

**Fire Marshals Association of West Virginia, Inc.**

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West Virginia State Fire Commission  
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Charleston, WV 25314

State Fire Marshal

Reference: Public Input – Regarding Adoption of 87CSR1

**Concerns Regarding Exemption for Limited Use Food Preparation Facilities in the WV State Fire Code**

The emergency rule modifying the State Fire Code, in response to legislative proposals, introduces a concerning exemption for certain commercial cooking operations, as currently written. Specifically, the rule allows "Limited Use Food Preparation Facilities"---defined as stationary, stand-alone or individual food preparation booths which cook and serve food for short periods of time throughout the year, not to exceed 15 days per year---to operate without traditional automatic fire suppression or mechanical ventilation systems.

Importantly, we recognize this exemption does not apply to mobile food vendors or food trucks. Rather, it applies to permanent structures such as concession stands located at county fairs, festivals, or similar venues that meet the specific criteria within the rule.

While our association supports flexibility for limited-use venues, we have significant concerns with this rule as written, particularly regarding the absence of enforceable ventilation standards and the lack of a reliable method to track days of operation.

**1. Fire Behavior Is Not Seasonal or Situational**

NFPA 96: *Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations* (2021) establishes clear requirements for cooking operations that produce grease-laden vapors, stating in Section 4.1.1:

"Cooking equipment used in processes producing smoke or grease-laden vapors shall be equipped with an exhaust system that complies with all the equipment and performance requirements of this standard."

Cooking remains the leading cause of nonresidential structure fires, with U.S. Fire Administration data showing nearly one in three such fires originate in cooking areas---regardless of how often they are used. The infrequent operation of a concession stand does not diminish the fire risk associated with the use of deep fryers, griddles,

or other high-heat appliances. Fire does not recognize calendars, and one day of unsafe operation is all it takes for tragedy to strike.

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## **2. "Reasonable Ventilation" Should Be Objectively Defined**

The emergency rule states—"a reasonable amount of ventilation and air flow shall be utilized to disperse fumes and "vaporized grease" from any cooking activities", however, gives no technical definition or enforceable criteria. This creates a significant enforcement challenge and a real hazard to life safety.

Ventilation in these settings is not just about comfort—it is critical for:

- Removing combustible grease vapors;
- Preventing carbon monoxide buildup;
- Reducing the chance of flash fires or smoke inhalation incidents.

Without specific performance-based language (e.g., minimum airflow in CFM, hood type classifications, or UL-listed fan requirements), this ambiguity opens the door for inadequate setups such as residential box fans or open windows—solutions that are insufficient and potentially dangerous in commercial cooking environments.

We urge that the rule be amended to reference clear ventilation standards such as:

- NFPA 96 for grease vapor removal;
  - ASHRAE 62.1 for indoor air quality and mechanical ventilation.
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## **3. Operational Limits Require Enforcement Mechanisms**

The exemption only applies to venues that operate 15 days or fewer per year, but the rule includes no tracking, registration, or reporting requirements to verify compliance. This loophole invites abuse and creates enforcement blind spots.

To resolve this, we recommend implementing a simple event registration process, such as:

- An online form or quick-link hosted on the State Fire Marshal's website, or
- A method selected by the local Authority Having Jurisdiction (AHJ) to suit local needs.

Submission should be required at least 48 hours prior to operation and include:

- Facility name and location;
- Operating dates;
- Equipment used;
- Responsible party contact information.

Such a measure is not burdensome and would allow AHJs to:

- Track cumulative operational days per venue;

- Conduct inspections when appropriate;
  - Deter non-compliant facilities from falsely claiming exemption.
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#### **4. Enforcement Is About Prevention, Not Liability Shifting**

As enforcement officers, our role is not to simply notify and walk away. It is to **uphold fire and life safety through proactive regulation and enforcement actions**. A rule that is vague, unenforceable, or easily exploited is a rule that is a threat to life safety.

A one-size-fits-all exemption, even for limited-use venues, weakens decades of code development. It implies that safety is optional depending on the day of the year, a philosophy we cannot and should not support.

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#### **Recommendations for Improvement**

While we understand and respect the need to support community and seasonal events, we strongly urge that the following improvements be made to the emergency rule in the interest of safety and fair enforcement:

1. **Define “reasonable ventilation”** using NFPA 96 and/or ASHRAE 62.1 as reference standards.
  2. **Disallow residential-grade fans or unlisted equipment** for commercial cooking use.
  3. **Implement a mandatory “Event Exemption Registration”**, to be submitted no later than 48 hours in advance.
  4. **Enable AHJs to verify and track exemption usage** on a rolling basis.
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#### **Conclusion**

We do not oppose the intent of this exemption in totality—but we do oppose any rule that lowers the bar for fire safety without ensuring equivalent risk reductions. The rule must be measurable, enforceable, and guided by sound fire science. By introducing common-sense guardrails and accountability measures, we can preserve the flexibility for community events while continuing to protect life and property.

We stand ready to work with the State Fire Marshal, Legislators, and our fellow West Virginians to refine this rule in a way that upholds our mission: **preserving fire and life safety across all occupancy types, at all times of the year.**

For West Virginia’s Protection,



**Bobby C. Palmer**  
President - FMAWV



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May 13, 2025

West Virginia State Fire Commission

Re: Agency Response to Public Comment Received Regarding Title 87 CSR 1,  
State Fire Code, Limited Use Food Preparation Facilities

Dear Mr. Chairman and Members of the Commission:

This letter is to provide an agency response and suggestions for addressing the Public Input/Letter of Comment, dated May 8, 2025, received from the Fire Marshals Association of West Virginia, Inc., regarding the exemption for limited use food preparation facilities statewide. This letter is being provided for clarification on the allowed exemption that is in effect at this time and its filing as an emergency rule during the 2025 Regular Legislative session.

HB 2074 and SB 544 were introduced in both chambers of the legislature during the 2025 Regular Legislative Session. HB 2074 went to the House Committee on Government Organization and testimony was taken. During the testimony, it was discussed that the State Fire Marshal would be tasked with enforcing the existing Fire Code regarding limited use food preparation facilities. The State Fire Marshal currently enforces the State Fire Code, which is a legislative rule, 87 CSR 01. Within the State Fire Code, the State Fire Marshal has included exemptions in the Fire Code for certain matters which include the following sections of the Fire Code:

1) 1.6 Exemptions on all one- and two-family dwellings; exemptions on buildings and uses for agriculture purposes and agritourism approved/exempted through West Virginia Department of Agriculture (see Sec. 16.1 also); all boiler inspections and permits are exempt from State Fire Code and under jurisdiction of the West Virginia Department of Labor.

2) 2.2.b.1 Exemption of automatic sprinkler systems in lodging and room occupancies where there is outside exiting from all sleeping areas of the building.

3) 2.2.b.3 Exemption of fire stations and emergency services buildings under 5,000 square footage housing equipment and apparatus only and where no sleeping areas or quarters within.

4) 2.2.e.1 Exemption of classroom door locking devices in educational facilities.

4) 2.2.e.2. Exemption of all modular classroom structures with a Manufacturer's Statement of Origin prior to January 1, 2018 (a clarification of the definition of "new" and "existing" modular classroom structures).

If either of the introduced bills were successful and became law, the State Fire Marshal would need to open the Fire Code to include the exemptions for limited use food preparation facilities included in the bills. However, the State Fire Marshal proposed opening the Fire Code, through the filing of the emergency rule, without legislation to make the exemption being requested in the proposed legislation and to be able to expound upon the proposed language in the bills to better provide a more enhanced means to insure fire safety measures would be in place that would not only meet the goals the legislature had in regard to fairs, festivals, and events, but also to those food vendors who prepare and sell food on a limited basis without requiring hood and exhaust systems and also exempting the requirement for automatic fire suppression systems.

The State Fire Marshal proposed filing the emergency rule to become effective after approval by the Secretary of State so that the exemptions for limited use food preparation facilities are in place for the upcoming fair and festival season. Also, with the emergency rule in place, the Fire Code can go through the full legislative process in 2026 and comport with having the rule fully amended and effective before the emergency rule expires fifteen months from approval.

An emergency existed requiring that this emergency rule be promulgated to address the time-sensitive nature of the upcoming fair and festival seasons in the Spring and Summer seasons of 2025 with relation to limited use food preparation facilities. This rule cannot be amended through the legislative process until 2026 and there is an emergent need for the exception included in this emergency rule this summer. This emergency exists for the immediate preservation of the public peace, health, safety and welfare of those attending fairs and festivals this summer as the Fire Code establishes the safeguarding of life and property from the hazards of fire and explosion. Also, the emergency exists to comply with the time limitation to have this emergency rule in place this summer, as there were situations last summer that necessitated a change in the rule.

With the above understood language and intent being understood the State Fire Marshal would provide the following clarification:

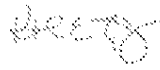
- 1) There was no intent in this language to have the provisions of NFPA 96 met in these limited use circumstances.
- 2) Ventilation concerns will be determined by the AHJ, but would not include commercial hood and exhaust systems but checking for adequate natural ventilation or some adequate means of ventilation that would not include a requirement of commercial exhaust and ventilation.
- 3) The goal to limit grease vapors should be dealt with using adequate types of grease removal through cleaning of equipment and other necessary areas.
- 4) The implication of any language that suggests having no inspection for these types of limited use food preparation facilities has never been the intent of this emergency rule change, even though some of the surrounding states do not have requirements for some of their similar commercial cooking circumstances.
- 5) Based on the requirements included in the Fire Code, this exemption gives agencies and fire departments a limited scope of inspection and enforcement and not just "turning a blind eye" to the raised concerns.

In the May 8, 2025, letter from the Fire Marshals Association of West Virginia, Inc., item # 3, regarding Operational Limits Require Enforcement Mechanisms, was identified as an area of concern. This item can be addressed by every jurisdiction creating a submission and registration process for inspections of the limited use food preparation facilities. I think the concern raised that could be an issue is the operational dates could vary due to the cancellation of events due to whether or other reasons and the 48 hour window is going to be burdensome on all parties involved whether based on staffing levels and other unforeseen events that could cause either unacceptable delays or inability to satisfy an event's request. I suggest each jurisdiction have information

provided whether physically or on-line. It could be provided by the State Fire Marshal's Office in the calendar year of 2026.

Please be advised that this proposed language in the emergency rule has been provided between the legislature and our agency and may not prevent all accidents that may occur within these limited use food preparation facilities. But, the proposed language in the emergency rule is being provided to have some form of checks and balances for these limited use food preparation facilities that would not have been in place with the proposed language in the introduced bills.

Respectfully,



Kenneth E. Tyree Jr., CFPS  
State Fire Marshal

cc: Cabinet Secretary Cunningham, State Fire Commission, ket jr., file