

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

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SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: State Fire Marshal TITLE NUMBER: 103

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 3

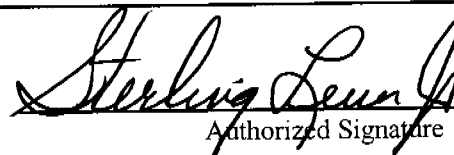
TITLE OF RULE BEING PROPOSED: "Supervision of Fire Protection Work"

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 4206

SECTION 64-6-1, PASSED ON March 5, 2008

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2008


Authorized Signature

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TITLE 103
LEGISLATIVE RULE
WEST VIRGINIA FIRE MARSHAL SECRETARY OF STATE

SERIES 3
SUPERVISION OF FIRE PROTECTION WORK

§103-3-1. General.

1.1. Scope. -- This legislative rule governs certification, fees, examinations and training of fire protection technicians, and the powers and duties of the West Virginia State Fire Marshal and penalties for violations in accordance with W. Va. Code §29-3D-1 *et seq.*

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

1.3. Filing Date. -- April 25, 2008

1.4. Effective Date. -- July 1, 2008

§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-1 *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" means systems discharging chemicals or gases.

3.2. "Certified Person" means a person who 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" means 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. "Fire Protection Technician" means all technicians required to be licensed under the provisions of this rule.

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

3.7. "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.

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

3.9. "Pre-Engineered Systems" means 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 may 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.

3.10. "Sprinkler-Based Fire Protection Layout Technician" is an individual who has achieved 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.

3.11. "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.

3.12. "Sprinkler Systems" means 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.

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

3.14. "State Fire Marshal" means the West Virginia State Fire Marshal.

3.15. "Supervision" means the availability of a higher classification fire protection technician 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 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 a copy of the required written examination scores reflecting a score of seventy percent (70%) or more; or submits copies of current certificates pertaining to his or her 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. A person desiring a sprinkler based fire protection layout technician license under the provisions of this rule 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. A person desiring a sprinkler fitter license under the provisions of this rule shall submit to the State Fire Marshal an application on forms provided by the State Fire Marshal, and include documentation he or she has 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. 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 fee 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 may be re-examined after thirty (30) days, upon the submission of a new application and the payment of the required fees.

7.4. 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 shall 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 a 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 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 the 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 non-compliance 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.