WEST VIRGINIA SECRETARY OF STATE
KRIS 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 Commission		
RULE TYPE:	Legislative	TITLE-SERIES:	87-06
RULE NAME:	Certification and Evaluation of Local Fire Departments		
CITE AUTHORITY:	West Virginia Code §§ 15A-11-3, 15A-11-5, and 29A-3-1 et seq.		

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 87
LEGISLATIVE RULES
STATE FIRE COMMISSION

SERIES 6
CERTIFICATION AND EVALUATION OF LOCAL FIRE DEPARTMENTS

§87-6-1. General.

1.1. Scope. -- These rules govern the requirements and procedures for certification or recognition of local fire departments by the State Fire Commission and the circumstances for the withdrawal of recognition by the Commission. This rule also delineates the scope of the powers and responsibilities of recognized local departments.

1.2. Authority. -- West Virginia Code §§ 15A-11-3, 15A-11-5, and 29A-3-1 et seq.

1.3. Filing Date. -- ~~April 15, 2024~~.

1.4. Effective Date. -- ~~May 1, 2024~~.

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on August 1, ~~2029~~ 2032.

§87-6-2. Definitions.

As used in this Rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

2.1. “Certification” refers to the State Fire Commission’s formal acceptance and approval of a new, local fire department to carry out fire fighting, fire suppression and rescue operations in this State, pursuant to the procedures for application, review and approval that are set forth in this rule. Certification of new fire departments also constitutes the initial, formal recognition of that department.

2.2. "Commission" means the West Virginia State Fire Commission.

2.3 “Dual Response Area” refers to an area, defined by a mutual aid agreement or designated by the Commission, in which more than one local fire department may respond or may be called upon for initial response to a fire, threat of fire, or public emergency. The term “dual response area” is not mutually incompatible with the designation of a “first due area” and a dual response area may overlap, or comprise all or a portion of, a designated first due area.

2.4. “Fire Department” and "Local Fire Department" means an organization, constituted as either an administrative department of a local government authority or an independently-chartered corporation, that is established for the principal purpose of fighting and preventing fires. For the purposes of this Rule, the term “fire department” shall also include those entities, so organized, using the name “fire company” or referred to as a fire company within the West Virginia Code.

2.5. “Fire Protection District” means a geographical area established by the Commission, within fire protection boundaries approved by the Commission, for the administration of fire protection and emergency response programs.

2.6. "First Due Area" means a fire protection district for which the Commission has assigned primary responsibility to a local fire department to provide fire protection and rescue services.

2.7. "ISO" refers to a national organization, ISO Properties, Inc., also known as the Insurance Services Office, that provides research, products, programs, and information on matters of insurance and risk management.

2.8. "Mutual Aid Agreement" is an agreement between a local fire department and another fire department, or governmental authority having jurisdiction over such other fire department, for the common protection of people and property from fire, for the reciprocal provision of emergency and rescue services and for the reciprocal use of equipment and personnel for these purposes.

2.9. "Recognition" refers to the State Fire Commission's formal acceptance and acknowledgment of the current qualifications of a local fire department to carry out fire fighting, fire suppression and rescue operations in this State.

2.10. "State Fire Marshal" refers to the West Virginia State Fire Marshal and representatives duly authorized by the State Fire Marshal to act on his or her behalf.

§87-6-3. Requirement and Authority of Recognition.

3.1. General Requirement for Recognition: Every organization or corporation that is established for the principal purpose of fighting and preventing fires within local fire protection districts must be recognized as a local fire department by the West Virginia State Fire Commission. In the absence of official recognition by the Commission, no organization, corporation, or sub-division of a local government authority may claim or exercise the benefits, privileges and powers of a fire department provided under the West Virginia Code and this section. This requirement shall not apply to fire-fighting, fire protection, and rescue entities organized and operated under the authority of a federal agency or a subdivision thereof and which do not receive distributions from state funds collected for fire-fighting organizations and their members.

3.2. In addition to the general authority and responsibility for fire-fighting and fire prevention within an approved fire protection district, recognition of a local fire department shall have the following effect:

3.2.1. The fire chief or line officer of a recognized fire department shall have the authority to exercise all powers and duties provided under the provisions of ~~Article 3A, Chapter 29 of the~~ W. Va. Code, §29-3A-1 *et seq*.

3.2.2. The recognized local fire department may enter into mutual aid agreements with other recognized fire departments or with other governmental agencies, of this state or any adjoining state, for reciprocal aid and assistance.

3.2.3. The recognized local fire department constitutes a "fire department or company" for purposes of the prosecution of offenses under W. Va. Code §29-3A-4.

3.2.4. The recognized local fire department may request aid and assistance from the State Fire Marshal under the provisions of W. Va. Code §15A-10-3(b).

3.2.5. Members of a recognized local fire department may be deputized by the State Fire Marshal under the provisions of W. Va. Code §15A-10-3(j), subject to the conditions and restrictions in subsection (n) of that Code section.

3.2.6. The State Fire Marshal may assign registration permits for emergency vehicles to recognized local fire departments and authorize members of a recognized local fire department to drive Class A vehicles equipped with emergency lights and warning devices, pursuant to the provisions of W. Va. §17C-15-26(d).

3.2.7. Recognized local fire departments shall be eligible to receive distributions from the Pensions and Protections Fund and from the Fire Protection Fund under the provisions of W. Va. Code §§8-15-8a, 8-15-9, 33-3-14d, and 33-3-33.

3.3. No entity may exercise, or claim benefit of, the powers, privileges and responsibilities listed in this section without recognition by the State Fire Commission pursuant to this rule.

3.4. In no event shall recognition of a local fire department be deemed to be a grant or delegation of any of the powers of the West Virginia State Fire Commission or the State Fire Marshal unless those powers are specifically imposed by state law or expressly delegated by the Commission or the State Fire Marshal.

§87-6-4. Duration of Recognition.

4.1. Except as established in the rotating schedule for implementation of the evaluation program provided in subsection 6.2. of this rule, recognition issued by the Commission shall, if not revoked, suspended, or restricted, be valid for a period of five years. In lieu of recognizing each department for exactly five years, the Commission may establish a fixed day of a year upon which recognitions will expire after the duration of approximately five years.

4.2. Recognition will not expire automatically following the date of expiration. In the event that a local fire department fails to submit a timely application for renewal of recognition or fails to submit a complete application for evaluation, the State Fire Commission may temporarily suspend its recognition of that department upon motion and vote in a public meeting of the Commission; Provided, that the State Fire Marshal must provide written notice to the department of the department's failure and the date, time, and location of the Commission's meeting, to be served by registered or certified mail or by package courier providing proof of delivery at least two weeks prior to the scheduled meeting

§87-6-5. Evaluation Criteria.

5.1. In conducting any review for certification or recognition of a local fire department, the State Fire Commission may consider any and all of the following factors:

5.1.1. The location, size and boundaries of the fire protection district, and the location of the fire station or substations within that fire protection district;

5.1.2. The number of active and available personnel to participate in fire-fighting and rescue services and the level and amount of training achieved by each active member;

5.1.3. The quantity, type, and condition of all equipment to be used by the local fire department;

5.1.4. Documentation of an administrative structure of the department including the designation of a chain of command and responsibilities of the respective office holders;

5.1.5. The existence and substance of "911" service agreements for the area served and of any mutual aid agreements affecting the local fire department;

5.1.6. The ISO Public Protection Classification for the local fire department's fire protection district;

5.1.7. The record, if any, of the department in responding to emergency calls and the responsibilities of local fire departments throughout the previous certification period;

5.1.8. The quality of record-keeping practices of the department, including regular and timely submission of fire loss data and reports as required by state law;

5.1.9. Any disciplinary action against the local fire department or any acts, failures to act or circumstances that would constitute grounds for disciplinary action against the local fire department under the provisions of Section 10 of this rule; and

5.1.10. Any other factor or circumstance directly bearing upon the ability of the fire department to serve the public adequately and provide for the safety of persons and property from fire and in other emergencies when the local fire department undertakes any other types of non-medical emergency services, which fall within the statutory jurisdiction of the State Fire Commission.

5.2. In any review of an existing local department or departments, or consideration of the establishment of a new department, under this rule, the fundamental issue for the State Fire Commission is the ability of the local fire department or departments to provide effective and responsible protection for persons and property from fire and other hazards. The State Fire Commission may not arbitrarily change a local fire department's fire protection district boundaries or other responsibilities.

§87-6-6. Review and evaluation of existing departments.

6.1. All local fire departments in operation and recognized by the State Fire Commission on the effective date of this rule are hereby deemed to be duly-certified departments, Provided that these local fire departments must be regularly evaluated for renewal of recognition under the schedule established below for implementation of this rule.

6.1.1. Any existing County Fire Department shall be permitted to respond to any and all calls within their county as mutual aid responders to other recognized State Fire Commission approved fire departments within the response areas.

6.1.2. Any existing County Fire Department within the same said county, shall be permitted to utilize and operate fire apparatus and equipment from other departments within the county based on established memorandum of understanding (MOUs) and agreements with those departments.

6.2. Schedule for implementation – Within 120 days of the effective date of this rule, the State Fire Marshal shall establish geographical divisions of the entire area of the state for a system of regular review and renewal of the recognition of local fire departments. The State Fire Marshal shall have the discretion to determine the number and the boundaries of the geographical regions based upon the manpower and resources available for the review and inspection responsibilities defined herein, Provided that these geographical divisions shall contain approximately equal numbers of local fire departments. On or before the conclusion of this period, the State Fire Marshal shall assign all of the departments within a given region, by random lot, to a rotating schedule for renewal of recognition in such fashion that, per year, twenty percent of the local departments within a region shall be required to apply for and obtain renewal of their recognition in each year following the adoption of this rule. The schedule for regular evaluation shall begin in the year 2008.

6.3. Six months prior to the expiration of recognition of a local fire department, the State Fire Marshal shall send forms for the renewal of recognition to the local fire department. Applications for

renewal of recognition must be in writing, using the forms provided by the State Fire Marshal and must be submitted no later than three months prior to the date of expiration of the recognition period for the local fire department.

6.4. If the State Fire Marshal finds it necessary to visit a local fire department for purposes of completing an evaluation, the State Fire Marshal shall notify the local fire department in advance and arrange a mutually-suitable time in which a responsible individual can meet the State Fire Marshal.

6.5. If, for any reason, the State Fire Marshal fails to provide the renewal application forms to a department in a timely manner or if the State Fire Marshal is unable to complete an evaluation of a local fire department prior to the date established for expiration of recognition, the local fire department's official recognition shall continue until such time as the State Fire Marshal is able to complete an evaluation of the department and the Commission is able to meet and consider the renewal application.

6.6. After review of the evaluation according to the criteria established or referenced herein, the State Fire Marshal shall submit the results of the evaluation to the State Fire Commission with a recommendation as to whether the local fire department should be approved and recognized. The Commission shall have the ultimate authority to rule upon the evaluation of each local fire department. The Commission is not bound by the recommendation of the State Fire Marshal and may independently review all materials submitted with the application.

§87-6-7. Certification of new departments.

7.1. No new local fire department or fire company will be authorized without prior approval of, and certification by, the Commission.

7.2. The State Fire Commission retains the ultimate authority to authorize the creation of, certify, and establish fire protection areas for a new local fire department when the Commission determines that the establishment of such new department will provide more comprehensive and necessary protection for the safety of people and property within such areas. In making these determinations, however, the State Fire Commission shall, as far as reasonably practical, attempt to do so with the consent and cooperation of all local government authorities in the areas to be served by the new department, with due consideration for the plenary authority of municipal governments to provide for fire protection for their constituents.

7.3. Application for Certification - Any organization seeking to be certified as a new local fire department shall make application to the State Fire Commission using forms provided by the State Fire Marshal. All applications shall be in writing and shall be considered public records, subject to inspection by the public.

7.4. Application Review - The Commission shall conduct a review of the application in a process of two phases.

7.4.1. Phase I - Initial documentation review. In this phase, the State Fire Marshal, together with additional Commission staff as may be reasonably required, will review documentation of the basic organizing materials for the creation of a new department, including a letter of intent from the organization or local governmental authority, copies of any pertinent local ordinances, sign-off by appropriate local officials and a map of the proposed service area. After review of these materials, the State Fire Marshal will make a recommendation to the Commission as to whether the Commission should grant Phase I approval and authorize the organization to proceed to Phase II.

7.4.1.a. Any County that establishes a County Fire Department shall be permitted to respond to any and all calls within their county as mutual aid responders to other recognized State Fire Commission approved fire departments within the response areas.

7.4.2. Phase II - In Phase II, the applying organization shall obtain and present evidence of sufficient staffing, equipment, and resources to operate as a local fire department. Upon satisfactory demonstration of compliance with the requirements of the Commission, the Commission may grant approval and certification of the local fire department.

7.4.2.a. Any County that establishes a County Fire Department shall be permitted to utilize and operate fire apparatus and equipment from other departments within the county based on established memorandum of understanding (MOUs) and agreements with the said departments. If there are no other departments within the county, the county fire department shall be required to meet all requirements established in 7.4.1 and 7.4.2.

7.5. The Commission is not bound by the recommendation of the State Fire Marshal at any phase of the application process and the Commission may independently review all materials submitted with the application. The Commission may, in its discretion, make additional inquiry into the facts and circumstances of any proposal for a new department and may request that additional information be provided to the Commission in consideration of an application.

§87-6-8. Incidental review and guidance by the State Fire Marshal.

8.1. The State Fire Marshal may enter onto the premises of any local fire department to observe and ensure compliance with the responsibilities of the local fire department under state law and the rules and policies of this Commission. This provision shall not be construed to compel the officers or members of a local fire department to be available to the State Fire Marshal at all times or to be present for any unscheduled visit by the State Fire Marshal or authorized representative.

8.2. The Commission authorizes the State Fire Marshal to issue warning letters to a local fire department when, after incidental review or investigation, it appears that the local department has, by act or omission, violated the standards for recognition and safe operation as a fire department, but where those circumstances do not require review or disciplinary action by the Commission. In this circumstance, a letter of warning serves as advice and caution only; it shall not be considered a formal, disciplinary action under subsection 10.3. of this rule.

§87-6-9. Complaints and investigations

9.1. The procedures established in this rule for the investigation and disposition of complaints apply only to complaints falling within the State Fire Commission's authority and administrative function to certify and formally recognize local fire departments. These procedures do not apply to investigations by the State Fire Marshal of alleged crimes or suspected criminal activity, conducted under the authority of W. Va. Code § 15A-10-3.

9.2. In proceedings involving the investigation and review of complaints against a local fire department or its members, the Commission shall act as the adjudicatory body determining whether evidence supports the complaint. The State Fire Marshal shall act as the investigating officer and the party presenting the facts regarding the complaint before the Commission.

9.3. Any person may make a complaint regarding a local fire department, including the State Fire Marshal, or a member of the Commission or the Commission's staff. Complaints must be made in writing and the Commission may provide a form for the purpose of submitting a complaint, but a complaint may be filed in any form as long as it is made in writing, signed by the complainant, and submitted to the Commission at its business office.

9.4. Upon receipt of a written complaint, the Commission will log and assign a number to the complaint. The complaint will then be delivered to the State Fire Marshal for investigation. The Fire Marshal shall have 7 days to review the complaint to determine if it describes any violation of the requirements or responsibilities of a local fire department.

9.4.1. If the State Fire Marshal determines that there is no violation described, he or she shall notify the complainant of this determination and that he or she will recommend that the Commission dismiss the complaint at its next meeting. The State Fire Marshal will have no duty to investigate further unless the complainant amends or updates the allegations. In providing notice to the complainant pursuant to this subsection, the State Fire Marshal shall advise the complainant of the date and time of the next meeting of the State Fire Commission in which the Commission will take up the complaint.

9.4.2. If the State Fire Marshal determines that the complaint appears to describe conduct regulated by the standards for local fire departments or describes a violation of law for which the Commission has the authority to sanction a local fire department, then the Fire Marshal shall either begin an investigation of the allegations stated in the complaint or, when the complaint involves a fire department administered by a municipality as an administrative unit of the municipal corporation, refer the complaint to the governing body having supervisory or administrative authority over the fire department identified in the complaint.

9.5. No provision of this rule shall restrict the State Fire Marshal from investigating additional violations if, in the course of his investigation of the original complaint, the State Fire Marshal becomes aware of evidence that indicates that other violations of law may have occurred.

9.6. In addition to the foregoing provisions, the Commission may, upon its own motion, initiate a complaint and cause the State Fire Marshal to conduct an investigation of a local fire department.

9.7. If the State Fire Marshal determines, pursuant to subsection 9.4. of this rule, that an investigation is necessary, the State Fire Marshal shall forthwith send written notice to the local fire department identified in the complaint that an investigation will be initiated and shall include a statement of the substance of the allegations in the complaint. For purposes of this section, a notice to the local fire department shall be directed to the chief of the local department and to the secretary or other officer authorized to respond to official correspondence and it shall be served by any method of mail or package delivery that provides dated proof of delivery. The State Fire Marshal shall also inform the local governmental authority having jurisdiction over the fire department or its fire service district of the complaint and the nature of the violations alleged. The local fire department shall have 30 days to prepare a response or answer to the complaint, but the State Fire Marshal may proceed with investigation of the complaint during such interval.

9.8. The State Fire Marshal shall make such investigation as is reasonably necessary to ascertain whether the local fire department has violated any of the requirements or responsibilities of a local fire department. At the conclusion of the investigation, the State Fire Marshal shall make a report to the Commission as to whether there is probable cause to believe that any violation has occurred and, in the event that any violation is believed to have occurred, the report shall briefly identify the nature of the violation or violations. The findings of the State Fire Marshal shall be logged with the original complaint and served upon the local fire department at least 30 days in advance of any meeting of the Commission in which the report of the State Fire Marshal may be considered.

9.9. The local fire department may respond in writing to the report of the State Fire Marshal and this response, together with the department's original response to the complaint, shall be delivered to the Commission along with the report of the State Fire Marshal. When the report and responses are to be considered at a meeting of the Commission, the local fire department may appear and make an oral presentation to the Commission.

9.10. If the Commission finds that there is probable cause to believe that a violation has occurred, the Commission shall enter an order to that effect and serve a copy of the order upon the local fire department and the local government agency having jurisdiction over the fire department. A probable cause order serves only as a formal charge and, in the absence of any other order, it shall have no effect other that to trigger the local fire department's right to a hearing as provided in subsection 10.1. of this rule.

§87-6-10. Grounds for Denial, Restriction, Suspension or Revocation of Recognition or Certification.

10.1. Right to a Hearing

10.1.1. The State Fire Commission may not suspend, revoke, or place probationary restrictions upon, the recognition of an existing, recognized local fire department without a prior hearing, unless the local fire department explicitly and formally waives the right to a hearing.

10.1.2. The Commission may deny an application for certification or refuse to issue a certification without a prior hearing, upon entry of a written order stating the findings of the Commission and the reasons for the denial or refusal; Provided, that the local fire department or proposed new department may request a hearing upon the action of the Commission and shall be afforded a reasonably prompt hearing following such demand.

10.1.3. The State Fire Commission hereby grants authority to the State Fire Marshal to order a local fire department to suspend fire fighting and rescue operations as a temporary, emergency measure when the continued operations of that department pose a substantial and imminent risk of harm to public safety, which may also include risk of harm to members of the local department. If the State Fire Marshal issues an order to suspend operations, the State Fire Marshal shall immediately make arrangements with the local 911 call center and surrounding fire departments to provide coverage for the affected fire protection district , and the State Fire Marshal shall, within 48 hours, notify the Commission's Chair or Vice-Chair of the order and the specific grounds for the action taken. The Commission shall provide a hearing to the local fire department upon the grounds cited within 30 days and, following the hearing, the Commission may approve, rescind, modify, or extend the order as an official order of the Commission. An order to suspend operations does not constitute a suspension of recognition of the local fire department.

10.2. The following acts, failures or circumstances are deemed to be performance failures of a local fire department that may warrant official action by the Commission:

10.2.1. Failure to maintain minimum levels of performance in training, equipment maintenance or fire protection procedures, as established by statute, by legislative rule, or by written policy promulgated pursuant to W. Va. Code §15A-11-8(h);

10.2.2. A pattern of failure to provide fire protection service to the department's assigned fire protection district or to other areas served through mutual aid agreements;

10.2.3. A pattern of failure to respond to reasonable requests and lawful directives of the State Fire Marshal or State Fire Commission;

10.2.4. Any act of deceit, falsification or misrepresentation in the creation, maintenance, or submission of records that the local fire department is required to prepare or file under any provision of state law;

10.2.5. Chronic or gross failure to adhere to the West Virginia State Fire Code;

10.2.6. Chronic or gross abuse of the powers and privileges provided under subsection 3.2 of this rule;

10.2.7. A practice or pattern of performance that demonstrates a substantial threat to the safety of people and property within the community served, which threat may also include a substantial risk of harm to the safety to the firefighting personnel themselves;

10.2.8. Lack of an ISO Public Protection Classification, failure to obtain such classification or, except in the case of an application for a new department, a Public Protection Classification indicating that there is no fire protection or that there is an unacceptable level of protection within the department's assigned fire protection district;

10.2.9. Any circumstance resulting in the absence, loss, removal, or substantial alteration of a first due area or other approved run area;

10.2.10. Any act of a local governmental authority with jurisdiction over the geographical area served by the local fire department, in lawful exercise of plenary powers assigned to that authority, that effectively removes or substantially diminishes department's power to serve within department's assigned fire protection district, or any such act that effectively removes or substantially diminishes the physical facilities available to the local fire department;

10.2.11. An adjudication that the local fire department is in default of payment of any fees, taxes, invoices or premiums due to the State of West Virginia, such as sales and use taxes, unemployment compensation or workers compensation payments, where the Commission is required by state or federal law to deny the local department's certification, recognition or legal authority to operate, and where the adjudication is rendered by a court of competent jurisdiction or by an administrative agency with specific statutory authority to determine such failure or default; and

10.2.12. Any violation of law that demonstrates a gross or flagrant disregard for the rule of law directly bearing on the safety of the community or communities to be served by the local fire department and that cannot be corrected by other authorities acting through other means such as removal of the responsible individuals or criminal prosecution of the offending individuals.

10.3. Disciplinary powers of the State Fire Commission

10.3.1. The Commission may deny certification or recognition and may restrict, suspend, or revoke the recognition of a local fire department upon a showing that the department or proposed department has violated the standards for recognition as set out in this rule. No restriction, suspension or revocation of recognition may occur without a prior hearing conducted by the Commission, except that the Commission may temporarily suspend recognition pending a subsequent hearing if the Commission determines that continued operation of a local fire department constitutes an immediate danger to the public.

10.3.2. Remedial alternatives - Upon notice to the Commission of violation of the standards for recognition and safe operation of a local fire department, the Commission may, at any point, in lieu of other disciplinary action, utilize any of the following methods to resolve or remedy the circumstances resulting in such violation:

10.3.2.a. The Commission may authorize the State Fire Marshal to issue a warning letter to the local fire department identifying the nature of the violation or violations and advising the local fire department that additional violations could result in the modification or loss of its recognition.

10.3.2.b. The Commission may establish a plan and period of improvement during which the local department may attempt to correct or alleviate the circumstances giving rise to a violation and the Commission may extend such period if additional time is required to address all circumstances. If at the conclusion of such period or extended period, the local fire department has reasonably satisfied the requirements or objectives of the improvement plan, the Commission shall dismiss the complaint. If, however, the local fire department has failed to satisfy the objectives, the matter shall be set down for hearing upon the violations alleged against the local fire department.

10.3.2.c. The Commission may enter into a stipulation, agreed settlement or consent order with the local fire department to resolve and conclude the disciplinary action under such terms as the Commission deems reasonable and just. The Commission may authorize the State Fire Marshal or other representative of the Commission to negotiate the terms of such agreement and present the resulting agreement to the Commission for its approval.

10.4. The use of any of these remedial alternatives rests in the sole discretion of the Commission. The Commission may elect to proceed directly to a disciplinary hearing if it appears unlikely or impossible to remedy the situation that has given rise to the violations or if it appears that there is an imminent risk of harm to the public by the continued operation of the local fire department.

10.5. No local fire department shall have a guaranteed or presumed right to certification or recognition, or to reissuance of a recognition, if that department's recognition was previously revoked or withdrawn by the Commission.

§87-6-11. Commission Actions.

11.1. Any decision by the Commission approving, denying, restricting, suspending, or revoking the certification or recognition of a local fire department shall be made in open meeting upon a vote of the majority of those members present. When considering the regular evaluations of multiple fire departments, the Commission may grant the renewals in a consolidated motion before the Commission.

11.2. Pursuant to West Virginia Code §§6-9A-2(4)(A) and 6-9A-4(b)(4), the Commission may deliberate upon an issue in consideration of the granting, denial, withdrawal, modification, suspension or revocation of a department's certification or recognition in an executive session.

§87-6-12. Procedures for Withdrawal, Suspension or Revocation of Certification or Recognition.

12.1. Notice - If the Commission determines that there is probable cause to believe a violation of standards has occurred and that a hearing is necessary to resolve the issues alleged, the Chairman of the Commission shall schedule a hearing upon the matters alleged against the local fire department. The State Fire Marshal shall prepare a short, plain statement of the matters to be considered at the hearing and shall prepare a written notice advising the local fire department of the date, time, and location of the hearing. The notice and statement of the State Fire Marshal shall be served upon the local fire department by personal delivery upon an officer of the department or by registered or certified mail addressed to the mailing address of the department as shown on the department's application for certification. A copy of the statement of charges shall also be provided to the local government entity having jurisdiction over the area served by the local fire department.

12.2. Parties - The State Fire Marshal or his authorized representative shall have the responsibility of presenting the case in support of the complaint, or the case on behalf of the Commission if the Commission has initiated the investigation. The local fire department shall be named as the respondent in the proceedings and may appear by the authorized representative of the department, or by counsel, or both. These parties shall be the primary participants in the case, but the Commission may, at its discretion, allow the participation of any other party as an intervenor in the proceeding, upon written

motion by such party and upon a showing that such party has a substantial interest in the proceeding that is not likely to be represented by the other parties in the case.

12.3. Hearing - The Commission has the discretion to determine the time, location and duration of any hearing brought pursuant to the provisions of this rule. Hearings shall be open to the public and may be conducted before the full Commission or the Chairman may, at his discretion, designate a member to serve as a hearing examiner to conduct a hearing on behalf of the Commission. Alternatively, the State Fire Commission may authorize and empower an impartial attorney to serve as a hearing examiner. When a hearing examiner is so designated or authorized, that person shall have full authority to conduct the proceedings and may exercise all powers listed in West Virginia Code §29A-5-1(d). At any point in the proceedings, the Commission may choose to invoke one of the remedial alternatives described in subdivision 10.3.b. of this Rule to resolve and dispose of the matter.

12.4. The State Fire Marshal shall have the burden of proving the matters alleged against the local fire department by a preponderance of evidence.

12.5. Decision and Order - The decision of the Commission shall be reduced to a written order and shall become final upon service of the order upon the local fire department by registered or certified mail. Any decision of the Commission, disposing of a complaint against a local fire department in any manner, shall also be served by certified mail upon the complainant and upon the local government entity having jurisdiction over that fire department.

§87-6-13. Appeals.

13.1. Any party who is adversely affected by a final order or decision of the Commission, rendered under the provisions of this rule, shall have the right to judicial review of that decision as established in West Virginia Code §§29A-5-4 and 29A-6-1.