

Form #3

FILE

2007 JUL 26 PM 2:44

OFFICE WEST VIRGINIA
SECRETARY OF STATE

James W. Spears
Authorized Signature

Authorized Signature



**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

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STATE FIRE MARSHAL'S OFFICE

1207 Quarrier St, 2nd Floor
Charleston, WV 25301

SUMMARY OF LEGISLATIVE RULE FOR LICENSURE OF FIRE PROTECTION WORKERS

Proposed legislative rule §103-3 "Supervision of Fire Protection Workers" establishes the following as a Legislative Rule:

Standards and procedures for certification, including applications, examinations required, fee schedule, qualifications and classifications, procedures for investigating complaints, revoking or suspending certifications and for certification renewal.

This rule is necessary to fulfill statutory obligations imposed by §29-3D. Legislative rules are necessary for this agency to effectively regulate and license fire protection workers. Also this legislative rule establishes rules and guidelines for the industry to adhere to and reference.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 27, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Fire Marshal's Office
1207 Quarrier Street, 2nd Floor
Charleston, WV 25301
558-2191 Ext. 206 Attn: Anthony Carrico, Deputy State
Fire Marshal

LEGISLATIVE RULE TITLE: ~~Supervision of Fire Protection Work~~

1. Authorizing statute(s) citation 29-3D-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 26, 2007

b. What other notice, including advertising, did you give of the hearing?

Three "stake-holders" meetings held in the Charleston Office prior to Filing Agency Approved Rule. This group includes representatives from the sprinkler, hood suppression and portable fire extinguisher industries. In addition, the ACT Foundation was actively involved in the rule making process.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 25, 2007 9:00 a.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received XXX

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

July 27, 2007

- 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 Marshal

1207 Quarrier Street, 2nd Floor

Charleston, WV 25301

Ph: 304-558-2191 Ext. 206 Email: acarrico@wvfiremarshal.org

Fax: 304-558-2537

- 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)

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.

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Supervision of Fire Protection Work

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: State Fire Marshal

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

Phone Number: 304-558-2191 Ext. 206 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.

Upon full implementation, this rule should gross the agency approximately \$75,000.00 in special revenue. Industry does not anticipate any significant cost increases to the public. Associated costs reflect projected increases in both personnel services and administrative costs.

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.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-3,000.00	15,000.00	25,000.00
Personal Services	0.00	20,000.00	-20,000.00
Current Expenses			
Repairs & Alterations			
Assets			
Other	3,000.00	0.00	5,000.00
2. Estimated Total Revenues	0.00	50,000.00	100,000.00

Rule Title: _____

Rule Title: Supervision of Fire Protection Work

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

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

Estimated costs to the agency reflect additional mailing, printing and personnel costs. Revenue generated estimated based on 2,000 potential licenses at \$50.00 per license (average). This program will require the hiring of an additional clerical employee and associated administrative costs (computer, phone, etc.).

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.

N/A

Date: July 27, 2007

Signature of Agency Head or Authorized Representative

James W. Spears

**TITLE 103
LEGISLATIVE RULE
WEST VIRGINIA FIRE MARSHAL**

**SERIES 3
SUPERVISION OF FIRE PROTECTION WORK**

FILED
2007 JUL 26 PM 2:44
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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 agent 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 agent suppression system. This shall not include the fabrication or installation of any associated exhaust recovery appliances such as "hoods" and exhaust pipes or plenums.

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

3.7. "Journeyman Sprinkler Fitter" means a person qualified by at least eight thousand (8,000) 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.

3.8. "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. "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.

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

3.11. "Pre-Engineered Suppression Systems Technician" means a person certified to maintain or repair an agent 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. "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. "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. "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 eight thousand (8,000) hours of experience installing, adjusting, repairing sprinkler based fire protection systems and piping for engineered systems.

(a) A sprinkler fitter in training must work under the supervision of a licensed journeyman sprinkler fitter. A journeyman sprinkler fitter shall not supervise more than two sprinkler fitters in training at any one time.

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

3.17. "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 National Institute for Certification in Engineering Technologies and the National Fire Protection Association codes and standards are hereby incorporated by reference.

4.2. State standards. *Title 87, Series 1, Code of State Rules "State Fire Code"*.

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

5.1. Effective the first day of January, two thousand-nine, no person may perform fire protection work in this state without 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 the first day of July, two thousand nine, 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 they meet 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

National Institute for Certification in Engineering Technologies (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.

7.7. 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 eight-thousand (8,000) hours of work experience installing, adjusting and repairing sprinkler based fire protection systems and show they have passed a written examination. The contents of the examination shall be based on the standards adopted under section four of this rule.

7.8. 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 produce documentation that they are 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.

§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. Expiration date will coincide with the duration of the license period; *provided* that no license granted after January 1, 2009 shall 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 Fire Marshal and payment of a renewal fee, the 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 worker.

§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 or this rule is grounds for the denial, suspension, revocation or refusal to reinstate a license and permits the imposition of 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 hearing held before the State Fire Marshal or his designee under the provisions of W. Va. Code §29A-5-1, et seq, the Administrative Procedures Act, wherein the licensee shall be provided the opportunity to present evidence in person, by counsel or both and after which, if the State Fire Marshal finds a violation of this article has occurred, the State Fire Marshal may impose any disciplinary action permitted in the article or rule.

9.3. The performance of fire protection work in violation of W. Va. Code §29-3D, §29-3

or this rule may result in the suspension of a license for not less than twenty-four hours nor more than one year, or revocation of the license until reinstated.

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. Penalties.

10.1. A person required to obtain a license under this article or rule, who is found performing fire protection work without a valid license on their person, is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(a) For the first offense, a fine of not less than two hundred dollars no more than one thousand dollars;

(b) For the second offense, a fine of not less than five hundred dollars nor more than two thousand dollars, or confinement in jail for not more than six months, or both;

(c) For the third and subsequent offenses, a fine of not less than one thousand dollars nor more than five thousand dollars and

confinement in jail for not less than thirty days nor more than one year.

10.2. A separate offense means each day that the person performs fire protection work that is in violation of the article or this rule.

10.3. The state fire marshal may pursue injunctive relief to enjoin any violation of any provision of this article or this rule.

§103-3-11. Fire Protection License Fund; Fees; Disposition of Funds.

11.1. All fees paid pursuant to §29-3D-9, shall be paid to the State Fire Marshal and deposited in a special revenue account with the State Treasurer for the use of the State Fire Marshal as provided in subsection c, section twelve-b, article three of this chapter.

11.2. The license fee for a sprinkler based fire protection layout technician and journeyman sprinkler fitter shall be 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.

11.3. The license fee for a pre-engineered suppression systems installer shall be thirty dollars (\$30) for one year or seventy-five dollars (\$75) for three years.

11.4. The license fee for a pre-engineered suppression systems technician shall be twenty dollars (\$20) for one year or fifty dollars (\$50) for three years.

11.5. The license fee for an engineered suppression systems installer shall be thirty dollars (\$30) for one year or seventy-five dollars (\$75) for three years.

11.6. The license fee for an engineered suppression systems technician shall be twenty dollars (\$20) for one year or fifty dollars (\$50) for three years.

11.5. The license fee for a portable fire extinguisher technician shall be twenty dollars (\$20) for one year or fifty dollars (\$50) for three years.

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

§103-3-12. Local License Ordinances void.

On and after the first day of January, two thousand-nine, no city, county or other political subdivision of this state may require the licensure and supervision of fire protection workers as a condition to perform fire protection work within that jurisdiction. Any such requirement in effect prior to the effective date of this article shall become void as of the first day of January, two thousand-nine.

§103-3-13. Reciprocity.

To the extent that other states which provide for the licensing and supervision of fire protection workers have requirements the equivalent to this article, the Fire Marshal, in his or her discretion, may grant licenses of the same classification without examination to fire protection workers licensed by other states.