



WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Fire Marshal

RULE TYPE: Legislative

TITLE-SERIES: 103-01

RULE NAME: Certification of Electrical Inspectors

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

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.

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 1
CERTIFICATION OF ELECTRICAL INSPECTORS

§103-1-1. General.

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

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

1.3.Filing Date. -- ~~May 1, 2014.~~

1.4. Effective Date. -- ~~July 1, 2014.~~

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

§103-1-2. Definitions.

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

2.2."Journeyman electrician" - Means a person who holds a valid Journeyman's Electrician License issued by the State Fire Marshal and as defined in W. Va. Code §29-3B-2.

~~2.23.~~ "Electrical work" - Means the installation of wires, conduits, apparatus, fixtures, other appliances, equipment or systems for transmitting, carrying, controlling or using electricity as defined in the scope of the national electrical code.

~~2.34.~~ "License" - Means a valid and current electrician's license issued by the State Fire Marshal.

~~2.45.~~ "Electrical contractor" - Means a person, firm or corporation who engages in the business of electrical work or employs master electricians, journeyman electricians, apprentice electricians or other workers for the construction, alteration or repair of any electrical system as defined in the scope of the national electrical code.

~~2.56.~~ "Design" - Means to plan or layout electrical systems in sketches or drawings for use by licensed electricians. It includes, but is not limited to, determining the service components of electrical systems, the type and sizes of conductors, circuit breakers and other components of electrical systems necessary to accommodate the demand load.

~~2.67.~~ "National Electrical Code" - Means the National Electrical Code for licensing of electricians promulgated by the National Fire Protection Association. Copies of the National Electrical Code may be

obtained contacting: The National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. 1-800-344-3555.

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

~~2.8. "State Fire Commission" - Means the state agency composed of the appointed state fire commissioners and the office of the State Fire Marshal.~~

2.9. "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.

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

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

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

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

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

§103-1-4. Qualifications for Certification.

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

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

4.1.b. For a "Class B Electrical Inspector Certification", in addition to the electrical licensure requirement, an applicant shall provide proof that he or she passed "Test 2A Electrical One and Two Family Dwelling" and "Test 2B Electrical General" of the National Certification Program for Construction Code Inspectors, or its equivalent as determined by the State Fire Marshal.

4.1.c. For a "Class C Electrical Inspector Certification", in addition to the electrical licensure requirement, an applicant shall provide proof that he or she passed "Test 2C Electrical Plan Review", "Test 2A Electrical One and Two Family Dwelling" and "Test 2B Electrical General" of the National

Certification Program for Construction Code Inspectors, or its equivalent as determined by the State Fire Marshal.

§103-1-5 License Without Examination

5.1. 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:

5.1.a. 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;

5.1.b. 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;

5.1.c. 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;

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

5.1.e. The person has established residency as a West Virginia resident as defined by §11-21-7(a) of this code;

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

5.1.g. 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;

5.1.h. 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;

5.1.i. 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

5.1.j. The person pays all applicable fees and meets all applicable bonding requirements in this state.

5.1.k. 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 section 5.1 of this rule.

5.1.1. 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.

5.2 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:

5.2.a. 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;

5.2.b. 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;

5.2.c. 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

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

5.3 State law examination.

5.3.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.

§103-1-~~56~~. Procedure for Application.

~~§6~~.1. Form of Request - Each applicant requesting an electrical inspector's certification under the provisions of this rule shall, as a condition precedent to the issuance of certification, provide the State Fire Marshal with:

~~§6~~.1.a. A completed application on forms furnished by the State Fire Marshal;

~~§6~~.1.b. Proof of professional liability insurance (errors and omissions) in the amount of not less than, one million dollars (\$1,000,000.00), and general liability insurance in an amount not less than seven hundred fifty thousand dollars (\$750,000.00). Proof of renewal shall be forwarded to the State Fire Marshal's office prior to the expiration date of the policy and shall cover at a minimum the period for which the Electrical Certification is issued;

~~§6~~.1.c. A copy of a valid West Virginia business license as issued by the West Virginia Department of tax and Revenue;

~~§6~~.1.d. Proof of passage of testing as required by section 4 of this rule within the preceding six years.

~~§6~~.1.e. Any other documentation that the State Fire Marshal may require to ensure compliance with qualifications for certification.

56.2. The State Fire Marshal shall deny a certificate to any person who fails to meet the required minimum qualifications and he or she shall also forfeit his or her application fee. Any applicant who attains the minimum requirements at a ~~latter~~ later date shall submit to the State Fire Marshal a new application for certification.

56.3. After review of an application and approval by the State Fire Marshal and receipt of the certification fee, the State Fire Marshal shall issue the individual electrical inspector's certification.

§103-1-~~67~~. Expiration and Renewal

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

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

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

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

67.5. National and state organizations acceptable to offer the required continuing education requirements include but are not limited to the following organizations or their chapters: The International Association of Electrical Inspectors (IAEI); The National Fire Protection Association (NFPA); The National Electrical Contractor's Association (NECA); Building Officials and Code Administration (BOCA); and any other recognized organization or party that the State Fire Marshal deems appropriate.

§103-1-~~78~~. Fees.

78.1. Certification fee - Seventy five (\$75.00) dollar fee per certification.

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

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

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

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

§103-1-89. Effect of Noncompliance; Failure to Obtain Certification; Penalty.

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

§103-1-910. Responsibilities of the Electrical Inspector.

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

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

910.3. A certified electrical inspector shall submit an annual report to the State Fire Marshal indicating the number, type and locations of electrical inspections performed during the ~~preceding~~ 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.

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

§103-1-4011. Causes for Denial, ~~Probation~~, Limitation, ~~Discipline~~, Suspension or Revocation of Certifications of Electrical Inspectors.

~~11.1 The State Fire Commission Marshal may deny an application for certification, place a certification upon probation, limit or restrict a certification, suspend a certification or revoke any certification, upon satisfactory proof that a certification holder has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §29-3C-1 et seq. or the rules of the State Fire Commission or State Fire Marshal. Further, the State Fire Marshal, pursuant to the authority given to him pursuant to section 5-6 of this rule, may deny an application for license pursuant to the provisions of this rule.~~

11.1. The State Fire Marshal may 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-10-1 et seq. of this code are violated.

11.1.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.

11.1.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.

11.1.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.

11.2. 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.

11.3. 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.

11.4. 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.

11.5. 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.

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

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

§103-1-~~44~~12. Disposition of Complaints.

~~44~~12.1. Any person, firm, corporation, member of the Fire Commission, State Fire Marshal, or public officer may make a complaint to the State Fire Marshal which charges an electrical inspector with a violation of W. Va. Code §29-3C-1 et seq. or of this rule. The State Fire Marshal may provide a form for

that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

4412.1.a. The name and address of the electrical inspector against whom the complaint is lodged;

4412.1.b. The date of inspection;

4412.1.c. The name of any person who may have inspected or repaired the electrical work after the alleged incident;

4412.1.d. The nature of the alleged violation;

4412.1.e. The location of the alleged violation.

4412.2. A complaint against a certified electrical inspector shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §29-3C-1 et seq. or this rule.

4412.3. 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.

4412.4. The State Fire Marshal shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

4412.5. The State Fire Marshal shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

4412.6. Upon receipt of a complaint, the State Fire Marshal shall issue one of the following acknowledgments to the complainant:

4412.6.a. That the matter will be reviewed by the State Fire Marshal;

4412.6.b. 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,

4412.6.c. That more information will be required in order to adequately review the individual complaint.

4412.7. If the State Fire Marshal acknowledges the complaint under subsection 11.6.1, or 11.6.3, the State Fire Marshal shall send a copy of the complaint, including any supporting documentation, by certified mail to the electrical inspector or applicant in question for his or her written comment, and he or she shall submit a written response to the State Fire Marshal within thirty (30) days of the date of such correspondence, or waive the right to do so.

4412.8. Requests for comment on complaints sent to electrical inspectors or applicants shall be considered properly served when sent to the last address on file with the State Fire Marshal. It is the responsibility of the electrical inspector or applicant to keep the State Fire Marshal informed of his or her current address.

~~11.12.9.~~ Upon receipt of an electrical inspector's 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.

~~11.12.10.~~ After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 11.6.2 of this rule, the 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, being who shall be a full time employee of the State Fire Marshal, or to an ethics investigator, for review and investigation.

~~11.12.11.~~ Upon receipt of a complaint the designee or ethics investigator 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 or ethics investigator's findings and recommendations. The State Fire Marshal, the designee or ethics investigator shall, upon request of the State Fire Marshal, his designee or ethics investigator, be afforded an opportunity to have an investigation interview with the electrical inspector or applicant in question or any other involved parties, a report of which shall be placed in the investigation file.

~~11.12.12.~~ To facilitate the disposition of a complaint, the State Fire Marshal, his designee, or ethics investigator, 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, his designee or ethics investigator, shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

~~11.12.13.~~ 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, or ethics investigator 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.

~~11.12.14.~~ 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 an electrical inspector may be sanctioned, ~~by the State Fire Commission. Provided, that the State Fire Marshal, his designee, or an ethics investigator shall make their respective findings and recommendations to the State Fire Commission in writing prior to the State Fire Commission dismissing the complaint.~~

~~11.16.~~ 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, his designee, or an ethics investigator shall make their 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 license, suspend a license or revoke any license 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 section, and in 103-CSR-4.~~

§103-1-~~42~~13. Appeal of Denial of Certification; Hearings; Evidence.

~~4213.1.~~ 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~~ W. Va. Code § 15A-10-1 et seq. The taking of evidence and hearing procedures shall be made in conformity therewith.

§103-1-~~13~~. Orders.

~~13.1.~~ 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.

~~13.2.~~ The findings of fact and conclusions of law must be approved by a majority of the Fire Commission either by a poll or vote at a meeting, before a final order is entered. A copy of the final order approved by a majority of the Fire Commission shall be served upon the demanding or charged party and/or his or her attorney of record, if any, within ten (10) days after entry by the Fire Commission by personal service or by registered or certified mail.

§103-1-14. Appeal.

14.1. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code § ~~29A-6-1~~ 15A-10-1 et seq.

§103-1-15. Orders and Decisions of the State Fire Marshal.

15.1. State Fire Marshal's Order and Decisions are final and Conclusive - Any order or final written decision of the State Fire Marshal based upon or made in the course of the administration or enforcement of the provisions of W. Va. Code §§29-3C-1 et seq. based upon or made pursuant to this rule, is final, unless vacated or modified upon review pursuant to the appeal rights and procedures provided by ~~Chapter~~ W. Va. Code § ~~29A~~ 15A-10-1 et seq. ~~of the W. Va. Code~~ and this rule.