



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/29/2022 1:50:20 PM

Office of West Virginia  
Secretary Of State

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

AGENCY: Fire Commission TITLE-SERIES: 87-03  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 87-03 Hazardous Substance Emergency Response Training Programs

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W.Va. Code 15A-11-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This rule is consistent with W.Va. Code 15A-11-4, which states "The State Fire Commission shall promulgate rules pursuant to 29A-3-1 et seq. of this code establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the State Fire Marshal."

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/28/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/28/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

These regulations establish the rules and regulations deemed necessary by the State Fire Commission for establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the State Fire Marshal. The changes to the rule include formatting to make the rule consistent with current rules. The rule was required to address the sunset date.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

These regulations establish the rules and regulations deemed necessary by the State Fire Commission for establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the State Fire Marshal.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE LEGISLATIVE 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)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

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 87  
LEGISLATIVE RULE  
STATE FIRE COMMISSION

SERIES 3  
HAZARDOUS SUBSTANCE EMERGENCY RESPONSE  
TRAINING PROGRAMS

**§87-3-1. General.**

1.1 Scope. -- These regulations establish the rules and regulations deemed necessary by the State Fire Commission for establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the state fire marshal.

1.2 Authority. -- ~~WV Code §29-3-5a, §29-3-5d, §8-15a-5~~ This legislative rule is issued under authority of W. Va. Code § 15A-11-4.

1.3 ~~Effective Date~~ Filing Date. -- ~~July 1, 2018.~~

1.4 ~~Filing Date~~ Effective Date. -- ~~April 26, 2018.~~

1.5 Sunset Provision. -- This rule shall terminate and have no further force or effect ~~on~~ upon July August 1, 2023.

**§87-3-2. Procedures for Certification of Training Programs.**

2.1 Any person, firm, corporation, or governmental entity may request certification of their hazardous material response training program by submitting a copy of the program to the State Fire Marshal.

2.2 The desired program level of certification such as fire department personnel or industrial responder must be designated.

2.3 The instructional program curriculum must address each of the topics as outlined in Section 4.4 or 4.5 of this rule.

2.4 The State Fire Marshal shall approve the program contingent upon compliance with Section 4 of these rules and regulations.

2.5 A copy of all training/certifications records and approved training programs shall be provided to the State Fire Marshal Office for record keeping purposes. All personnel shall be required to provide a hazardous material refresher certification annually to the State Fire Marshal for record keeping purposes per OSHA requirements.

**§87-3-3. Record of Participation.**

3.1. The individual organization, agency, department or enterprise is responsible for maintaining a record of those individuals receiving the appropriate training. A copy of those records shall be provided to the WV State Fire Marshal's Office.

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### §87-3-4. Criteria for Qualified Training Program in Hazardous Substance Emergency Response Activities.

4.1 Scope. -- The hazardous substance emergency response training programs (HSERTP) must include the evaluation of hazardous materials/substances emergency threat to people, property, and environment. The HSERTP should utilize the analytical method of study regarding the behavior(s) of hazardous substance(s)/material(s).

4.2 Goal. -- The goal of every HSERTP is to provide emergency personnel with the knowledge necessary to analyze a hazardous materials incident before selecting appropriate action alternatives.

4.3 Definitions. --

4.3.1a. Hazardous substance or material means any "hazardous substance" as defined in Subsection (g), Section 3, Article 31, Chapter 16 of this Code, any "chemical substance and materials" listed in the rules and regulations promulgated by the commissioner of labor pursuant to Section 18, Article 3, Chapter 21 of this Code, and any "hazardous waste" as defined in Subdivision (7), Section 3, Article 5E, Chapter 20 of this Code.

4.3.2b. Fire Department personnel, (i.e. volunteer, paid, combination fire department, or county fire prevention units) are the earliest in time or succession of the arrival of emergency personnel at the scene of an incident involving a hazardous substance(s) and shall at a minimum meet the requirements as identified in this rule.

4.3.3c. Industrial Responder personnel, (i.e. hazardous material response contractor, railroad responder, and industrial response teams) are employees of an industrial type enterprise who are trained/instructed in the techniques of mitigation of hazardous substance(s) and shall at a minimum meet the requirements of OSHA 29 CFR 1910.120(q).

4.3.4d. Hazardous substance emergency response training program (HSERTP) is a structured program which provides instruction to personnel on the response capabilities for mitigation of a hazardous substance(s) incident.

4.4 Fire Department hazardous material response program.

4.4.1a. Active and specialized support members of a volunteer fire department, combination fire department or county fire prevention unit(s) that respond but do not operate at hazardous material incidents must have completed and achieved certification for training at or above the level of Hazardous Material Awareness, and have passed any and all testing required for this certification. Active and specialized support members that operate at hazardous materials incidents must have completed and achieved, at the minimum, certification for training at the Hazardous Materials Operations Level, as set forth by NFPA 1001, Standard for Fire Fighter Professional Qualifications or equivalent, and have passed any and all testing required for this certification. Additionally, all active members and firefighters shall have the training available to them to allow them to become compliant with the NIMS Training Guidelines for West Virginia as established by the West Virginia Division of Homeland Security and Emergency Management.

Additional training should be at the discretion of the fire chief based on possible involvement with hazardous materials incidents unless otherwise directed by federal or state statutes, rules and/or regulations.

These training certification records shall be retained by the fire department and/or their governing Authority Having Jurisdiction. A copy shall also be provided to the State Fire Marshal for record retention purposes.

4.4.2b. Paid fire department members and officers shall be trained per NFPA 472. All fire department personnel shall be certified at the Awareness level. Paid fire department personnel that operate at hazardous material incidents must minimally meet the requirements of the U.S. Environmental Protection Agency and U.S. Occupational Safety and Health Administration requirements for response at the Operations and/or Technician level. Additionally, all paid firefighters, fire officers and chief officers covered under this policy shall meet or exceed the NIMS training as provided in the current version of NIMS guidelines for West Virginia established by the West Virginia Division of Homeland Security and Emergency Management.

Additional training should be at the discretion of the fire chief based on possible involvement with hazardous materials incidents unless otherwise directed by federal or state statutes, rules and/or regulations.

These training certification records shall be retained by the fire department and/or their governing Authority Having Jurisdiction. A copy shall also be provided to the State Fire Marshal for record retention purposes.

4.4.3c. The instructional program curriculum shall provide knowledge of the following sequence of events common to most hazardous substance incidents:

4.4.3c.1. Approach to the site: The course must provide instruction on the recognition of identifiable clues of hazardous substances that indicates a potential danger which requires first emergency response personnel to approach the incident cautiously.

4.4.3c.2. Identification of hazards: The course must provide instruction in recognizing the methodology for identifying hazardous substances and use of available resources for identification.

4.4.3c.3. Security of the site: The course must provide instruction in procedures for isolating the site to assure the safety of persons, property, and the environment.

4.4.3c.4. Obtaining help: The course must include instruction on training procedures for requesting assistance from responsible agencies, CHEMTREC, etc.

4.4.3c.5. Entry to the site: The course must include instruction on the principal facts relating to the use of personal protective equipment and rescue of persons, without compounding the problem.

4.5 Industrial Responder hazardous material response programs. –

~~4.5.1~~ 4.5.a. The industrial responder training program shall provide training/instruction at a minimum. in accordance with 29 CFR 1910.120(q)(6) and have a knowledge of:

4.5.1aa.1. The chemical properties or reference sources to obtain the chemical properties of the substance such as:

4.5.1a.1a.1.A Flammability.

4.5.1a.2a.1.B Health risks (to emergency response personnel).

4.5.1a.3a.1.C. Reactivity.

4.5.1a.4a.1.D. Environmental concerns.

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- 4.5.4.a.5a.1.E. Fire extinguishment methods.
- 4.5.4.a.6a.1.F. Synonyms, trade names, etc.
- ~~4.5.2~~ 4.5.a.2. Shipping containers:
  - 4.5.2aa.2.A. Design criteria.
  - 4.5.2ba.2.B. Recommended materials of container construction.
  - 4.5.2ea.2.C. Valve locations & operation.
  - 4.5.2da.2.D. Container markings (identification).
- 4.5.3a.3. Appropriate personal protective equipment such as:
  - 4.5.3aa.3.A. Self-contained breathing apparatus, respirators, etc.
  - 4.5.3ba.3.B. Chemical suits (if necessary).
  - 4.5.3ea.3.C. Others as required.
- 4.5.4a.4. Use of monitoring equipment:
  - 4.5.4aa.4.A. Toxic gas or vapor detection devices.
  - 4.5.4ba.4.B. Combustible gas measuring devices.
  - 4.5.4ea.4.C. Other appropriate test equipment.
- 4.5.5a.5. Hazard mitigation techniques such as:
  - 4.5.5aa.5.A. Diking/containment.
  - 4.5.5ba.5.B. Container patching/repair.
  - 4.5.5ea.5.C. Sorbent materials.
  - 4.5.5da.5.D. Neutralizing agents.
  - 4.5.5ea.5.E. Use of water fog patterns.
  - 4.5.5fa.5.F. Fire-fighting foam and special additives.
  - 4.5.5ga.5.G. Trans-loading.
- 4.5.6a.6. Decontamination of:
  - 4.5.6aa.6.A. Personnel.
  - 4.5.6ba.6.B. Equipment.
  - 4.5.6ea.6.C. Environment.

4.5.~~7~~a.7. Incident Management

4.5.~~7~~aa.7.A. All active industrial-type incident officers/leaders shall be trained to become compliant with the National Incident Management System (NIMS) training guidelines for West Virginia as established by the West Virginia Division of Homeland Security and Emergency Management pertaining to:

- 4.5.~~7~~a.~~1~~a.7.A.1. Incident Command
- 4.5.~~7~~a.~~2~~a.7.A.2. Unified Command
- 4.5.~~7~~a.~~3~~a.7.A.3. Incident Assessment