

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2004 JUL -5 P 1:44

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Fire Commission TITLE NUMBER: 87

RULE TYPE: Legislative CITE AUTHORITY: 29-3-5b

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

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"

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 5, 2004 AT 4:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

State Fire Commission

RE: Home Inspectors Rule

1207 Quarrier Street, 2nd Floor

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



The Department of Military Affairs and Public Safety

Bob Wise, Governor

M. Christine F. Morris, Acting Cabinet Secretary

Joseph J. Bostar, III
Chairman

Bill L. Spencer
Vice Chairman

Chuck Runyon
Secretary

STATE FIRE COMMISSION

1207 Quarrier St, 2nd Floor
Charleston, WV 25301

Phone: (304) 558-2191

Fax: (304) 558-2537

Proposed Legislative Rule

Title 87, Series 5

State Fire Commission
"Certification of Home Inspectors"

SUMMARY:

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.

CIRCUMSTANCES:

By the authority granted to the State Fire Commission (29-3-5b) and by continuing demand from the home inspection industry, this rule is being filed for implementation. It is recognized that no state standard or regulations exists to safeguard the consumer/home owner in this state.

It is also generally recognized that the certification of home inspectors falls under the overall umbrella of regulation by the State Fire Commission as determined by the state legislature.

West Virginia

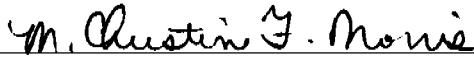
State Fire Code

Title 87, Series 5

CERTIFICATION OF HOME INSPECTORS

Rules
Of the West Virginia
State Fire Commission

Approved by Secretary, Department of Military Affairs and Public Safety

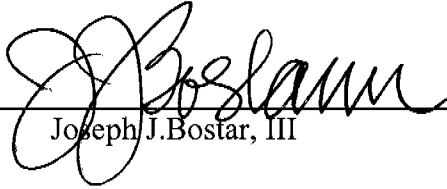


M. Christine F. Morris

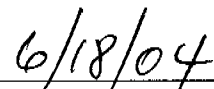


Date

Approved by the Chairman, State Fire Commission



Joseph J. Bostar, III



Date

STATE FIRE COMMISSION
1207 Quarrier St, 2nd Floor
Charleston, WV 25301



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: "Certification of Home Inspectors"

Type of Rule: XXX Legislative Interpretive Procedural

Agency: State Fire Commission

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

1. Effect of Proposed rule:

Table with columns: ANNUAL FISCAL YEAR, INCREASE, DECREASE, CURRENT, NEXT, THEREAFTER. Rows include ESTIMATED TOTAL COST, PERSONAL SERVICES, CURRENT EXPENSE, REPAIRS & ALTERATIONS, EQUIPMENT, OTHER.

2. Explanation of Above Estimates:

Personnel costs calculated on estimated time spent on program. Mailing and paper costs are also added to formula.

3. Objectives of These Rules:

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.

Rule Title: "Certification of Home Inspectors"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None known

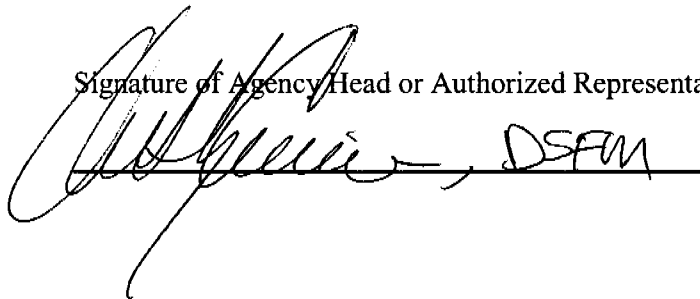
B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: None known

C. Economic Impact on Citizens/Public at Large.

Added cost of home inspections due to the addition of certification fees and insurance requirements this rule imposes on the inspector. Anticipate cost to be shifted to the consumer.

Date: June 29, 2004

Signature of Agency Head or Authorized Representative:

 D. S. F. M.

TITLE 87
LEGISLATIVE RULE
STATE FIRE COMMISSION

FILED

2004 JUL -6 P 1:45

SERIES 5
CERTIFICATION OF HOME INSPECTORS

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 authorizes the state fire marshal the authority to enforce the provisions of this rule.

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

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 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:

2.4.1. "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 two 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.

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

2.4.3. "Certification" - Means a valid and current home inspectors certification issued by the state fire marshal.

2.4.4. "Home Inspection Report" - Means a written report prepared for compensation and issued after a home inspection to the owner or other vested parties. The inspection report shall include, but not be limited to the following:

2.4.4.1. 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.

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

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

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

2.4.5. "Client" - Means any person who engages or seeks to engage, the services of a home inspector for the purpose of obtaining inspection of, and a written report upon, the condition of a residential dwelling.

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

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

2.4.8. "State fire commission" - Means the state agency composed of the appointed state fire commissioners and the office of the state fire marshal.

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

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

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

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

2.4.13. "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:

3.1.1. 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.

3.1.2. 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.

3.1.3. A person who is employed as a property manager for a residential dwelling and whose official duties and

responsibilities include inspecting the residential structure from performing an inspection on the dwelling if the person does not receive separate compensation for the inspection work.

3.1.4. A person who is regulated in another profession from acting within the scope of that person's license, registration or certificate.

§87-5-4. Qualifications for Certification.

4.1. Every applicant shall have passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors, or the Certified Real Estate Inspector's Examination offered by the National Association of Home Inspectors.

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

4.3. Proof of general liability insurance in the amount of not less than one million (\$1,000,000.00) dollars. 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; and;

4.4. Proof of professional liability (errors and omissions) insurance in the amount of not less than two hundred and fifty thousand (\$250,000.00) dollars. 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:

5.1.1. A completed application on forms furnished by the state fire marshal;

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

5.1.3. Any other documentation that the state fire marshal may require to ensure compliance with qualifications for certification.

5.2. The state fire commission 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 latter 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 commission 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 30, 2004 and on August 30th 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 certification renewal to the state fire marshal prior to the expiration date.

6.3. Renewal After Expiration - A certified home inspector who has not renewed his or her certificate in accordance with the provisions 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 twenty (20) Continuing Education Units annually. A continuing education unit is defined as .1 hours for every fifty minutes of instruction. Upon receipt of the required documentation, the state fire marshal shall issue the certification.

6.5. National and state organizations acceptable to offer the

required continuing education requirements are limited to the following organizations or their chapters: American Society of Home Inspectors (ASHI); the National Association of Home Inspectors (NAHI); or the West Virginia Association of Home Inspectors (WVAHI).

§87-5-7. Fees.

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:

8.3.1. To perform or offer to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspector's company, has prepared a home inspection report in the past twelve months. *Provided:* A home protection company that is affiliated with or that retains a home inspector does not violate this section if it performs repairs pursuant to a claim made under a home protection contract.

8.3.2. 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 property.

8.3.3. To offer or deliver any compensation, inducement or reward to the owner of the inspected property, the broker or agent, for the referral of any business to the inspector or the inspection company.

8.3.4. 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 performs home inspections without the required certification, is in violation of § 29-3-27.

9.2. Each day during which a person performs home inspections without the required certification or while in non-compliance with any of the provisions of this rule after official notice that the work is unlawful, is a separate violation of this rule.

9.3. 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.

§ 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 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 within ten (10) days upon completion of the home inspection. These standards do not limit inspectors from:

11.1.1. Including other inspection services, systems or components in addition to those required;

11.1.2. Recommending repairs based upon the findings of the general home inspection.

11.1.3. 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 Standards of Practice shall not be technically exhaustive and will not identify concealed conditions or latent defects.

12.2. Home inspectors may use, as a minimum guide, the standards of practice and code of ethics as adopted by the West Virginia Association of Home Inspectors, the American Society of Home Inspectors or the National Association of Home Inspectors for determining his or her professional opinion.

12.3. This rule applies to residential resale buildings.

§87-5-13. General Exclusions.

13.1. Certified home inspectors are not required to report on:

- 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 presence or absence of pests such as wood damaging organisms, rodents or insects;
- j). Cosmetic items, underground items not permanently installed;
- k). Hidden or latent defects; or
- l). Items not visible for inspection.

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 failure of 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 presence or 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:

- 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 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 ampacities 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; 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;
- 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 twenty-nine, Article three-c of the West Virginia Code.

§ 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 able 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 of any findings of his or her home inspection to the client.

24.2. A certified home inspector shall submit an annual report to the state fire marshal indicating the number, type and locations of home inspections performed during the proceeding year. 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 submit annually to the state fire marshal a copy of his or her fee schedule.

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

24.5. 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. Home inspector's shall have on their person at all times while engaging in the business of home inspections 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 an infraction of the certification requirements of W. Va. Code §29-3-1 et seq. 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 which prompted the complaint, the complaint should contain as a minimum the following information:

26.2.1 The name and address of the certified home inspector or applicant against whom the complaint is lodged;

26.2.2 The date of the alleged unlawful act;

26.2.3 The nature of the alleged unlawful act; and

26.2.4 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. State Fire Marshal's Order and Decisions Appealed - 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. Preservation of the right to an appeal and the procedure for the contested case is governed by this section and by W.Va. Code 29-3-1 et seq.

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:

27.3.1. A copy of the order or decision of the state fire marshal

being contested;

27.3.2. 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;

27.3.3. A clear and concise statement of the facts upon which the petitioner relies as sustaining his or her assignment of errors;

27.3.4. The address to which the petitioner desires to have all notices, documents, and the final order of the fire commission mailed;

27.3.5. The telephone number or numbers where the petitioner can be contacted;

27.3.6. 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;

27.3.7. A prayer setting forth the relief sought; and

27.3.8. The signature of the petitioner.

27.3.9. 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 is final.

27.4. 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.

27.5. 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.

27.6. Authorized Representative - The petitioner may appear individually, or by counsel.

27.7. 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.

27.10.1. 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.

27.10.2. 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.

27.10.3 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.

27.10.4. 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.

27.10.5. 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.

27.10.6. 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.

27.11.1. 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.

27.11.2. 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.

27.11.3. 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.