, suspended, or revoked, however, written notice shall be given to the licensee stating the grounds for such denial, limitation, suspension, or revocation.

12.1.b. An applicant or licensee has 10 working days after receipt of the order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation of a license under this article. If a formal hearing is requested, the applicant or licensee and the secretary shall proceed in accordance with the provisions of §29A-5-1 *et seq.* of this code.

12.1.c. If the license is denied, limited, suspended, or revoked, the license or certification holder shall cease and desist practices of their profession as of the effective date of the denial, limitation, suspension, or revocation. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

12.1.d. A party aggrieved by a decision by the State Fire Marshal may appeal such final decision to the Office of Administrative Hearings, pursuant to §15A-9-1 *et seq.* of this code or may choose independent informal dispute resolution as set forth in this article.

12.2. Independent informal dispute resolution.

12.2.a. A license or certification holder adversely affected by an order or citation of a deficient practice issued pursuant to this article may request the independent informal dispute resolution process. A license or certificate holder may contest a cited deficiency as contrary to law or unwarranted by the facts or both.

12.2.b. The State Fire Marshal has the authority to establish conference panels composed of three persons of the licensed or certified skill to decide the outcome of the independent informal dispute resolution process. One member shall be selected by the State Fire Marshal, one member shall be selected by the licensee or certificate holder, and one member shall be selected by agreement of both. If a vacancy occurs on the panel, the replacement for that member shall be made by the original individual who had selected such member. The members of the panel shall serve without compensation. This panel shall hear the matter and render a decision. The licensee or certificate holder may not be accompanied by counsel during the independent informal dispute resolution conference.

12.2.c. Upon appeal of a decision rendered by the State Fire Marshal, the panel shall hold an informal conference affirming, modifying, or vacating an order of the State Fire Marshal, or issuing an order in the name of the State Fire Marshal. The panel shall forthwith notify the parties of its decision and as soon as practicable send written notices of its decision to the parties. The decision of the panel is final. The independent informal dispute resolution process is not a formal evidentiary proceeding.

12.2.d. A party aggrieved by a decision of a panel may appeal pursuant to §29A-5-1 *et seq.* of this code.

12.2.e. The State Fire Marshal shall promulgate a procedural rule to carry out the provisions of this section.

§103-3-13. Fire Protection License Fund; Fees; Disposition of Funds.

13.1. The State Fire Marshal shall deposit all fees paid in a special revenue account with the State Treasurer pursuant to W. Va. Code §29-3D-9 for the use of the State Fire Marshal as provided under W. Va. Code §29-3-12(b)(c).

13.2. The license fee for a sprinkler based fire protection layout technician and journeyman sprinkler fitter is one hundred dollars (\$100) for one year or one-hundred and seventy-five dollars (\$175) for three years, ~~and for a sprinkler fitter in training fifty dollars (\$50) for one year or one hundred and twenty-five dollars (\$125) for three years.~~

13.3. The license fee for a pre-engineered suppression systems installer shall be fifty dollars (\$50) for one year or one hundred (\$100) for three years.

13.4. The license fee for a pre-engineered suppression systems technician shall be twenty-five dollars (\$25) for one year or fifty dollars (\$50) for three years.

13.5. The license fee for an engineered suppression systems installer shall be fifty dollars (\$50) for one year or one hundred (\$100) for three years.

13.6. The license fee for an engineered suppression systems technician shall be twenty-five dollars (\$25) for one year or fifty dollars (\$50) for three years.

13.7. The license fee for a portable fire extinguisher technician shall be fifty dollars (\$50) for one year or one hundred dollars (\$100) for three years.

~~13.8. The license fee for a fire protection damper technician shall be fifty dollars (\$50) for one year or one hundred dollars (\$100) for three years.~~

~~13.9. The license fee for a fire protection damper technician in training shall be twenty-five dollars (\$25) for one year or fifty dollars (\$50) for three years.~~

~~13.10. All applicants for a fire protection worker license shall pay an application fee of fifty dollars (\$50).~~

§103-3-14. Reciprocity.

14.1. The State Fire Marshal, in his or her discretion, may grant a license of the same classification without examination to a fire protection technician licensed by another state upon payment of the license fee, application fee and submission of a completed application as provided by the State Fire Marshal to the State Fire Marshal. The State Fire Marshal may issue a fire protection technician certificate to any person

who holds a valid certification, license or registration to conduct fire protection work, issued by another state or possession of the United States or the District of Columbia that has standards substantially equivalent to, or exceeding, those of this state, as determined by the State Fire Marshal.

§103-3-15. Severability.

15.1. The sections of this rule are severable. Should any section be declared by judicial opinion unconstitutional or in any manner contrary to the laws of the State of West Virginia, that particular section shall be invalid and all other sections shall remain in full force and effect.