



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 Marshal TITLE-SERIES: 103-07
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 103-07 Certification of Home Inspectors

PRIMARY CONTACT

NAME: Brandolyn N Felton-Ernest
ADDRESS: 1900 Kanawha Blvd E
Bldg 1 Room W 400
Charleston, WV 25305
EMAIL: brandolyn.feltonernest@wv.gov
PHONE NUMBER: 304-558-2930

CITE STATUTORY AUTHORITY: W. Va. Code 15A-10-5(a), (b), (c)

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:

The State Fire Marshal may propose rules for legislative approval establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the State Building Code, which include, but are not limited to, building code officials, inspectors, plans examiners and home inspectors. The State Fire Marshal shall propose rules for legislative approval requiring applicants for home inspector licensing, registration, or certification to submit to a state and national criminal history record check and may deny licensing, registration, or certification based upon results of the criminal history record check. The State Fire Marshal may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the rules promulgated 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: 6/23/2023

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

COMMENTS RECEIVED: Yes

(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 filed with the Secretary of State noting only written public comments would be received and noting 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 to be followed to assure that consumers of home inspection services can rely on the competence of home inspectors, as determined by educational and experience requirements and testing. In order to protect consumers, this rule defines home inspection, outlines what must be included in a home inspection, defines unethical conduct by home inspectors and creates penalties for prohibited acts.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is required to assure that consumers of home inspection services can rely on the competence of home inspectors, as determined by educational and experience requirements and testing.

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 103
LEGISLATIVE RULE
STATE FIRE MARSHAL

SERIES 7
CERTIFICATION OF HOME INSPECTORS

§103-7-1. General.

1.1. Scope. -- This rule establishes the procedures to be followed to assure that consumers of home inspection services can rely on the competence of home inspectors, as determined by educational and experience requirements and testing. In order to protect consumers, this rule defines home inspection, outlines what must be included in a home inspection, defines unethical conduct by home inspectors and creates penalties for prohibited acts.

1.2. Authority. -- W. Va. Code § 15A-10-5(a), (b), (c).

1.3. Filing Date. -- ~~April 26, 2023.~~

1.4. Effective Date. -- ~~May 1, 2023.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2028~~9~~.

1.6. Enforcement. -- The State Fire Marshal shall administer and enforce the provisions of this rule.

1.7. Repeal and Replace. -- This rule replaces 87 CSR 5, "Certification of Home Inspectors" filed May 1, 2014 and effective July 1, 2014, pursuant to Senate Bill 586, passed during the 2020 Regular Session.

§103-7-2. Necessity of Certification; Definitions.

2.1. After the effective date of this rule, a person may not perform, offer to perform or engage in home inspection work for compensation or hire within the state of West Virginia unless that person possesses a certificate issued by the State Fire Marshal.

2.2. A "business entity" as used in this rule means a corporation, association, partnership, limited liability company, or other legal entity. A business entity may not provide home inspection services unless each of the home inspectors employed by the business entity is certified.

2.3. A business entity or person may not use, in connection with the name or signature of the business entity, the title "home inspector" or "home inspectors" to describe the business entity's services, unless each of the home inspectors employed by the business entity is certified.

2.4. A person shall not present, call or represent him or herself as able to provide a home inspection for compensation unless certified in accordance with the provisions of this rule.

2.5. The following words and terms have the following meanings:

2.5.a. "Certification" -- Means a valid and current home inspector certification issued by the State Fire Marshal.

2.5.b. "Client" -- Means any person who for compensation engages the services of a home inspector for the purpose of obtaining inspection of, and a written report upon, the condition of a residential dwelling.

2.5.c. "Compensation" -- Means direct or indirect payment, including the expectation of payment whether or not actually received.

2.5.d. "Component" -- Means a readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails where many similar pieces make up a system.

2.5.e. "Home Inspection" -- Means a visual analysis for the purpose of providing a professional opinion of the condition of a building and its carports and garages, any reasonable accessible installed components and the operation of the building systems, including the controls normally operated by the owner, for the following components of a residential dwelling of four units or less: heating system, cooling system, electrical system, plumbing system, structural components, foundation, roof covering, exterior and interior components and site aspects as they affect the dwelling.

2.5.f. "Home Inspection Report" -- Means a written report prepared for compensation and issued after a home inspection to the client. The inspection report shall include, but not be limited to the following:

2.5.f.1. On those systems and components inspected which, in the professional opinion of the inspector, are significantly deficient or are near the end of their service life and a reason why, if not self evident, the systems or components are significantly deficient or near the end of their service life;

2.5.f.2. The inspector's recommendations for further evaluation by a licensed professional to correct or monitor the reported condition discovered; and

2.5.f.3. Any systems and components which were present at the time of the inspection but were not inspected, and a reason they were not inspected.

2.5.g. "Home Inspector" -- Means any person who is certified pursuant to this rule as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.

2.5.h. "Readily Accessible" -- Means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action that likely will involve risk to persons or property.

2.5.i. "Residential Dwelling" -- Means a structure consisting of from one to four family dwelling units.

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

2.5.k. "System" -- Means a combination of interactive or interdependent components assembled to carry out one or more functions.

2.5.1. “Technically Exhaustive” -- Means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations or other means.

§103-7-3. Exemptions.

3.1. This rule does not apply to, and a certification is not required for, the following persons:

3.1.a. A person, employed by a governmental entity, who inspects residential dwellings as part of his or her official duties and responsibilities for that entity;

3.1.b. A person performing an inspection of a residential dwelling on behalf of a bank, savings and loan association or credit union for the sole purpose of monitoring the progress of the construction of the dwelling;

3.1.c. A person employed as a residential property manager when conducting inspections as part of his or her duties in that position and when that person does not receive separate compensation for the act of inspecting the residences; or

3.1.d. A person, regulated in another profession, when acting within the scope of that person’s license, registration or certificate.

§103-7-4. Qualifications for Certification.

4.1. As an initial requirement and qualification to obtain a certification as a home inspector, every applicant:

4.1.a. Shall have passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors or other, comparable examination, as determined or designated by the State Fire Marshal; and

4.1.b. Shall ~~either present proof of having conducted business as a home inspector for three years prior to the effective date of this rule, or~~ proof of satisfactory completion of at least eighty (80) hours of instruction which, as determined by the State Fire Marshal, directly relates to the performance of professional home inspections.

4.1.c. Successfully completed high school or its equivalent.

4.1.d. Present proof of, and shall maintain, general liability insurance in the amount of not less than two hundred fifty thousand dollars (\$250,000.00). The certified home inspector shall forward proof of renewal to the State Fire Marshal's office prior to the expiration date of the policy and the proof of renewal shall cover, at a minimum, the period for which the Home Inspector Certification is issued.

4.1.e. Applicants shall be required to provide fingerprints for examination by the West Virginia State Police Criminal Investigation Bureau and the Federal Bureau of Investigation. If the applicant has been fingerprinted by the State Fire Marshal within the previous thirty-six (36) months, then the State Fire Marshal may accept the previous fingerprints or require new fingerprints. If fingerprints are required to be provided by an applicant, the applicant shall provide a signed authorization for the release of information by the examining agencies. The costs of fingerprinting and fingerprint analysis shall be paid by the applicant.

§103-7-5. Procedure for application.

5.1. An applicant requesting certification under the provisions of this rule shall, as a condition precedent to the issuance of certification, provide the State Fire Marshal with:

5.1.a. A completed application on forms furnished by the State Fire Marshal;

5.1.b. A copy of a valid West Virginia business license issued by the West Virginia Department of Tax and Revenue; and

5.1.c. Any other documentation required by the State Fire Marshal to ensure compliance with qualifications for certification.

5.1.d. The appropriate application fee.

5.2. The State Fire Marshal shall deny a certificate to any person who fails to meet the required minimum qualifications. If a certificate is denied for failure to meet the minimum qualifications, the applicant shall forfeit his or her application fee. Any applicant who attains the minimum requirements at a subsequent date shall submit to the State Fire Marshal a new application for certification, application fee and certification fee.

5.3. After review and approval by the State Fire Marshal of an application and receipt of the certification fee, the State Fire Marshal shall issue the home inspector's certification to the applicant.

5.4. Any applicant who has been denied a license may request a hearing through the Office of Administrative Hearings.

§103-7-6. Expiration and Renewal.

6.1. Expiration. -- All home 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., certification issued on August 15, 2013 will expire on August 31, 2014 and on August 31st each successive year).

6.2. Renewal Fee Required. -- Any certified home 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 home inspector's responsibility to submit his or her application for renewal to the State Fire Marshal prior to the expiration date of the current certification.

6.3. Renewal After Expiration. -- Any previously certified home inspector who has not renewed his or her certificate in accordance with the preceding subsection 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 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 §103-7-4 of this rule, the testing having been completed within the last three years. A person may not perform home inspection work during the period of time his or her certification is expired. A person failing to renew his or her certification shall reapply for the home inspector's certification for which he or she qualifies in accordance with this rule.

6.4. As a condition of renewing any home inspector's certificate, the home inspector shall provide proof of completion of sixteen (16) Continuing Education Units annually. A continuing education unit is

defined as 1.0 hours for every fifty minutes of instruction. Upon receipt of the required documentation, the State Fire Marshal shall issue the certification. All continuing education shall be related directly to health, life safety, construction and maintenance of residential properties. Approval for courses shall be determined by the State Fire Marshal.

§103-7-7. Fees.

The following fees apply:

7.1. Certification fee -- One hundred twenty five dollar (\$125.00) fee per certification.

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

7.3. Application fee -- Twenty-five (\$25.00) dollar fee per application submitted.

7.4. Late renewal fee -- Fifty dollar (\$50.00) fee per year late per certification.

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

§103-7-8. Prohibited Acts.

8.1. The State Fire Marshal may make investigations or conduct hearings to determine whether a violation of this rule has occurred.

8.2. The State Fire Marshal may refuse to grant or may suspend or revoke a home inspector certification upon proof to the satisfaction to the State Fire Marshal that the holder has:

8.2.a. Participated in an unfair business practice;

8.2.b. Conducted an inspection not in conformance with the practices described in this rule;

8.2.c. Perpetrated any fraud or deceit in obtaining or attempting to obtain or renew a certificate of registration or certificate of authorization; been negligent, incompetent or committed an act of misconduct in the practice of home inspections;

8.2.d. Failed to comply with any of the provisions of this or any of the rules applicable to home inspectors;

8.2.e. Been disciplined by another state, territory, the District of Columbia, foreign country, the United States government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those grounds for discipline contained in this rule;

8.2.f. Failed within thirty days to provide information requested by the State Fire Marshal as a result of a formal or informal complaint, which would indicate a violation of this rule;

8.2.g. Knowingly made false statements or signed false statements, certificates or affidavits to induce payment;

8.2.h. Aided or assisted another person in violating any provision of this or any of the rules applicable to home inspectors;

8.2.i. Violated any terms of probation imposed by the State Fire Marshal or practiced home inspections while the certification is suspended, revoked, non-renewed or inactive;

8.2.j. Signed or approved any home inspection not reviewed by the individual actually signing the report.

8.2.k. Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

8.2.l. Provided false testimony or information to the State Fire Marshal.

8.3. It shall be considered an unfair business practice for a home inspector, a company that employs the inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector, to do any of the following:

8.3.a. To perform or offer to perform any repairs, or have a vested interest in any company that is to perform repairs, to a structure on which the inspector, or the inspector's company, has prepared a home inspection report within the preceding twelve months;

8.3.b. To inspect, for compensation, any property in which the inspector, or the inspector's company, has any financial interest or any interest in the transfer of the property;

8.3.c. To offer or deliver any compensation, inducement or reward to the owner of the inspected property, the broker or agent, or other party who might receive a benefit, for the referral of any business to the inspector or the inspection company; or

8.3.d. To accept an engagement to make an inspection or to prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon either the conclusions in the report, pre-established findings, or the close of escrow.

§103-7-9. Effect of Noncompliance; Failure to obtain certification; Penalty.

9.1. Any person who conducts a home inspection without the required certification may be subject to being issued a citation or a civil action for an injunction in the name of the state in the circuit court of the county where the inspection was or is being performed. A circuit court by mandatory or prohibitory injunction may compel compliance with the provisions of this rule, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire Marshal. The State Fire Marshal shall be represented in all proceedings instituted pursuant to this section by the attorney general or his or her assistants.

9.2. Any person who conducts or performs home inspections when that person does not have a valid certification issued or recognized by the State Fire Marshal may be subject to criminal prosecution under the provisions of W. Va. Code §15A-10-22.

§103-7-10. Reciprocity.

10.1. Upon payment of the certification fee, application fee and submission to the State Fire Marshal of a completed application, the State Fire Marshal may issue a home inspector certificate to any person

who holds a valid certification, license or registration to conduct home inspections, issued by another jurisdiction that has standards substantially equivalent to, or exceeding, those of this state, as determined by the State Fire Marshal.

§103-7-11. General Standards of Practice.

11.1. Home inspectors shall inspect readily accessible installed systems and components of residential dwellings and provide a written report to the client upon completion of the home inspection. These standards do not limit or restrict inspectors from:

11.1.a. Including other services for the inspection of systems or components in addition to those required;

11.1.b. Suggesting repairs to be made, based upon the findings of the home inspection, and recommending that the client seek the opinion of a professional tradesperson with regard to any suggested repairs; or

11.1.c. Excluding systems and components from the inspection if requested by the client.

§103-7-12. General Limitations.

12.1. Home inspections, performed in accordance with the general standard of practice defined in section 11 of this rule, are not technically exhaustive and will not identify concealed conditions or latent defects.

12.2. The provisions of section 11 of this rule constitute the minimum standard for a home inspector in conducting and submitting reports of home inspections.

12.3. This rule applies to residential dwellings as defined in this rule.

§103-7-13. General Exclusions.

13.1. Home inspectors may not be required to report or render an opinion on the following items:

13.1.a. The life expectancy of any component or system;

13.1.b. The cause of the need for a repair;

13.1.c. The methods, materials, and costs of corrections;

13.1.d. The suitability of the property for any specialized use;

13.1.e. Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements, special utility, insurance or restrictions;

13.1.f. The market value of the property or its marketability;

13.1.g. The advisability or inadvisability of purchasing the property;

13.1.h. Any component or system that was not inspected;

- 13.1.i. The absence of pests such as wood damaging organisms, rodents or insects;
 - 13.1.j. Cosmetic items and underground items not permanently installed;
 - 13.1.k. Hidden or latent defects;
 - 13.1.l. Items not visible for inspection;
 - 13.1.m. The presence or absence of mold, mold-like, or microbial, growth or substances; or
 - 13.1.n. The presence or absence of hazardous materials.
- 13.2. Home inspectors are not required to:
- 13.2.a. Offer warranties or guarantees of any kind;
 - 13.2.b. Calculate the strength, adequacy, or efficiency of any system or component;
 - 13.2.c. Enter any area or perform any procedure that may damage the property or its components or be dangerous to the home inspector or other persons;
 - 13.2.d. Operate any system or component that is shut down or otherwise inoperable;
 - 13.2.e. Operate any system or component that does not respond to normal operating controls;
 - 13.2.f. Disturb insulation or move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
 - 13.2.g. Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to toxins such as asbestos, radon and lead, carcinogens, noise, contaminants in the building or in soil, water and air;
 - 13.2.h. Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
 - 13.2.i. Predict future condition, including, but not limited to, the failure of any components.
 - 13.2.j. Project operating costs of components;
 - 13.2.k. Evaluate acoustical characteristics of any system or component; or
 - 13.2.l. Inspect special equipment or accessories that are not listed as components to be inspected.
- 13.3. Home inspectors may not offer or perform any act or service contrary to law;

§103-7-14. Structural Components.

- 14.1. The home inspector shall inspect, and describe the type of structural components including:
 - 14.1.a. Foundations;

- 14.1.b. Floors;
- 14.1.c. Walls;
- 14.1.d. Columns or piers;
- 14.1.e. Ceilings; and
- 14.1.f. Roofs.

14.2. The home inspector report shall describe the type of:

- 14.2.a. Foundation;
- 14.2.b. Floor structure;
- 14.2.c. Wall structure;
- 14.2.d. Columns or piers;
- 14.2.e. Ceiling structure; and
- 14.2.f. Roof structure.

14.3. The home inspector shall:

14.3.a. Probe structural components only where deterioration is visible, except where probing would damage any surface;

14.3.b. Enter under floor crawl spaces, basements, and attic spaces, except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected;

14.3.c. Report the methods used to inspect under floor crawl spaces and attics; and

14.3.d. Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

§103-7-15. Exterior.

15.1. The home inspector shall inspect:

- 15.1.a. Wall cladding, flashings and trim;
- 15.1.b. Entryway doors and a representative number of windows;
- 15.1.c. Garage door operators;
- 15.1.d. Decks, balconies, stoops, steps, areaways, porches, and applicable railings;
- 15.1.e. Eaves, soffit, and fascias; and

15.1.f. Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.

15.2 The home inspector shall:

15.2.a. Describe wall cladding materials;

15.2.b. Operate all entryway doors and a representative number of windows;

15.2.c. Operate garage doors manually or by using permanently installed controls for any garage door operator; and

15.2.d. Report whether or not any garage door operator will automatically reverse or stop if equipped with that safety feature.

15.3. The home inspector is not required to inspect or report on:

15.3.a. Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;

15.3.b. Fences;

15.3.c. The presence of safety glazing in doors and windows;

15.3.d. Garage door operator remote control transmitters;

15.3.e. Geological conditions;

15.3.f. Soil conditions;

15.3.g. Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment or athletic facilities);

15.3.h. Detached buildings or structures; or

15.3.i. The presence or condition of buried fuel storage tanks.

§103-7-16. Roofing.

16.1. The home inspector shall inspect:

16.1.a. Roof coverings;

16.1.b. Roof drainage systems;

16.1.c. Flashings;

16.1.d. Skylights, chimneys and roof penetrations; and

16.1.e. Signs of leaks or abnormal condensation on building components.

16.2. The home inspector shall:

16.2.a. Describe the type of roof covering materials; and

16.2.b. Report the methods used to observe the roofing.

16.3. The home inspector is not required to:

16.3.a. Walk on the roofing; or

16.3.b. Inspect attached accessories including but not limited to solar power systems, antennae and lightning arrestors.

§103-7-17. Plumbing.

17.1. The home inspector shall inspect:

17.1.a. Interior water supply and distribution systems, including piping materials, supports, insulation; fixtures and faucets; functional flow; leaks; and cross connections.

17.1.b. Interior drain, waste and vent systems, including: traps, drain, waste and vent piping; piping supports and pipe insulation; leaks and functional drainage;

17.1.c. Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues and vents;

17.1.d. Fuel storage and distribution systems including interior fuel storage equipment, supply piping, venting and supports; leaks; and

17.1.e. Sump pumps.

17.2. The home inspector shall describe:

17.2.a. Water supply and distribution piping materials;

17.2.b. Drain, waste and vent piping materials;

17.2.c. Water heating equipment; and

17.2.d. The location of the main water supply shut-off device.

17.3. The home inspector shall operate all plumbing and plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance or winterized equipment.

17.4. The home inspector is not required to:

17.4.a. State the effectiveness of anti-siphon devices;

17.4.b. Determine whether water supply and waste disposal systems are public or private;

17.4.c. Operate automatic safety controls;

17.4.d. Operate any valve except water closet flush valves, fixture faucets and hose faucets;

17.4.e. Inspect:

17.4.e.1. Water conditioning systems;

17.4.e.2. Fire and lawn sprinkler systems;

17.4.e.3. On-site water supply quantity and quality;

17.4.e.4. On-site waste disposal systems;

17.4.e.5. Foundation irrigation systems;

17.4.e.6. Spas;

17.4.e.7. Swimming pools;

17.4.e.8. Solar water heating equipment; or

17.4.e.9. The system for proper sizing, design or use of proper materials.

§103-7-18. Electrical.

18.1. The home inspector shall not be required to inspect any electrical system, component or subcomponent for electrical code compliance.

18.2. The home inspector may submit a professional evaluation concerning:

18.2.a. Service entrance conductors;

18.2.b. Service equipment, ground equipment, main over current device and main and distribution panels;

18.2.c. Amperage and voltage ratings of the service;

18.2.d. Branch circuit conductors, their over-current devices and the compatibility of the amperages and voltages;

18.2.e. The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage and on the dwelling's exterior walls;

18.2.f. The polarity and grounding of all receptacles within six feet (6') of interior plumbing fixtures, and all receptacles in the garage or carport and on the exterior of inspected structures; and

18.2.g. The operation of ground fault circuit interrupters or arc fault breakers.

18.3. The home inspector shall describe:

- 18.3.a. Service amperage and voltage;
- 18.3.b. Service entry conductor materials;
- 18.3.c. Service type as being overhead or underground; and
- 18.3.d. The location of main and distribution panels.

18.4. The home inspector shall report any observed aluminum branch circuit wiring.

18.5. The home inspector shall report on the presence or absence of smoke detectors and carbon monoxide detectors, if accessible, except when detectors are part of a central system. Inspectors shall recommend the proper installation of smoke detectors and carbon monoxide detectors per current NFPA standards, and in compliance with West Virginia Code § 29-3-16a(a).

18.6. The home inspector is not required to:

- 18.6.a. Insert any tool, probe, or testing device inside the panels;
- 18.6.b. Test or operate any over-current device except ground fault circuit interrupters and arc fault breakers;
- 18.6.c. Dismantle any electrical device or control other than to remove the dead front covers of the main and auxiliary distribution panels; or
- 18.6.d. Evaluate:
 - 18.6.d.1. Low voltage systems;
 - 18.6.d.2. Security system devices, heat detectors or carbon monoxide detectors;
 - 18.6.d.3. Telephone, security, cable TV, intercoms or other ancillary wiring that is not part of the primary electrical distribution system; or
 - 18.6.d.4. Built-in vacuum equipment.

18.7. The home inspector shall recommend to the client, if a perceived possible electrical hazard exists, a full electrical system inspection performed by a West Virginia certified electrical inspector as certified pursuant to W. Va. Code, §29-3C-1 *et seq.*

§103-7-19. Heating.

- 19.1. The home inspector shall inspect permanently installed heating systems including:
 - 19.1.a. Heating equipment;
 - 19.1.b. Normal operating controls;
 - 19.1.c. Automatic safety controls;
 - 19.1.d. Chimney, flues and vents, where readily visible;

19.1.e. Solid fuel heating devices including fireplaces;

19.1.f. Heat distribution systems including fans, pumps, ducts and piping, with associated supports, insulation, air filters, registers, radiators, fan coil units, convectors; and

19.1.g. The presence of an installed heat source in each room.

19.2. The home inspector shall describe:

19.2.a. The energy source; and

19.2.b. The heating equipment and distribution type.

19.3. The home inspector shall operate the systems using normal operating controls.

19.4. The home inspector shall open readily accessible panels provided by the manufacturer or installer for routine homeowner maintenance.

19.5. The home inspector is not required to:

19.5.a. Operate heating systems when weather conditions or other circumstances may cause equipment damage;

19.5.b. Operate automatic safety controls;

19.5.c. Ignite or extinguish solid fuel fires and/or pilot lights ; or

19.5.d. Inspect:

19.5.d.1. The interior of flues;

19.5.d.2. Fireplace insert flue connections;

19.5.d.3. Humidifiers;

19.5.d.4. Electronic air filters; or

19.5.d.5. The uniformity or adequacy of heat supplies to the various rooms.

§103-7-20. Central Air Conditioning.

20.1. The home inspector shall inspect central air conditioning systems, including the following components:

20.1.a. Cooling and air handling equipment;

20.1.b. Normal operating controls;

20.1.c. Fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, fan coil units; and

20.1.d. The home inspector shall inspect for the presence of an installed cooling source in each room.

20.2. The home inspector shall describe:

20.2.a. Energy sources; and

20.2.b. Cooling equipment type.

20.3. The home inspector shall operate the systems using normal operating controls.

20.4. The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

20.5. The home inspector is not required to:

20.5.a. Operate cooling systems when weather conditions or other circumstances may cause equipment damage;

20.5.b. Inspect non-central air conditioners; or

20.5.c. Inspect the uniformity or adequacy of cool-air supply to the various rooms.

§103-7-21. Interiors.

21.1. The home inspector shall inspect:

21.1.a. Walls, ceiling and floors;

21.1.b. Steps, stairways, balconies and railings;

21.1.c. Countertops and a representative number of cabinets and drawers; and

21.1.d. A representative number of doors and windows.

21.2. The home inspector shall:

21.2.a. Operate a representative number of windows and interior doors; and

21.2.b. Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

21.3. The home inspector is not required to inspect:

21.3.a. Paint, wallpaper and other finish treatments on the interior walls, ceilings and floors;

21.3.b. Carpeting; or

21.3.c. Draperies, blinds or other window treatments.

§103-7-22. Insulation and Ventilation.

22.1. The home inspector shall inspect:

22.1.a. Insulation and vapor retarders in unfinished spaces;

22.1.b. Ventilation of attics and foundation areas;

22.1.c. Kitchen, bathroom and laundry venting systems; and

22.1.d. The operation of any readily accessible attic ventilation fan and, when temperature permits, the operation of any readily accessible thermostatic control.

22.2. The home inspector shall describe:

22.2.a. Insulation in unfinished spaces; and

22.2.b. Absence of insulation in unfinished space at conditioned surfaces.

22.3. The home inspector is not required to report on:

22.3.a. Concealed insulation and vapor retarders; or

22.3.b. Venting equipment that is integral with household appliances.

§103-7-23. Built-In Kitchen Appliances.

23.1. The home inspector shall inspect and operate the basic functions of the following kitchen appliances:

23.1.a. Every permanently installed dishwasher; through its normal cycle;

23.1.b. Ranges, cook tops and permanently installed ovens;

23.1.c. Trash compactors;

23.1.d. Garbage disposals;

23.1.e. Ventilation equipment or range hoods; and

23.1.f. Permanently installed microwave ovens.

23.2. The home inspector is not required to inspect:

23.2.a. Clocks, timers, self-cleaning oven function, or thermostats for calibration or automatic operation;

23.2.b. Non built-in appliances such as clothes washers and dryers; or

23.2.c. Refrigeration units such as freezers, refrigerators and icemakers.

23.3. The home inspector is not required to operate:

23.3.a. Appliances in use; or

23.3.b. Any appliance that is shut down or otherwise inoperable.

§103-7-24. Responsibilities of the Home Inspector.

24.1. A home inspector shall submit a written report as to the conditions of the property, on the day of the inspection, to the client within a mutually agreed upon time frame.

24.2. A home inspector shall submit an annual summary to the State Fire Marshal of all home inspections performed during the preceding year, reporting the number, type and county of inspections conducted. This annual report shall be filed with the State Fire Marshal no later than the thirty-first day of January of the following year. The State Fire Marshal may offer standardized forms for use to comply with this section.

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

24.4. A certified home inspector shall maintain records of all his or her home inspections for three (3) years from the date the inspection report was provided to the client.

24.5. At all times the certified home inspector shall keep a current address and phone number on record with the West Virginia State Fire Marshal.

§103-7-25. Display of Certification.

25.1. While conducting the business of home inspections, home inspectors shall, at all times, have on their person the certification card issued by the State Fire Marshal.

25.2. A certification issued by the State Fire Marshal shall be displayed at the certificate holder's place of business.

25.3. All correspondence, inspection reports and advertisements shall identify the certificate holder with the term "Certified Home Inspector" along with the certification number of the inspector as issued by the State Fire Marshal.

§103-7-26. Disposition of fees.

26.1. All fees and moneys received as a result of actions under this rule shall be deposited in the special revenue account created pursuant to W. Va. Code §15A-10-7.

§103-7-27. Causes for Denial, Limitation, Suspension or Revocation of Certifications of Home Inspectors.

27.1. 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.

27.1.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.

27.1.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.

27.1.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.

27.2. 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 pursuant to §15A-10-18.

27.3. Then a party may appeal the hearing examiner's decision to the Intermediate Court of Appeals as the Intermediate Court of Appeals has appellate jurisdiction over all "[f]inal judgments, orders, or decisions of an agency or administrative law judge entered after June 30, 2022" per West Virginia Code §51-11-4(b)(4).

§103-7-28. Disposition of Complaints.

28.1. Any person, firm, corporation, State Fire Marshal, or public officer may make a complaint to the State Fire Marshal which charges a certified home inspector with a violation 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:

28.1.a. The name and address of the certified home inspector against whom the complaint is lodged;

28.1.b. The date of inspection;

28.1.c. The name of any person who may have inspected or repaired the home after the alleged incident;

28.1.d. The nature of the alleged violation;

28.1.e. The location of the alleged violation.

28.2. A complaint against a certified home inspector shall allege that such person 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 this rule.

28.3. 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.

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

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

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

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

28.6.b. That the complaint is outside the jurisdiction of the State Fire Marshal, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

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

28.7. If the State Fire Marshal acknowledges the complaint under subsection 28.6.a., or 28.6.c, the State Fire Marshal shall send a copy of the complaint, including any supporting documentation, by certified mail to the certified home 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.

28.8. Requests for comment on complaints sent to certified home 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 certified home inspector or applicants to keep the State Fire Marshal informed of his or her current address.

28.9. Upon receipt of a certified home 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.

28.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subsection 28.6.b. (outside of the jurisdiction) 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, who shall be a full time employee of the State Fire Marshal, or to an ethics investigator, for review and investigation.

28.11. 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 or her designee or ethics investigator, be afforded an opportunity to have investigation interviews with the certified home inspector or applicant in question or any other involved parties, a report of which shall be placed in the investigation file.

28.12. To facilitate the disposition of a complaint, the State Fire Marshal, his or her 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 or her 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.

28.13. 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.

28.14. At any point in the course of an investigation or inquiry into a complaint, the State Fire Marshal may determine that there is not sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a certified home inspector may be sanctioned by the Fire Marshal after which the complaint may be dismissed.

28.15. At any point in the course of an investigation or inquiry, the State Fire Marshal may determine that there is sufficient evidence to warrant a finding that a violation has occurred, after which the Fire Marshal shall in a reasonable period of time render a decision.

28.15.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.

28.15.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.

28.15.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.

28.15.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.

28.15.e. Then a party may appeal the hearing examiner's decision to the Intermediate Court of Appeals as the Intermediate Court of Appeals has appellate jurisdiction over all "[f]inal judgments, orders, or decisions of an agency or administrative law judge entered after June 30, 2022" per West Virginia Code §51-11-4(b)(4).

§103-7-29. Severability.

29.1. 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.