

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

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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: WV State Fire Commission TITLE NUMBER: 87

CITE AUTHORITY: W. Va. Code §29-3-5b

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Certification of Home Inspectors

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature



- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2005

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- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Anthony Carrico, Deputy State Fire Marshall

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WV State Fire Commission  
1207 Quarrier Street, Second Floor  
Charleston, WV 25301

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Tel. 304-558-2191, Fax 304-558-2537

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acarrico@wvfiremarshal.org

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Doren Burrell, Senior Assistant Attorney General

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Office of the Attorney General  
State Capitol, Room E-26  
Charleston, WV 25305

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Tel. 304-558-2522, Fax 304-558-2525

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doren.burrell@wvago.gov

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

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**WEST VIRGINIA STATE FIRE COMMISSION**

**CERTIFICATION OF HOME INSPECTORS**

**Title 87, Series 5**

**Public Comments to Proposed Rule and  
State Fire Commission's Responses to Comments**

Written comments are attached. The State Fire Commission's responses follow groups of documents containing similar comments.

TITLE 87  
LEGISLATIVE RULE  
STATE FIRE MARSHAL

SERIES 5  
CERTIFICATION OF HOME INSPECTORS

**87-5-4. Qualifications for Certifications**

4.1 As an initial requirement and qualification for 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 and shall present proof of having conducted business as a home inspector for a period of three years prior to the effective date of this rule; OR

4.1.b Shall have passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors and show proof of at least eighty (80) hours of directly related instruction relating to Professional Home Inspectors as approved by the State Fire Marshal; OR

**4.1.c Shall have passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors and provide proof of having performed 100 fee paid Home Inspections.**

4.4. Every applicant shall present proof of, and shall be required to maintain,

4.4.a General liability insurance in the amount of not less than two hundred fifty thousand dollars (250,000.00) AND

4.4.b **E&O Errors of Omission Insurance in the amount of not less than two hundred fifty thousand dollars (250,000.00) AND**

4.4.c **Provide a personal insurance bond in the amount of not less than ten thousand dollars (\$10,000.00)**

**87-5-8. Prohibited Acts.**

8.3.a. To perform or offer to perform any repairs, **OR HAVE A VESTED INTEREST IN A COMPANY THAT IS TO PERFORM WORK** to a structure on the which the inspector, or the inspectors company, has prepared a home inspection report **FOR A PERIOD OF 12 MONTHS**

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 parties that receive financial profit** for the referral of any business to the inspector or the inspection company.

*Respectively submitted*  
*Thomas Skusko*  
*457 Lane Road*  
*Lake Lynne, PA 15451*

TITLE 87  
LEGISLATIVE RULE  
STATE FIRE MARSHAL

SERIES 5  
CERTIFICATION OF HOME INSPECTORS

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Thomas R. Wise  
541 GANS ROAD  
LAKE LYNN, PA 15451

TITLE 87  
LEGISLATIVE RULE  
STATE FIRE MARSHAL

SERIES 5  
CERTIFICATION OF HOME INSPECTORS

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*Charles R. Rasmussen*  
11 Sheldon Ave  
Fairchance, PA. 15436

TITLE 87  
LEGISLATIVE RULE  
STATE FIRE MARSHAL

SERIES 5  
CERTIFICATION OF HOME INSPECTORS

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RESPECT FULLY  
SUBMITTED,  
DAVID M. LEZEK  
(DAVID M. LEZEK)  
1515 WESTBROOK DR.  
MORGANTOWN, WV 26508

TITLE 87  
LEGISLATIVE RULE  
STATE FIRE MARSHAL

SERIES 5  
CERTIFICATION OF HOME INSPECTORS

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*Respectively submitted*  
*Rocky Hill*  
*53 North Mantown St.*  
*Fairfield, Penn.*  
*15436*

TITLE 87  
LEGISLATIVE RULE  
STATE FIRE MARSHAL

SERIES 5  
CERTIFICATION OF HOME INSPECTORS

**87-5-4. Qualifications for Certifications**

4.1a. conducted business as a home inspector for three years **and performed a minimum of 100 fee paid home inspections** prior to the effective date of this rule; OR

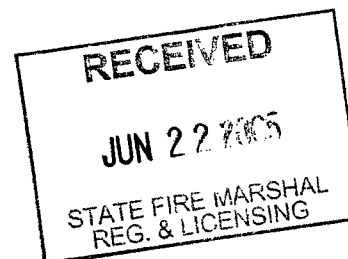
4.3. Every applicant must have successfully completed high school or its equivalent: **provide a personal insurance bond in the amount of and not less than \$25,000.**

4.4. Every applicant shall present proof of, and shall be required to maintain, general liability insurance in the amount of not less than two hundred fifty thousand dollars (250,000.00) **and E&O Errors of Omission Insurance in the amount of not less than two hundred fifty thousand dollars (250,000.00).**

**87-5-8. Prohibited Acts.**

8.3.a. To perform or offer to perform any repairs, **OR COMMISSION FOR WORK TO BE PERFORMED OR HAVE A VESTED INTEREST IN A COMPANY THAT IS TO PERFORM WORK** to a structure on the which the inspector, or the inspectors company, has prepared a home inspection report **FOR A PERIOD OF 12 MONTHS**

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State Fire Commission's responses to the comments of:

Thomas Shusko  
Thomas R. Wise  
Charles Roskassley  
Davide M. Lezek  
Rocky Hise  
an unsigned commenter

This group of six comments, all faxed from the same originating number, appear to be essentially the same and so will be addressed as a group.

Regarding §87-5-4 Qualifications for Certification

The State Fire Commission disagrees with the request to require documentation of having performed 100 paid inspections as a qualification to be certified. This appears to be a problem because, under these rules, only certified home inspectors may perform home inspections for compensation and therefore, a person could not lawfully pursue this qualification for certification once the rule becomes effective.

The State Fire Commission is divided over the issue of whether to impose a requirement of Errors and Omissions Insurance on certified home inspectors, but having noted that many other professional licensing authorities such as the Board of Professional Engineers do not impose a similar requirement, the Commission has decided not to include this requested amendment.

The State Fire Commission disagrees with the request to require the positing of a bond by certified home inspectors. Bonds are generally written for task-specific or job-specific circumstances. The comments do not provide sufficient guidance as to the purpose to be served by this request and therefore the Commission declines to include this provision.

Regarding §87-5-8 Prohibited Acts

The State Fire Commission agrees with the suggested amendments to the conflict of interest provisions and has therefore amended §87-5-8.3.a. to include the suggested language.

The State Fire Commission agrees to the suggested addition to subdivision c. and this subdivision will be amended as follows:

“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 financial benefit, for the referral of any business to the inspector or the inspection company”

The Commission has chosen to use the word “benefit” rather than “profit” to eliminate the requirement of proving that an actual profit was made.



**AMERICAN  
HOME INSPECTION  
ASSOCIATION**

21351 Ridgetop Circle, Suite 300  
Dulles, VA 20166

Phone (703) 421-6899  
Fax (703) 404-3746

mail@americanhomeinspection.org  
www.americanhomeinspection.org

Tuesday, June 21, 20005

The Honorable Sterling Lewis, Jr.  
State Fire Marshal  
1207 Quarrier Street, 2<sup>nd</sup> Floor  
Charleston, WV 25301

VIA OVERNIGHT MAIL

Re: *Title 87, Series 5, "Certification of Home Inspectors"*

Dear Marshal Lewis:

This is to express our organization's conditional endorsement of proposed West Virginia legislative rule § 87-5 relating to the certification of home inspectors, which is scheduled to come before the State Fire Commission for consideration soon.

Our organization and its member companies strongly support licensing for home inspectors. However, we also believe that the industry and the public would be better served if the rule enacted by the Commission did not favor one trade association's licensing examination over that of another – or, for that matter, one that may one day be developed by private industry.

We believe that if the Commission hopes to foster better examinations in the future it is best not to prescribe by legislative rule that only one examination can be used to evaluate a home inspector's qualifications for licensure. Therefore, we respectfully request that §§ 87-5-4.1.a and 87-5-4.1.b be amended to state that in order to qualify for licensure as a home inspector in West Virginia, the applicant must "have passed a home inspector examination approved by the State Fire Commission" rather than specify "the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors."

We appreciate this opportunity to comment on the proposed rule and stand ready to be of whatever help we can to you and the members of the Commission. Thank you for your consideration.

Respectfully yours,

AMERICAN HOME INSPECTION ASSOCIATION

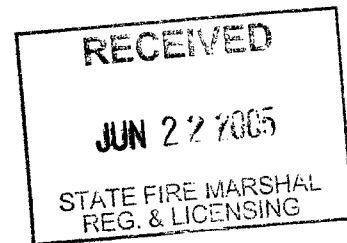
A handwritten signature in black ink, appearing to read "David E. Poisson". The signature is written in a cursive style with a large initial "D".

By: David E. Poisson  
Executive Director and General Counsel



1-800-595-7952  
991 River Road  
Morgantown, WV 26501

June 20, 2005



State Fire Commission  
Attn: Fire Dept. Certification Rule  
1207 Quarrier Street  
2<sup>nd</sup> Floor  
Charleston, WV 25301

Gentlemen:

I would like to make the following comment on the proposed Title 87, Series 5, Certification of Home Inspectors.

§87-5-4 Qualifications for Certification 4.1.a should read:

“Shall have passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors or equivalent testing as approved by the State Fire Marshal’s Office . . .”

Thank you for the consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads 'Jack E. Jamison, Jr.'.

Jack E. Jamison, Jr.  
Chief Inspector  
MEGCO Inspections

State Fire Commission's responses to the comments of :

David E. Poisson, American Home Inspection Association  
Jack E. Jamison, Jr, MEGCO Inspections

The State Fire Commission agrees with the comments that the certification rules should not be tied to one specific examination conducted by only one private testing organization. Therefore the Commission has amended section 87-5-4 of the rule to permit the use of other, appropriate examinations if the test matter and methods are approved by the State Fire Marshal.

WEST VIRGINIA CODE OFFICIALS ASSOCIATION

P.O. Box 2514  
Beckley, WV 25802-2514

June 7, 2005

West Virginia State Fire Commission  
1207 Quarrier St. – 2<sup>nd</sup> Floor  
Charleston, WV 25301

RECEIVED

JUN 09 2005

STATE FIRE MARSHAL  
REG. & LICENSING

RE: Title 87 Legislative Rule Series 5 – Certification of Home Inspectors

Dear Sirs:

The following is filed as an objection to portions of the above referenced Legislative Rule – Certification of Home Inspectors, 87-5-4.1.a., 4.1.b. and 13.1.e. I filed written objections previously to the original language, prior to Fire Commission adoption. Those concerns remained unaddressed by the proposed rule and arbitrarily reduce and restrict other qualifications for certification.

Subsection 4.1.a. requires passage of the National Home Inspector Examination and proof of conducting business as a home inspector for three years prior to the effective date. Subsection 4.1.b requires the same test and 80 hours of instruction directly related to professional home inspections as approved by the SFM.

After the effective date, subsection 4.1.a. will be rendered moot. You won't be able to do business as a home inspector unless you are certified. Any potential new inspector any time after the effective date can't qualify, limiting home inspectors certification to those who so, without any standards, for three years prior to 2005.

After the effective date, subsection 4.1.b. further restricts certification of new home inspectors to those who take the 80 hours of specific class instruction, in the form and content approved by the SFM. The terminology used eliminates existing qualified and certified home inspectors by exclusion of other criteria.

I submit that most, if not all, WV Registered Professional Engineers and WV Registered Professional Architects are eminently qualified as home inspectors. Most if not all West Virginia City and County Building Code Inspectors are eminently qualified as home inspectors, most if not all, with in excess of both three years of "home inspection" experience and 80 hours of ICC Residential Code (and prior to that CABO One & Two Family Code) instruction and training. All of these are already recognized as Qualified to inspect and enforce the State Building Code, the standard for construction and renovation statewide.

Subsection 13.1.e. specifically exempts home inspectors from reporting essential consumer information. The owner or prospective owner or seller needs to know if the

structure complies with the state building code, city, county, state or regulatory requirements that are pertinent. Municipal and county inspections note such compliance and/or non-compliance.

I urge the State Fire Commission to amend the proposed legislative rule to include other eminently qualified "home" inspectors for certification and enhance consumer credibility by adding the following language:

1. Add to 4.1.a - ...having conducted business as a home inspector **or served as a municipal or county residential building code inspector** for three ...
2. Add to 4.1.b. - **OR**
3. Add a new subsection - 4.1.c. **Shall have passed the International Code Council (ICC) Residential Building Inspector Examination, or its equivalent, and present proof of valid ICC Certification of same; OR**
4. Add a new subsection - **4.1.d. Shall be a Registered WV Professional Engineer or a WV Registered Professional Architect.**
5. Add to 13.1.e). - insurance or restrictions, **unless otherwise qualified to do so;**

Thank you for your consideration and interest in building safety in West Virginia.

Sincerely,



ROBERT L. CANNON, Chief  
Beckley/Raleigh County Code Enforcement Department

President  
West Virginia Code Officials Association  
P.O. Box 2514  
Beckley, WV 25802-2514  
304-256-1757 - FAX 304-256-1815  
email - rcannon@beckley.org

State Fire Commission's responses to the comments of :

Robert L. Cannon, President  
West Virginia Code Officials Association

The State Fire Commission disagrees with Mr. Cannon's interpretation of subdivision 87-5-4.1.a. as becoming moot once the rule is adopted. This provision is included to allow a transition into the implementation of this rule for individuals currently serving as home inspectors. Once these people obtain their certifications when the rule takes effect, new and inexperienced applicants will be required to take eighty hours of instruction in lieu of the experience requirement.

The Commission also disagrees with the comment that Professional Engineers or Architects should be deemed qualified per se. The Commission feels that, although such professionals may possess sufficient technical knowledge of home design, a home inspector should only be certified after passing an examination that focuses on the specifics of home construction, structural and systems review, as well as other matters specifically relating to the proper functioning of residential homes as built.

As for the request to add the International Code Council Residential Building Inspector Examination as a certification criterion, the Commission declines to include this specific reference, but has amended the rule to permit the State Fire Marshal to approve other written examinations as suitable and equivalent to the current criteria.

The Commission deems the request to add the words "unless otherwise qualified to do so" as excess verbiage and declines to amend section 87-5-13.1.e. as suggested.

# Annotations of Michael Real, WV Home Inspectors Assoc.

## RECOMMENDATIONS AND SUGGESTED CHANGES IN THE PROPOSED: TITLE 87 LEGISLATIVE RULE STATE FIRE MARSHAL

### SERIES 5 LICENSING OF HOME INSPECTORS

This document was prepared, and is presented, on behalf of those interested parties who responded during the previous "proposed" rules' 30 day comment period. While it is not everything that each entity would desire, we believe that this presentation and resultant legislation will be a solid, defensible, document which will enhance consumer protection in the State of West Virginia.

We applaud the State's Fire Commission on their desire to see meaningful legislation enacted to better safeguard the life, safety and health of the citizens of the State of West Virginia.

#### 87-5-2. Necessity of (licensing; definitions)

Change, throughout the entire document: The term LICENSING is definitely preferred as a designation rather than certification by everyone involved.

- 2.4.a Substitute four (4) for two (2) units. -ok
- 2.4.d Replace (to the owner or other interested party) with "client" -ok
- 2.4.e Remove the words "seeks to engage" -ok
- 2.4.n ADD, "Describe- To distinguish from another system or component" -ok
- 2.4.o ADD, "Inspect- A visual evaluation of readily accessible areas" -ok

#### 87-5-4. Qualifications for (Licensing)

4.1.a Change to read: "shall have passed a psychometrically designed and monitored examination, approved by the State's Fire Marshal, designed to test the competency of individuals as it relates to the process of home inspection." -ok

4.1.b Change as above (4.1.a) -ok

#### 87-5-6 EXPIRATION

6.4 ADD "continuing" delete continued -ok

#### 87.5.11. General standards of practice

11.1.b Change to read: "Recommend that the client seek the opinion of a professional tradesperson with regards to any suggested repairs based upon the findings of the home inspection." -ok

accept

Suggest repairs to be made based upon the findings of the home inspection and

87-5-13 ADD the word (be) in between not and required

13.1.m ADD, (Report on the presence or absence of mold-like, microbial growth or substances.

13.1.n ADD, (Report on the presence or absence of hazardous materials

13.2.m (same as 13.1.m)

13.2.n (same as 13.2.n)

### 87.5.18 ELECTRICAL

~~18.2 ADD, The word (NOT) in between is and authorized.??~~

18.6.b ADD, (arc fault breakers)

18.6.g SAME ↑

### 87-5-24 RESPONSIBILITIES

24.2 Define "locations"

State Fire Commission's responses to the comments of :

Michael Real, WV Home Inspectors Association

The comments, submitted as annotations to the proposed rule, contain several corrections for typographical error and these have been accepted by the Commission as appropriate corrections.

The Commission also accepts the proposed amendments to the definitions in section 87-5-2 except that after discussion with the author of the comments, he has agreed to withdraw the request for the additional definitions suggested as subdivisions 2.4.n and 2.4.o.

Although the Commission has not adopted the specific language proposed in the comment for §87-5-4 the Commission has modified this section to eliminate the exclusive requirement of only one allowable examination company.

The Commission has accepted the suggested amendment of section 87-5.11.1.b with some additional, clarifying language.

The Commission has accepted the suggested modifications to section 87-5-13 with the exception of the proposed additional sections 13.2.m and 13.2.n. These are deemed to be redundant of the other amendments to this section.

The Commission has accepted the suggested modifications to section 87-5-18 to include "arc fault breakers" in this section.

After further discussions with the author of the comments, the Commission has amended section 87-5-24.2 to clarify the requirements of annual reporting to be a summary by county only and not a detail of individual locations.

The author had previously requested the addition of a subsection 87-5-4.5 relating to the filing of proposed forms, but the author has since withdrawn this request.

**WEST VIRGINIA STATE FIRE COMMISSION**

**CERTIFICATION OF HOME INSPECTORS**

**Title 87, Series 5**

**BRIEF SUMMARY OF PROPOSED RULE**

The rule establishes the requirements for certification of home inspectors. The rule defines the qualifications required as well as the process for application to be certified as a home inspector in the State of West Virginia

The rule also defines the requirements and minimum standards for the conduct of home inspections.

In addition, the rule provides procedures for the investigation of alleged violations of the rule and the West Virginia Code. The procedures for contested case hearings upon such allegations are also included.

**WEST VIRGINIA STATE FIRE COMMISSION**  
**RULES AND PROCEDURES FOR THE CERTIFICATION**  
**AND REVIEW LOCAL FIRE DEPARTMENTS**  
**Title 87, Series 6**

**STATEMENT OF CIRCUMSTANCES FOR PROPOSED RULE**

West Virginia Code §29-3-5(c) authorizes the State Fire Commission to establish state standards and fee schedules for the certification of persons who will conduct inspections relating to the State Building Code ( previously promulgated by the Commission at 87 CSR 4 ), including home inspectors. Currently there is no state standard for the minimum requirements of a home inspection. This rule establishes minimum standards to be applied consistently throughout the state.

The rule also sets out the requirements to be certified as a home inspector, the fees for certification, and procedures for the investigation of alleged violations of the rule. The provisions of this rule should promote uniformity in practice of home inspections and should provide basic due process for those applying to be certified as home inspectors or alleged to have violated the requirements and minimum standards for home inspections.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Certification of Home Inspectors

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Fire Commission

Address: 1207 Quarrier Street, 2nd Floor  
Charleston, WV 25301

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Phone Number: 304-558-2191 Email: acarrico@wvfiremarshal.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Fiscal impact is expected to minimal to the administering agency (State Fire Marshal's Office) as revenue should be neutral if not negative due to administrative costs associated with mailing, certificates, computer equipment and personnel.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	7,500.00
Personal Services	0.00	0.00	2,500.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Equipment	0.00	0.00	5,000.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	6,000.00

Rule Title: Certification of Home Inspectors

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

Agency projects, based upon current number of home inspectors surveyed, a slight increase in costs associated with the overall administration of the certification program. Long-range estimates are to become revenue neutral within one to two fiscal years with a slight increase in revenue thereafter.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

[Empty box for memorandum content]

Date: May 24, 2005

Signature of Agency Head or Authorized Representative

James W. Spears

TITLE 87  
LEGISLATIVE RULE  
STATE FIRE COMMISSION 05 JUL 29 PM 4: 27

RECEIVED

SERIES 5  
CERTIFICATION OF HOME INSPECTORS

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§87-5-1. 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. Enforcement. - The State Fire Commission hereby authorizes and directs the State Fire Marshal to administer and enforce the provisions of this rule.

1.3. Authority. -- W. Va. Code §29-3-5b(c)

1.4. Filing Date. -

1.5. Effective Date. -

**§87-5-2. Necessity of certification; definitions.**

2.1 After the effective date of this rule, no home inspection work may be performed, offered or engaged in for compensation or hire within the state of West Virginia by any person unless such person possesses a certificate issued by the State Fire Marshal in accordance with this rule.

2.2. No business entity may provide home inspection services unless each of the home inspectors employed by the business entity is certified in accordance with the provisions of this rule.

2.3. No business entity may 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 in accordance with the provision of this rule

2.4. No person shall 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. As used in this rule:

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

a. "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 effect the dwelling.

b. "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.

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

d. "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:

1. On those systems and components inspected which, in the professional opinion of the inspector, are significantly deficient or are near the end of its service life.

2. A reason why, if not self evident, the system or component is significantly deficient or near the end of its service life.

3. The inspector's recommendations to correct or monitor the reported violation.

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

e. "Client" – Means any person who 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.

f. "Compensation" – Means direct or indirect payment, including the expectation of payment whether or not actually received.

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

h. "State Fire Commission" – Means the state agency composed of the appointed State Fire Commissioners and the office of the State Fire Marshal.

i. "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.

j. "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.

k. "Residential Dwelling" – Means a structure consisting of from one to two family dwelling units.

l. "System" – Means a combination of interactive or interdependent components assembled to carry out one or more functions.

m. "Technically Exhaustive" – Means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations or other means.

### **§87-5-3. Exemptions.**

3.1. This rule does not apply to, and no certification may be required for, the following persons:

a. A person who is employed by a governmental entity from inspecting residential dwellings if the inspection is within his or her official duties and responsibilities.

b. A person performing a home inspection if the inspection will be used solely by a bank, savings and loan association or credit union to monitor progress on the construction of a residential dwelling.

c. A person, who is employed as a property manager for a residential dwelling and whose official duties and responsibilities include inspecting the residential structure, in performing an inspection on the dwelling if the person does not receive separate compensation for the inspection work.

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

### **§87-5-4. Qualifications for Certification.**

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

a. Shall have passed the National Home Inspector Examination offered by the

Examination Board of Professional Home Inspectors or other, comparable examination, as determined and designated by the State Fire Marshal, and

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.

4.2. Every applicant must have successfully completed high school or its equivalent;

4.3. Every applicant shall present proof of, and shall be required to maintain, general liability insurance in the amount of not less than two hundred fifty thousand dollars (\$250,000.00). Proof of renewal shall be forwarded to the State Fire Marshal's office prior to the expiration date of the policy and shall cover, at a minimum, the period for which the Home Inspector Certification is issued.

#### **§87-5-5. Procedure for application.**

5.1. Form of Request - Each applicant requesting a home inspector's certification under the provisions of this rule shall, as a condition precedent to the issuance of certification, provide the State Fire Marshal with:

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

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

c. Any other documentation that the State Fire Marshal may require to ensure compliance with qualifications for certification.

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

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

#### **§87-5-6. 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, 2003 will expire on August 31, 2004 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** – A certified home inspector who has not renewed his or her certificate in accordance with the preceding subsection of this rule shall submit a new application to the State Fire Marshal. 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 State Fire Marshal shall require 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 or the State Fire Commission.

#### **§87-5-7. Fees.**

The following fees are hereby established and adopted by the State Fire Commission:

7.1. Certification fee – One hundred (\$100.00) dollar 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. 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 notarized statement stating that the certification was lost or destroyed.

#### **§87-5-8. 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 participated in unfair business practice.

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:

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;

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

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

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.

§87-5-9. Effect of Noncompliance; Failure to obtain certification; Penalty.

9.1. Any person who conducts a home inspection without the required certification is subject to being issued a citation or a civil action in the name of the state in the circuit court of the county where the inspection was or is being performed for an injunction. 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 or State Fire Commission. 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 Commission may be subject to criminal prosecution under the provisions of West Virginia Code §29-3-27.

§87-5-10. Reciprocity.

10.1. Upon payment of the certification fee, application fee and submission of a completed application as provided by the State Fire Marshal to the State Fire Marshal, the State Fire Marshal may issue an home inspectors certificate to any person who holds a valid certification, license or registration to conduct home inspections, issued by another state or possession of the United

States or the District of Columbia that has standards substantially equivalent to, or exceeding, those of this state, as determined by the State Fire Marshal.

**§87-5-11. 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:

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

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

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

**§87-5-12. General Limitations.**

12.1. Home inspections, performed in accordance with the general standard of practice defined in §87-5-11, shall not be technically exhaustive and will not identify concealed conditions or latent defects.

12.2. The provisions of §87-5-11 of this rule shall constitute the minimum standard for a home inspector in conducting, and submitting reports of, home inspections.

12.3. This rule applies to residential resale buildings.

**§87-5-13. General Exclusions.**

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

a. Life expectancy of any component or system;

b. The cause of the need for a repair;

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

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

- e. Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements, special utility, insurance or restrictions;
  - f. The market value of the property or its marketability;
  - g. The advisability or inadvisability of purchase of the property;
  - h. Any component or system that was not inspected;
  - i. The absence of pests such as wood damaging organisms, rodents or insects;
  - j. Cosmetic items, underground items not permanently installed;
  - k. Hidden or latent defects;
  - l. Items not visible for inspection;
  - m. The presence or absence of mold, mold-like, or microbial, growth or substances;
- or
- n. The presence or absence of hazardous materials.

13.2. Home inspectors are not required to:

- a. Offer warranties or guarantees of any kind;
- b. Calculate the strength, adequacy, or efficiency of any system or component;
- 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;
- d. Operate any system or component that is shut down or otherwise inoperable;
- e. Operate any system or component that does not respond to normal operating controls;
- f. Disturb insulation, move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
- 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;
- h. Determine the effectiveness of any system installed to control or remove suspected hazardous substances;

- i. Predict future condition, including, but not limited to, the failure of any components.
- j. Project operating costs of components;
- k. Evaluate acoustical characteristics of any system or component; or
- l. Inspect special equipment or accessories that are not listed as components to be inspected.

13.3. Home inspectors shall not:

- a. Offer or perform any act or service contrary to law;
- b. Report on the market value of the property or its marketability;
- c. Report on the advisability or inadvisability of purchase or the property;
- d. Report on any component or system that was not inspected;
- e. Report on the absence of pests such as wood damaging organisms, rodents or insects. However, the home inspector may advise the client of damages to the building and recommend further inspection by a licensed wood destroying insect inspector.

**§87-5-14. Structural Components**

14.1. The home inspector shall inspect structural components including:

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

14.2. The home inspector shall describe the type of:

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

14.3. The home inspector shall:

- a. Probe structural components only where deterioration is visible, except where probing would damage any surface;
- 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;
- c. Report the methods used to inspect under floor crawl spaces and attics; and
- d. Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

**§87-5-15. Exterior.**

15.1. The home inspector shall inspect:

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

- a. Describe wall cladding materials;
- b. Operate all entryway doors and a representative number of windows;
- c. Operate garage doors manually or by using permanently installed controls for any garage door operator; and
- d. Report whether or not any garage door operator will automatically reverse or stop and if so equipped with said safety feature.

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

- a. Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;
- b. Fences;
- c. Presence of safety glazing in doors and windows;
- d. Garage door operator remote control transmitters;
- e. Geological conditions;
- f. Soil conditions;
- g. Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment or athletic facilities);
- h. Detached buildings or structures;
- i. Presence or condition of buried fuel storage tanks.

**§87-5-16. Roofing.**

16.1. The home inspector shall inspect:

- a. Roof coverings;
- b. Roof drainage systems;

- c. Flashings;
- d. Skylights, chimneys and roof penetrations; and
- e. Signs of leaks or abnormal condensation on building components.

16.2. The home inspector shall:

- a. Describe the type of roof covering materials; and
- b. Report the methods used to observe the roofing.

16.3. The home inspector is not required to:

- a. Walk on the roofing; or
- b. Inspect attached accessories including but not limited to solar systems, antennae and lightening arrestors.

**§87-5-17. Plumbing.**

17.1. The home inspector shall inspect:

- a. Interior water supply and distribution systems, including piping materials, supports, insulation; fixtures and faucets; functional flow; leaks; and cross connections.
- b. Interior drain, waste and vent system, including: traps, drain, waste and vent piping; piping supports and pipe insulation; leaks and functional drainage;
- c. Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues and vents;
- d. Fuel storage and distribution systems including interior fuel storage equipment, supply piping, venting and supports; leaks; and
- e. Sump pumps.

17.2. The home inspector shall describe:

- a. Water supply and distribution piping materials;
- b. Drain, waste and vent piping materials;

- c. Water heating equipment; and
- d. Location of 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:

- a. State the effectiveness of anti-siphon devices;
- b. Determine whether water supply and waste disposal systems are public or private;
- c. Operate automatic safety controls;
- d. Operate any valve except water closet flush valves, fixture faucets and hose faucets;
- e. Inspect:
  - 1. Water conditioning systems;
  - 2. Fire and lawn sprinkler system;
  - 3. On-site water supply quantity and quality;
  - 4. On-site waste disposal systems;
  - 5. Foundation irrigation systems;
  - 6. Spas;
  - 7. Swimming pools;
  - 8. Solar water heating equipment; or
  - 9. Inspect the system for proper sizing, design or use of proper materials.

#### **§87-5-18. 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 is authorized to submit a professional evaluation concerning:

- a. Service entrance conductors;
- b. Service equipment, ground equipment, main over current device and main and distribution panels;
- c. Amperage and voltage ratings of the service;
- d. Branch circuit conductors, their over-current devices and the compatibility of the amperages and voltages.
- 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.
- 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;
- g. The operation of ground fault circuit interrupters or arc fault breakers; and
- h. Smoke detectors.

18.3. The home inspector shall describe:

- a. Service amperage and voltage;
- b. Service entry conductor materials;
- c. Service type as being overhead or underground; and
- d. 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 operate their test function, if accessible, except when detectors are part of a central system.

18.6. The home inspector is not required to:

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

18.7. The home inspector shall recommend to the client if an electrical hazard exists, a full electrical system inspection performed by a West Virginia certified electrical inspector as certified by Chapter 29, Article 3C of the West Virginia Code, §29-3C-1 et seq.

#### **§87-5-19. Heating.**

- 19.1. The home inspector shall inspect permanently installed heating systems including:
- a. Heating equipment;
  - b. Normal operating controls;
  - c. Automatic safety controls;
  - d. Chimney, flues and vents, where readily visible.
  - e. Solid fuel heating devices including fireplaces;
  - f. Heat distribution systems including fans, pumps, ducts and piping, with associated supports, insulation, air filters, registers, radiators, fan coil units, convectors; and
  - g. The presence of an installed heat source in each room.

19.2. The home inspector shall describe:

- a. Energy source; and
- b. 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 open access panels provided by the manufacturer or installer for routine homeowner maintenance.

19.5. The home inspector is not required to:

- a. Operate heating systems when weather conditions or other circumstances may cause equipment damage;
- b. Operate automatic safety controls;
- c. Ignite or extinguish solid fuel fires; or
- d. Inspect:
  - 1. The interior of flues;
  - 2. Fireplace insert flue connections;
  - 3. Humidifiers;
  - 4. Electronic air filters; or
  - 5. The uniformity or adequacy of heat supplies to the various rooms.

**§87-5-20. Central Air Conditioning.**

20.1. The home inspector shall inspect:

- a. Central air conditioning systems including:
- b. Cooling and air handling equipment;
- c. Normal operating controls;

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

e. The presence of an installed cooling source in each room.

20.2. The home inspector shall describe:

a. Energy sources; and

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 open able access panels provided by the manufacturer or installer for routine homeowner maintenance.

20.5. The home inspector is not required to:

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

b. Inspect non-central air conditioners; or

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

#### **§87-5-21. Interiors.**

21.1. The home inspector shall inspect:

a. Walls, ceiling and floors;

b. Steps, stairways, balconies and railings;

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

d. A representative number of doors and windows.

21.2. The home inspector shall:

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

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:

- a. Paint, wallpaper and other finish treatments on the interior walls, ceilings and floors;
- b. Carpeting; or
- c. Draperies, blinds or other window treatments.

**§87-5-22. Insulation and Ventilation.**

22.1. The home inspector shall inspect:

- a. Insulation and vapor retarders in unfinished spaces;
- b. Ventilation of attics and foundation areas;
- c. Kitchen, bathroom and laundry venting system; and
- 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:

- a. Insulation in unfinished spaces; and
- b. Absence of insulation in unfinished space at conditioned surfaces.

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

- a. Concealed insulation and vapor retarders; or
- b. Venting equipment that is integral with household appliances.

**§87-5-23. Built-In Kitchen Appliances.**

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

- a. Permanently installed dishwasher; through its normal cycle;

- b. Range, cook top and permanently installed oven;
- c. Trash compactor;
- d. Garbage disposal;
- e. Ventilation equipment or range hood; and
- f. Permanently installed microwave oven.

23.2. The home inspector is not required to inspect:

- a. Clocks, timers, self-cleaning oven function, or thermostats for calibration or automatic operation;
- b. Non built-in appliances such as clothes washers and dryers; or
- c. Refrigeration units such as freezers, refrigerators and icemakers.

23.3. The home inspector is not required to operate:

- a. Appliances in use; or
- b. Any appliance that is shut down or otherwise inoperable.

**§87-5-24. Responsibilities of the Home Inspector.**

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

24.2. A certified home inspector shall submit an annual summary to the State Fire Marshal of all home inspections performed during the proceeding 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.

### **§87-5-25. 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 as issued by the State Fire Marshal.

25.2. A certification as 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.

### **§87-5-26. Disposition of Complaints.**

26.1. Enforcement of Certification Requirements - In the course of investigating complaints as authorized under West Virginia Code, the State Fire Marshal shall determine whether or not the person against whom the complaint has been filed is certified.

26.2. Any citizen, law enforcement official or other official of any state, county, or municipal government agency, upon observing or learning of an infraction of the certification requirements of established under this rule or W. Va. Code §29-3-5b may file a written complaint with the office of the State Fire Marshal. The State Fire Marshal may provide a form for this purpose, but a complaint may be filed in any written form. When a complaint is filed with the office of the State Fire Marshal, that office shall investigate the complaint. In addition to describing the alleged violation that prompted the complaint, the complaint should contain as a minimum the following information:

- a. The name and address of the certified home inspector or applicant against whom the complaint is lodged;
- b. The date of the alleged unlawful act;
- c. The nature of the alleged unlawful act; and
- d. The location of the alleged unlawful act or occurrence.

26.3. A copy of the complaint sent to the certificate holders or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the certificate holder or applicant to keep the State Fire Marshal informed of his or her current address. The certificate holder or applicant has 30 days to file a response or appeal petition to the complaint with the State Fire Marshal's office.

26.4. After receipt and review of a complaint, the State Fire Marshal shall cause to be conducted any reasonable inquiry or investigation he or she considers necessary to determine the truth and validity of the allegations set forth in the complaint.

**§87-5-27. Orders and Decisions of the State Fire Marshal; Appeals and Procedures for Appeals from such Orders or Decisions.**

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

27.2. Appeal of the State Fire Marshal Order and Decision - Any person aggrieved by an order or final written decision of the State Fire Marshal based upon or made in the course of the administration or enforcement of the provisions of W.Va. Code 29-3-1 et seq. or made pursuant to this rule, and who desires to contest the order or written decision may file an appeal from the order or written decision with the State Fire Commission. The procedures for preserving the right of appeal and for the conduct of the appeal are governed by this section and by West Virginia Code §29-3-18.

27.3. Appeal Petition – The appeal petition shall be typewritten, styled "Appeal Petition", and the appellant shall submit an original and one (1) copy. It shall be complete in itself so as to fully state the matters contested. No facsimile, telephone call, or similar communication may be regarded as an appeal petition. The petition shall contain and include the following:

- a. A copy of the order or decision of the State Fire Marshal being contested;
- b. A clear and concise assignment of each error which the petitioner alleges to have been committed by the State Fire Marshal in issuing the order or decision with each assignment of error being shown in separately numbered paragraphs;
- c.. A clear and concise statement of the facts upon which the petitioner relies as sustaining his or her assignment of errors;
- d. The address to which the petitioner desires to have all notices, documents, and the final order of the fire commission mailed;
- e.. The telephone number or numbers where the petitioner can be contacted;
- f. The names and addresses of all persons having any ownership interest in the property which is the subject of the State Fire Marshal's order being contested;
- g. A prayer setting forth the relief sought; and

h. The signature of the petitioner.

27.4. Time Requirement and Manner of Filing Appeal Petition – The petitioner shall submit an appeal petition by personal delivery or mail to the State Fire Commission within thirty (30) days following service upon the petitioner, or within thirty (30) days following actual receipt if service is not required or for some reason is not made of the order or decision being contested. Any appeal petition shall be sent by certified mail, return receipt requested, and is timely if postmarked within the thirty (30) day period. In the event the appeal petition is not timely filed with the State Fire Commission, the order or decision of the State Fire Marshal being contested shall be deemed final.

27.5. Copy of Appeal Petition to State Fire Commission – Upon receipt of an appeal petition, the Chairman of the State Fire Commission, through office staff, shall supply a copy of the petition to the State Fire Commission members together with an opinion by the State Fire Marshal regarding the urgency of the matter being contested. If the State Fire Marshal elects to file a response to the appeal petition, he or she shall deliver a copy of the response to the State Fire Commission and a copy to the petitioner.

27.6. Scheduling Appeal Petition for and Notice of Hearing – The State Fire Commission Chairman through office staff shall schedule a hearing on the appeal petition giving the petitioner and the State Fire Marshal at least ten (10) days written notice of the date, time, and place of the hearing. The notice to the petitioner shall be by personal delivery or by certified mail, return receipt requested, and shall contain a short and plain statement of the matters to be considered at the hearing, and a copy of the State Fire Marshal's response, if any, to the appeal petition. The notice of hearing shall be mailed or personally delivered by the State Fire Marshal no later than thirty (30) days after receipt of the appeal petition. A copy of the notice to the petitioner shall be supplied to the State Fire Marshal. The hearing shall be conducted at a designated location in Charleston, West Virginia, or in the discretion of the State Fire Commission at a location within the county of residence of the petitioner.

27.7. Authorized Representative – The petitioner may appear individually, or by counsel. Continuances – A motion for continuance may not be granted by the State Fire Commission unless made in writing three (3) days before the hearing or during the hearing, in either case for good and sufficient cause. Upon consideration of a motion for continuance, the urgency of the situation shall be determined and taken into consideration. Conflicting engagements of counsel or the employment of a new counsel are not good grounds for a continuance unless a motion is filed promptly after a notice of hearing has been mailed or unless extenuating circumstances are shown, which the State Fire Commission or hearing examiner considers adequate.

27.8. Absence of Petitioner or Counsel at the Scheduled Hearing – A hearing by the Fire Commission shall not be delayed or continued due to the absence of the petitioner or his or her legal counsel at a hearing, after service of notice of the time, date, and place of the hearing. The hearing shall proceed and the case shall be submitted for decision on the part of the absent petitioner or petitioners.

27.9. Hearing Examiner – Any member of the State Fire Commission may conduct a hearing on an appeal petition and has full authority to conduct the proceedings on an appeal petition, and when acting in that capacity shall be referred to as the hearing examiner. Alternatively, the State Fire Commission may authorize and empower an impartial attorney as a hearing examiner with the specific powers listed in *W. Va. Code §29A-5-1(d)*.

27.10. Subpoenas and Subpoenas Duces Tecum.

a. At any hearing held under this section, the State Fire Marshal may require, through the use of subpoenas and subpoenas duces tecum, the testimony of witnesses and the production of documentary evidence may be required. The State Fire marshal may issue subpoenas and subpoenas duces tecum at the request of the petitioner, the hearing examiner or the State Fire Commission.

b. Every subpoena or subpoena duces tecum shall prove service at least five (5) days before the return date of that subpoena, either by personal service made by any person eighteen (18) years of age, or older, or by registered or certified mail. A return acknowledgement signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail.

c. Any party requesting a subpoena or subpoena duces tecum shall see that it is properly served. Service of a subpoena or subpoena duces tecum issued at the insistence of the State Fire Commission is the responsibility of the State Fire Commission.

d. Any public official who serves any subpoena or subpoena duces tecum is entitled to the same fee as a Sheriff who serves a witness subpoena for a circuit court of this state; and fees for the attendance and travel of witness are the same as for witnesses before the circuit courts of this state. All fees shall be paid by the State Fire Commission if the subpoena or subpoena duces tecum is issued at the instance of the Fire Commission. All fees related to any subpoena or subpoena duces tecum issued at the instance of the petitioner or the State Fire Marshal shall be paid by the party requesting the subpoena or subpoena duces tecum.

e. A request for a subpoena or subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay the required fee.

f. Any person receiving a subpoena or subpoena duces tecum issued under this section shall honor the subpoena or subpoena duces tecum as though it were issued by a circuit court of the state, and shall appear as a witness and/or produce the books, records, or papers in response to the subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, upon application by the State Fire Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify in the circuit court.

27.11. Evidence.

a. All witnesses appearing at the hearing shall testify under oath or affirmation. Every adverse party has the right of cross-examination of witnesses who testify, and has the right to submit rebuttal evidence.

b. Either party may offer all relevant and material evidence, including papers, records, agency staff memoranda and documents in the possession of the State Fire Commission or the State Fire Marshal to be made part of the record in the case.

c. Except as otherwise in this section, the Hearing Examiner shall follow the rules of evidence as applied in civil cases in the circuit courts of this state in considering the admissibility of evidence. However, when necessary to ascertain certain facts not reasonably susceptible of proof under those rules, the Hearing Examiner may admit reasonably authenticated evidence, except where precluded by the Code or privilege, if it is of a type commonly relied upon by a reasonable prudent person in the conduct of his or her affairs.

27.12. Record of Proceedings – All of the testimony, evidence and rulings on admissibility of evidence at any hearing shall be recorded by a certified court reporter. An official record of the hearing shall be prepared by the State Fire Commission. A transcript, shall only be prepared if the Commission's final decision is appealed. The cost of the transcript shall be paid by the party requesting it.

27.13 Informal Disposition – At any stage of the proceedings, either party may dispose any contested case by stipulation, agreed settlement, consent order or default.

27.14. Decision by the State Fire Commission – Upon the conclusion of the hearing, the person designated by the State Fire Commission as hearing examiner shall prepare a decision supported by findings of fact and conclusions of law affirming, modifying, or vacating the earlier order or decision of the State Fire Marshal. The State Fire Commission may accept, modify, or reject the hearing examiner's decision. If the Commission accepts the hearing examiner's decision it shall sign the decision. If the Commission rejects or modifies the hearing examiner's decision, it shall prepare a written order setting forth findings of facts and conclusions of law. In either event, the order signed by the State Fire Commission shall be final unless vacated or modified upon judicial review of the order. The State Fire Commission shall serve a copy of the order on all parties to the hearing and all attorneys of record, if any, in person or by certified mail, return receipt requested.

27.15. Judicial Review – The petitioner or the State Fire Marshal may appeal the decision to the circuit court of the county of residence of the petitioner, if the appeal is filed within thirty (30) days after the date upon which the party was served a copy of the final order or decision of the State Fire Commission. The final order signed by the State Fire Commission is final if the proceedings for judicial review are not instituted within the thirty (30) day period.

**§87-5-28. Disposition of fees.**

28.1. All fees and moneys received as a result of actions under this rule shall be deposited in the special revenue account created pursuant to section twelve-b, article three, chapter twenty-nine of the West Virginia Code.