



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: 87-13
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 87-13 Certification of Fire Chiefs

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W.Va. Code 15A-11-8

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:

Per W.Va. Code 15A-11-8, regarding the powers, duties and authority of the State Fire Commission, the State Fire Commission shall certify the chief, or acting chief, of every department. The Fire Commission shall propose emergency legislative rules for promulgation to implement the program established.

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: 6/23/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/24/2023

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?

The rule was posted on the Secretary of State website noting only written public comments would be accepted and that the public comment period would end at 5:00 pm on July 24, 2023.

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

This rule establishes the procedures certifying Fire Chiefs and acting Fire Chiefs of all fire departments operating in the state of West Virginia which are subject to the jurisdiction and certification of the Fire Commission.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is required to establish the procedures for certifying Fire Chiefs and acting Fire Chiefs of all fire departments subject to the jurisdiction and certification of the Fire Commission.

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		
	2023 Increase/Decrease (use "-")	2024 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 87
LEGISLATIVE RULE
STATE FIRE COMMISSION

SERIES 13
CERTIFICATION OF FIRE CHIEFS

§87-13-1. General.

1.1. Scope. -- This rule establishes the procedures certifying Fire Chiefs and acting Fire Chiefs of all fire departments operating in the State of West Virginia which are subject to the jurisdiction and certification of the Fire Commission.

1.2. Authority. -- W. Va. Code §15A-11-8.

1.3. Filing Date. -- ~~May 5, 2022.~~

1.4. Effective Date. -- ~~August 1, 2022.~~

1.5 Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2027~~9~~.

§87-13-2. Certification Process.

2.1. Any member of any fire department who has been elected or appointed as Chief, or who is serving Acting Chief, must apply for Certification from the Fire Commission within 14 calendar days of assuming the position. No person may perform duties as a Chief until certified by the Commission in compliance with this rule.

2.2. The Chief or Acting Chief must send to the Fire Commission:

2.2.a. proof of election or appointment, by letter or document signed by an appropriate person who oversees the department;

2.2.b. all appropriate documentation, issued by The West Virginia Department of Education, West Virginia Public Service Training or the WVU Fire Service Extension Office, to show proof that the Chief or Acting Chief has completed all necessary training to hold the position.

2.2.b.1. The training must include 1021; or,

2.2.b.2. Fire Commission approved Fire Officer Level I and Fire Officer Level II

2.2.b.3. All previous firefighter and fire officer training will be recognized by the State Fire Commission to the level for which it is equivalent; and,

2.2.c. an executed and notarized Chief's Verification Statement, affirming that the chief will operate the department in compliance with all applicable laws, rules, and regulations, and will not allow the department, or members of the department to act or operate in a manner while engaging in fire department related activities, that is not in compliance with all applicable laws, rules and regulations.

2.3. Once received by the Commission, the application for certification shall be reviewed by the

Commission:

2.3.a. If information is missing from the application, or the required documentation is not submitted, the Commission will contact the Chief, and inform him or her, of the deficiencies in the application. If the Chief fails to correct the deficiencies in the application within 14 calendar days, the application will be rejected and the department shall choose a new Chief: *Provided*, That for good cause shown, this deadline may be extended in the sole discretion of the Commission. Any person who fails to timely submit the required information for certification, including any extensions which may be granted by the Commission, shall thereafter be ineligible for certification unless the person submits a written request to the Commission for reapplication along with sufficient proof that such person meets the minimum standards for certification, which request may be granted or denied in the sole discretion of the Commission. Any person aggrieved by the provisions of this subdivision may appeal the decision of the Commission in accordance with the provisions of subsection 12 of this Rule.

2.3.b. The complete application shall be reviewed by the Commission. The Commission shall review its files and past complaints received to determine if the applicant has operated a department not in compliance with applicable laws, rules, or regulations, or has him or herself acted in a manner not in compliance with applicable laws rules or regulations.

2.3.b.1. If there are no past Complaints, and the application meets the criteria as to proof of position, training, and the verification statement, the Commission shall approve the application and issue the Certification to the applicant.

2.3.b.2. If there are past complaints to this effect, the Commission shall schedule an interview with the applicant, to discuss the complaint(s) and then determine if the applicant understands the laws, rules, and regulations applicable to fire departments, and then further determine that applicant will abide by these in the future.

2.3.b.2.A. If the Commission is satisfied that the applicant understands the laws, rules and regulations applicable to fire departments, and will abide by the applicable laws, rules, and regulations, the Commission will issue the Certification to the applicant.

2.3.b.2.B. If the Commission is not satisfied that the applicant will abide by the applicable laws, rules and regulations, the Commission will deny the application for certification.

2.3.c. Notwithstanding the provisions of this rule, upon receipt of an application for certification, until a final determination is made pursuant to this Rule, the Chair of the Commission may grant the applicant a temporary certification, for good cause shown and if the temporary certification is in the best interests of public safety.

§87-13-3. Denial, Suspension, or Revocation of Certification.

3.1. Any person, firm, corporation, member of the Fire Commission, State Fire Marshal, or public officer may make a complaint to the State Fire Commission making an accusation that a Fire Chief is in violation of State laws, rules, or regulations applicable to fire departments. The Fire Commission 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:

3.1.a. The name of the fire department and the fire chief or acting chief against whom the complaint is lodged;

- 3.1.b. The date of the alleged incident;
- 3.1.c. The nature of the alleged violation; and,
- 3.1.d. The location of the alleged violation.

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

3.3. The Fire Commission shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

3.4. The Fire Commission shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

3.5. Upon receipt of a complaint, the Fire Marshal and the Chair of the Fire Commission shall review the complaint and one of the following acknowledgments to the complainant shall be issued:

- 3.5.a. That the matter will be reviewed by the Fire Commission;
- 3.5.b. That the complaint is outside the jurisdiction of the Fire Commission, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,
- 3.5.c. That more information will be required in order to adequately review the individual complaint.

3.6. If the complaint is acknowledged under subsection 3.5.a, or 3.5.b, the State Fire Marshal shall send a copy of the complaint, including any supporting documentation, by certified mail to the chief or acting chief in question for his or her written comment, and he or she shall submit a written response to the Fire Commission within thirty (30) calendar days of the date of such correspondence, or waive the right to do so.

3.7. Requests for comment on complaints sent to chiefs or acting chiefs, shall be considered properly served when sent to the last address on file with the Fire Commission. It is the responsibility of the chief or acting chief to keep the Fire Commission informed of his or her current address.

3.8. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 3.5.b of this rule, the Fire Marshal and Chair of the Fire Commission shall cause to be conducted any reasonable inquiry or investigation 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 Fire Marshal, be assigned to a designee, who shall be a full time employee of the State Fire Marshal, or, alternatively, to an ethics investigator, for review and investigation.

3.9. Upon receipt of a complaint the designee, or ethics investigator, shall, within sixty (60) days, review and investigate the same and provide the Fire Commission 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 investigation, the records reviewed, and interviews conducted, and a statement of the designee's, or ethics investigator's, findings and recommendations. The Fire Commission, the designee, or ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the chief or acting chief in question, or any other involved parties, a report of which shall be placed in the investigation file.

3.10. To facilitate the disposition of a complaint, the Chair of the Fire Commission, a designee, or ethics investigator, may request any person to attend an informal conference at any time prior to the Fire Commission entering any order with respect to the complaint. The Chair of the Fire Commission, 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.

3.11. The Fire Commission may issue subpoenas and subpoenas duces tecum to complete the investigation and to determine the truth or validity of complaints. A designee, or ethics investigator, may request that the Fire Commission issue subpoenas or subpoenas duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

3.12. At any point in the course of an investigation or inquiry into a complaint, the designee, or ethics investigator, may decide to recommend to the 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 chief or acting chief may be sanctioned by the Fire Commission: *Provided*, That the designee, or ethics investigator, shall make their respective findings and recommendations to the Fire Commission in writing prior to the Fire Commission dismissing the complaint.

3.13. At any point in the course of an investigation or inquiry, the designee, or ethics investigator, may recommend to the State Fire Commission that there is sufficient evidence to warrant a finding of probable cause that a violation has occurred, or designee, or ethics investigator, shall make their respective findings and recommendations to the Fire Commission in writing, and the 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 Fire Commission. If the 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.

3.14. Upon either a finding of probable cause, or no probable cause by the Fire Commission, , the Fire Marshal shall promptly send a copy of the same, including any supporting documentation, to the complainant.

§87-13-4. Appeal of Denial of Certification; Hearings; Evidence.

4.1. For any person who has been denied certification, or who has had a Complaint issued by the Fire Commission which alleges wrongdoing, and seeks revocation, or suspension of certification, the hearings shall follow the procedures set forth in Series 9 of Title 87 of the West Virginia Code of State Rules. These hearings shall be heard by the Office of Administrative Hearings as provided by West Virginia Code §15A-9-1 *et seq.*

§87-13-5. Orders from proceedings of Office of Administrative Hearings.

5.1. Any final order entered by the Office of Administrative Hearings 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) calendar 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.

5.2. A copy of the final order shall be served upon the demanding or charged party and/or his or her attorney of record, if any, within ten (10) business days after entry by the Fire Commission by personal service or by registered or certified mail.

§87-13-6. Appeal from proceedings of Office of Administrative Hearings.

6.1. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code § ~~29A-6-1 et seq~~ 51-11-4(b)(4) as the Intermediate Court of Appeals has appellate jurisdiction of all “[f]inal judgements, orders or decisions of an agency or administrative law judge entered after June 30, 2022.” Any party adversely affected by the final order, decision, or judgement of the Intermediate Court of Appeals may seek review by the Supreme Court of Appeals, pursuant to the requirements of W.Va. Code §51-11-1 et seq and W.Va. Code §29A-6-1.