

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

Form #2

Do Not Mark In This Box

2008 JUL -2 PM 1:50

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Fire Marshal's Office TITLE NUMBER: 103

RULE TYPE: Legislative CITE AUTHORITY: 29-3D-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: "Supervision of Fire Protection Work"

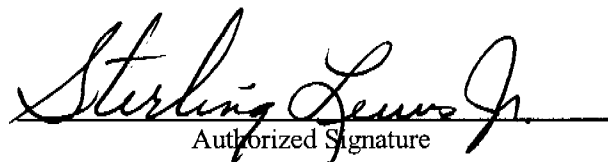
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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 1, 2008 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

State Fire Marshal's Office
1207 Quarrier Street, 2nd Floor
ATTN: 103-3 Comment
Charleston, WV 25301

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



**State of West Virginia
Department of Military Affairs and Public Safety**

Sterling Lewis, Jr.
State Fire Marshal

Joe Manchin III, Governor

Phone: (304) 558-2191

Fax: (304) 558-2537

STATE FIRE MARSHAL'S OFFICE

1207 Quarrier St, 2nd Floor
Charleston, WV 25301

June 30, 2008

Facts and Circumstances for §103-3 "Supervision of Fire Protection Workers"

This rule addresses additions to the existing rule that the House Committee on Government Organization removed during the 2007 Legislature. The committee decided that the Fire Marshal had exceeded his authority by adding several certification classifications that were not specifically listed by statute. Consequently, that committee originated H.B. 4512 which reinstated the removed classifications. This filing reinstates the original intent of the rule with full support of the affected industries.

A handwritten signature in cursive script that reads "Sterling Lewis, Jr.".

Sterling Lewis, Jr.
State Fire Marshal

A handwritten signature in cursive script that reads "James W. Spears".

James W. Spears
Cabinet Secretary
Military Affairs & Public Safety

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: "Supervision of Fire Protection Work"

Type of Rule: XX Legislative _____ Interpretive _____ Procedural

Agency: State Fire Marshal's Office

Address: 1207 Quarrier Street

2nd Floor

Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	+30,000.00	-13,500.00	0.0	-13,500.00	-13,500.00
PERSONAL SERVICES	0.0	-10,000.00	0.0	-10,000.00	-10,000.00
CURRENT EXPENSE	0.0	0.0	0.0	0.0	0.0
REPAIRS & ALTERATIONS	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	-3,500.00	0.0	-3,500.00	-3,500.00
OTHER	0.0	0.0	0.0	0.0	0.0

2. Explanation of Above Estimates:

Cost associated are limited to printing materials for certifications and personnel costs in salary.

3. Objectives of These Rules:

To certify associated fire protection workers that are currently unregulated.

Rule Title: "Supervision of Fire Protection Work"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Costs are limited to agency in materials and salaries associated with the administration of the program.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of

Citizens: Slight monetary increase to the individual certificate holders ranging from \$30 to \$150 annually.

C. Economic Impact on Citizens/Public at Large.

Expect no increase to be passed on the citizens as a result of certificate costs.

Date: June 30, 2008

Signature of Agency Head or Authorized Representative:

 _____

TITLE 103
LEGISLATIVE RULE
WEST VIRGINIA FIRE MARSHAL

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SERIES 3
SUPERVISION OF FIRE PROTECTION WORK

§103-3-1. General.

1.1. Scope. -- This legislative rule governs certification, fees, examinations, training, powers and duties of the West Virginia State Fire Marshal and penalties for violations in accordance with W. Va. Code §§29-3D et seq.

1.2. Authority. -- W. Va. Code §29-3D-4.

1.3. Filing Date. --

1.4. Effective Date. --

§103-3-2. Application and Enforcement.

2.1. Application. This legislative rule applies to the West Virginia State Fire Marshal and all persons, materials and transactions governed or otherwise defined under coverage of the Supervision of Fire Protection Work, W. Va. Code §29-3D et seq.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia State Fire Marshal.

§103-3-3. Definitions.

3.1. "Agent Suppression System" shall mean systems discharging chemicals or gases, and as further defined in this rule by type of system.

3.2. "Certified Person" shall mean a person that has been certified by an organization recognized by the state fire marshal through a formal certification program or by an equipment manufacturer that has a certification program accepted by the state fire marshal.

3.3. "Engineered Systems" shall mean those agent suppression systems requiring individual calculation and design to determine the flow rates, nozzle pressures, pipe size, area or volume protected by each nozzle, quantities of agent, number and type of nozzles, and their placement in a specific system.

3.4. "Engineered Suppression Systems Installer" means a person certified by the respective manufacturer to install, alter, extend, maintain, layout or repair an engineered suppression system. This shall not include the

fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

3.5. "Engineered Suppression Systems Technician" means a person certified by a manufacturer to maintain or repair an engineered suppression system. This shall not include the fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

3.4.6. "Fire Protection Technician" shall mean for purposes of this rule all technicians required to be licensed under the provisions of this rule.

3.5.7. "Journeyman Sprinkler Fitter" means a person qualified by at least ten thousand (10,000) hours of work experience installing, adjusting, repairing sprinkler based fire protection systems and piping for engineered systems; and who is competent to instruct and supervise the fire protection work of a sprinkler fitter in training.

3.6.8. "Layout" shall mean the preparation of shop drawings used in the installation of fire protection systems in either commercial or residential occupancies implementing engineering contract documents using applicable codes and standards.

3.9. "NFPA" means "National Fire Protection Association", 1 Batterymarch Park,

P.O. Box 9101, Quincy, MA 02269-9101. The standards and requirements as set out and as published by the NFPA as listed in this rule, have the same force and effect as if set out verbatim in this rule.

3.10. "NICET" means the National Institute for Certification in Engineering Technologies. The standards and requirements as set out and as published by the NICET as listed in the rule, have the same force and effect as if set out verbatim in this rule.

3.11. "Portable Fire Extinguisher Technician" means a person certified in accordance with NFPA 10 to install, maintain, repair and certify portable fire extinguishers as defined by NFPA 10.

3.12. "Pre-Engineered Suppression Systems Installer" means a person certified by the respective manufacturer to install, alter, extend, maintain, layout or repair an pre-engineered suppression system. This shall not include the fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

3.13. "Pre-Engineered Suppression Systems Technician" means a person certified to maintain or repair an pre-engineered suppression system. This shall not include the fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

3.12.14. "Pre-Engineered Systems" shall mean those agent suppression systems having predetermined flow rates, nozzle pressures, and quantities of extinguishing agent. These systems have the specific pipe size, maximum and minimum pipe lengths, flexible hose specifications, number of fittings, and number and types of nozzles prescribed by a testing laboratory. The maximum and minimum pipe lengths and the number of fittings shall be permitted to be expressed in equivalent feet of pipe. The hazards protected by these systems are specifically limited as to type and size by a testing laboratory, based on actual fire tests. Limitations on hazards that are permitted to be protected by these systems and piping and nozzle configurations are contained in the manufacturer's listed installation and maintenance manual, which is part of the listing of the system.

3.13.15. "Sprinkler-Based Fire Protection Layout Technician" is an individual who has achieved National Institute for Certification in Engineering Technologies (NICET) Level III or higher certification, and who has the knowledge, experience and skills necessary to layout fire protection systems based on engineering design documents.

3.14.16. "Sprinkler fitter in training" means a person with interest in and an aptitude for performing fire protection work but who alone is not capable of performing such work, and who

has fewer than ten thousand (10,000) hours of experience installing, adjusting, repairing sprinkler based fire protection systems and piping for engineered systems.

3.15.17. "Sprinkler Systems" shall mean for fire protection purposes, an integrated system of underground and overhead piping designed in accordance with fire protection engineering standards, discharging water or a combination of water and chemicals, and for the purposes of this rule as further defined in NFPA 13.

3.16.18. "State Fire Marshal" shall mean the West Virginia State Fire Marshal.

3.17.19. "Supervision" shall mean for the purposes of this rule the availability of a higher classification to be located on the work-site. All work required to be supervised shall be inspected upon the completion of the fire protection work performed.

§103-3-4. Adoption of Standards.

4.1. National standards. For the enforcement of this rule the NICET and NFPA codes and standards as cited in this rule are hereby incorporated by reference and shall have the same force and effect as if set out in verbatim in this rule.

4.2. State standards. W.Va. Code R. §87-1-1 *et seq.* "State Fire Code".

§103-3-5. Certification Required; Exemptions.

5.1. Effective January 1, 2009, a person may not perform fire protection work in this state without a license issued under this rule.

5.2. This licensure requirement does not apply to:

(a) A person who personally performs fire protection work on a single family dwelling owned or leased, and occupied by that person;

(b) A person who performs fire protection work at any manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating the plant or establishment;

(c) A person who, while employed by a public utility or its affiliate, performs fire protection work in connection with the furnishing of public utility service;

(d) A person who performs fire protection work while engaging in the business of installing, altering or repairing water distribution or drainage lines outside the foundation walls of a building, public or private sewage treatment or water treatment systems including all associated structures or buildings, sewers or underground utility services;

(e) A person who performs fire

protection work while engaged in the installation, extension, dismantling, adjustment, repair, servicing or alteration of a heating, ventilation and air condition (HVAC) system, air-veyor system air exhaust system or air handling system; or

(f) A person who performs fire protection work at a coal mine that is being actively Mined or where coal is being processed.

5.3. A person shall not present, call or represent him or herself as able to perform fire protection work unless licensed in accordance with the provisions of this rule.

5.4. Sprinkler based fire protection systems installation shop drawings shall be prepared by, or under the supervision of, a licensed sprinkler based fire protection layout technician and shall bear the name, signature, assigned license number and NICET certification number of the responsible fire protection layout technician.

§103-3-6. Minimum Qualifications for Licensure.

6.1. The State Fire Marshal shall certify any applicant for a license who:

(a) Is at least eighteen years of age;

(b) Submits an application on forms provided by the State Fire Marshal;

(c) Submits copy of the required written examination scores reflecting a score of seventy percent (70%) or more; or submits copies of current certificates pertaining to their respective license; and

(d) Pays the application fee.

6.2. On or before July 1, 2009, the State Fire Marshal may certify an applicant for a license without written examination if the applicant:

(a) Is at least eighteen years of age;

(b) Submits an application on forms provided by the State Fire Marshal;

(c) Provides acceptable documentation or a sworn affidavit which demonstrates he or she meets the minimum experience requirements for the fire protection license classification requested; and

(d) Pays the application fee.

6.3. A license issued under this rule is valid throughout the state, is not assignable or transferable, and is valid for a period not to exceed three (3) years from the date on which it was issued.

§103-3-7. Certifications, Examinations Required.

7.1. Any person desiring a sprinkler based fire protection layout technician license under the provisions of this article shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal and include documentation that the individual has achieved NICET Level III or higher certification in the appropriate classification.

7.2. All persons desiring an engineered suppression systems installer license under the provisions of this article shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal copies of all pertinent certifications from specific manufacturers authorizing the applicant to install, alter, extend, maintain or repair their systems. Applicants must also demonstrate a minimum of two-thousand (2,000) hours of consecutive work experience.

7.3. All persons desiring an engineered suppression systems technician license under the provisions of this article shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal authorizing the applicant to maintain or repair engineered suppression systems. Applicants must demonstrate a minimum of five hundred (500) hours of consecutive work experience or certification approved by the state fire marshal.

7.4. All persons desiring a pre-engineered suppression systems installer license under the

provisions of this article shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal copies of all pertinent certifications from specific manufacturers authorizing the applicant to install, alter, extend, maintain or repair their systems.

7.5. All persons desiring a pre-engineered suppression systems technician license under the provisions of this article shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal authorizing the applicant to maintain or repair pre-engineered suppression systems.

7.6. All persons desiring a portable fire extinguisher technician license under the provisions of this article shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal copies of all pertinent certifications demonstrating certification in accordance with NFPA 10 which authorizes the applicant to install, maintain or certify portable fire extinguishers complying with NFPA 10.

7.2.7. All persons desiring a sprinkler fitter license under the provisions of this article shall submit to the Fire Marshall an application form(s) provided by the State Fire Marshal and include documentation they have at least ten thousand (10,000) hours of work experience installing, adjusting and repairing sprinkler based fire protection systems and show he or she has passed a written examination. The contents of the examination shall be based on the

standards adopted under section four of this rule.

~~7.3-8.~~ The State Fire Marshal shall provide for the written examination of all sprinkler fitter license applicants.

(a) The State Fire Marshal may:

1. Contract with a private testing agent to conduct the written examination. The private testing agent shall charge examination fees according to a rate schedule developed by the State Fire Marshal and the applicant shall pay all examination fees directly to the testing agent; or

2. Develop a written examination process to include a fees schedule not to exceed the actual cost of administering the examinations. The license applicant shall pay all fees directly to the State Fire Marshal in advance of the examination.

(b) The minimum passing score is a score of seventy (70%) percent for each examination.

(c) An applicant who fails the examination may request, and the private testing agent or the State Fire Marshal shall provide the applicant with an analysis of his or her performance on the failed examination. An applicant who fails the examination shall be afforded the opportunity to be re-examined after thirty (30) days and upon the submission of a

new application and the payment of the fees required.

7.9. The state fire marshal shall not require a sprinkler fitter in training to produce documentation of hours previously worked, but shall require the sprinkler fitter in training to produce documentation that he or she is enrolled in a training program. All businesses employing sprinkler fitters in training shall produce, upon request from the State Fire Marshal, an official listing of all sprinkler fitters in training currently employed. Sprinkler fitters in training shall be supervised by a licensed journeyman sprinkler fitter. A journeyman sprinkler fitter shall not supervise more than two sprinkler fitters in training at any one time.

§103-3-8. Expiration and Renewal

8.1. Expiration – All fire protection licenses issued by the State Fire Marshal expire on the last day of the anniversary month from the month of issuance of the license. The expiration date will coincide with the duration of the license period; *provided* that no license granted after January 1, 2009 may exceed three years in duration; *provided further*, for the purpose of efficient management of licensure, for a license granted prior to January 1, 2009 the State Fire Marshal may extend the duration of licensure at no cost to the licensee for up to twelve (12) months beyond the term of the license.

8.2. Upon receipt of a renewal application

on a form provided by the State Fire Marshal and payment of a renewal fee, the State Fire Marshal shall renew the license for a period not to exceed three (3) years. It is the individual fire protection technician's responsibility to submit his or her license renewal to the State Fire Marshal prior to the expiration date.

8.3. Renewal after expiration – A licensed fire protection technician who has not renewed his or her license in accordance with the provisions of this rule shall submit a new application to the State Fire Marshal.

8.4. The state fire marshal may mail license renewal notifications in a timely manner, to each fire protection technician.

§103-3-9. Denial, Suspension, Revocation, or Reinstatement of License.

9.1. The State Fire Marshal may deny, suspend, revoke or reinstate a license.

9.2. A violation of W. Va. Code §29-3D-1 *et seq.* or this rule is grounds for the denial, suspension, revocation or refusal to reinstate a license and permits the State Fire Marshal to impose disciplinary action: *Provided*, That no disciplinary action against a licensee may be imposed without a proper prior notice as served under W. Va. Code §56-2-1, and an opportunity for a hearing held before the State Fire Marshal or his or her designee under the provisions of W. Va. Code §29A-5-1, *et seq.*, the Administrative

Procedures Act.. At the hearing, the licensee shall be provided the opportunity to present evidence in person, by counsel or both. After the hearing, if the State Fire Marshal finds a violation of this rule has occurred, the State Fire Marshal may impose any disciplinary action permitted in this rule.

9.3. The State Fire Marshal may suspend or revoke the license of a licensee who performs fire protection work in violation of W.Va. Code §29-3D-1 *et seq.* or this rule. The suspension of a license shall be for not less than twenty-four hours nor more than one year. The State Fire Marshal may reinstate the license upon satisfactory proof that the licensee is in full compliance with W.Va. Code §29-3D-1 *et seq.* and this rule.

9.4. Each licensed fire protection worker shall carry proof of valid licensure on his or her person during the performance of fire protection work.

9.5. A person whose license has been revoked may apply for a new license one year after the date of the revocation.

§103-3-10. Effect of Noncompliance; Failure to Obtain Certification; Penalty.

10.1. Each day during which a person performs fire protection work without the required certification or while in noncompliance with any of the provisions of W.Va. Code §29-

3D-1 *et seq.* or this rule, after official notice that the work is unlawful, is a separate violation of this rule.

§103-3-11. Disposition of Complaints

11.1. Enforcement of Certification Requirements - In the course of investigating complaints as authorized under W.Va. Code §29-3D-1 *et seq.*, the State Fire Marshal shall determine whether or not the person against whom the complaint has been filed is certified under W.Va. Code §29-3D-1 *et seq.*

11.2. 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 §29-3D-1 *et seq.* or this rule, 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 shall contain as a minimum the following information:

a) The name and address of the certified person 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.

11.3. 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.

11.4. 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.

§103-3-12. Orders and Decisions of the State Fire Marshal; Appeals and Procedures for Appeals from such Orders or Decisions.

12.1. All persons governed by this rule are subject to the provisions of Section 13 of the Fire Commission's rule, Fire Code, 87CSR1, as it relates to the State Fire Marshal's

orders and decisions and the procedures for appealing those orders and decisions.

§103-3-13. Fire Protection License Fund; Fees; Disposition of Funds.

13.1. The State Fire Marshal shall deposit all fees paid pursuant to W.Va. Code §29-3D-9 in a special revenue account with the State Treasurer for the use of the State Fire Marshal as provided under W.Va. Code §29-3-12(b)(c).

13.2. The license fee for a sprinkler based fire protection layout technician and journeyman sprinkler fitter is seventy-five dollars (\$75) for one year or one-hundred and fifty dollars (\$150) for three years, and for a sprinkler fitter in training fifty dollars (\$50) for one year or one hundred and twenty five dollars (\$125) for three years.

13.3. All applicants for a fire protection worker license shall pay an application fee of twenty-five dollars (\$25).

§103-3-14. Reciprocity.

The State Fire Marshal, in his or her discretion, may grant a license of the same classification without examination to a fire protection technician licensed by another state 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 a fire protection

technician certificate to any person who holds a valid certification, license or registration to conduct fire protection work, 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.

§103-3-15. Severability

15.1. The sections of this rule are severable. Should any section be declared by judicial opinion unconstitutional or in any manner contrary to the laws of the State of West Virginia, that particular section shall be invalid and all other sections shall remain in full force and effect.