



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Fire Commission

TITLE-SERIES: 87-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Fire Code

CITE STATUTORY AUTHORITY: W. Va. Code 15A-11-3.

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) Senate Bill 36

Section 64-6-3(a) Passed On 3/8/2024 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2024

This rule shall terminate and have no further force or effect from the following date:

August 01, 2029

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Brandolyn N Felton-Ernest -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 87  
LEGISLATIVE RULE  
FIRE COMMISSION

SERIES 1  
FIRE CODE

**§ 87-1-1. General.**

1.1. Scope. -- This rule establishes the State Fire Code for the safeguarding of life and property from the hazards of fire and explosion.

1.2. Authority. -- This legislative rule is issued under authority of W. Va. Code § 15A-11-3.

1.3. Filing Date. -- April 19, 2024.

1.4. Effective Date. -- May 1, 2024.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

1.6. Exemption. -- This State Fire Code has no application to personal care homes caring for three or less patients or buildings used wholly as dwelling houses for no more than two families and has no application to buildings or structures used primarily for agricultural purposes including agritourism purposes. Provided; however, that farm structures (1) used for group sleeping accommodations for farm workers or (2) used for health care, or detention/correctional occupancy are not exempt from the requirements of this State Fire Code. All permits and processes pertaining to the boilers, including inspections, are exempt from the State Fire Code and are under the jurisdiction of the West Virginia Division of Labor.

1.7. Incorporation of Other Documents. -- This State Fire Code does not include a reprinting of all the requirements imposed by statute or by the incorporation of various National Standards and Codes cited in section 2 of this rule. For ascertaining these additional standards and requirements it is necessary to make reference to these other documents. A copy of the relevant standards are listed throughout this Rule, and in Appendices A and B, attached to this Rule. The relevant standards may be viewed, at no cost, on the National Fire Protection Association website at the time of the adoption of this rule.

1.8. Conflicts.

1.8.a. Whenever there is a conflict between NFPA 1 and NFPA 101, the requirements of NFPA 101 shall take precedence.

1.8.b. Whenever there is a conflict between the State Building code and the State Fire Code, the State Fire Code shall take precedence.

1.8.c. Whenever there is a conflict between the State Fire Code and the NFPA codes, the State Fire Code shall take precedence.

**§ 87-1-2. National Standards and Codes.**

2.1. The standards and requirements as set out and established by NFPA 1 of the 2021 edition of "The

National Fire Codes" published by the National Fire Protection Association ("NFPA") and has the same force and effect as if set out verbatim in this rule and is hereby adopted and promulgated by the State Fire Commission as a part of the State Fire Code with the following exceptions or additions:

2.1.a. NFPA 101 2021 edition is adopted in full, as opposed to the limited capacity as set forth in NFPA 1, with the following additions:

2.1.a.1. NFPA 101 section 11.8 is adopted in full with the following additions:

2.1.a.1.A. Any new building or structure more than 75 feet in height, measured from the lowest level of fire department vehicle access to the floor of the highest normally occupied space used for human occupancy of the structure, is subject to this paragraph for high rise buildings. This rule shall not nullify or interfere with existing city high rise ordinances or local laws previously adopted prior to September 8, 1975 relative to high rise buildings. Industrial occupancies not occupied as business offices are exempted from the provisions of this paragraph.

2.1.a.1.B. Addition of Floors to Existing Buildings. -- Whenever floors are added to an existing building, which previously was not a high rise, causing the building to become a high rise, the building shall qualify as a new building for purposes of this rule.

2.1.a.1.C. Automatic Fire Protection Systems. -- Any building or structure as defined in subparagraphs 2.1.a.1.A. or 2.1.a.1.B. or Table 2.2.a. of this rule and used for human occupancy shall have an approved automatic fire extinguishing system throughout the entire building and standpipe systems installed in accordance with The National Fire Codes, adopted under Section 2 of this rule. Class I Manual Standpipe Systems may be used up to 75 feet as adopted by NFPA 14, Standard for Standpipe Systems. The fire alarm system of a high-rise building shall conform to the Standards imposed by this rule.

2.1.a.1.D. Fire Department Voice Communication System. -- A High rise building or structure used for human occupancy that is 75 feet in height or greater as measured in accordance with subparagraph 2.1.a.1.A. of this Section shall have an approved electrically supervised fire department voice communication system. The Fire Department Voice Communication System shall be located at each floor level of stair enclosures, elevator lobbies, the penthouse and in any elevator designated for fire department use. This system shall be a telephone jack system unless specifically approved otherwise by the designated fire authority having jurisdiction.

2.1.a.1.E. High Rise Central Control Station. -- In every high rise building as defined in subparagraphs 2.1.a.1.A. and 2.1.a.1.B. of this section, a central control station for fire department operations shall be provided in a location approved by the State Fire Marshal or the designated local fire authority. The Central Control Station shall contain: (1) the fire department voice communication system panel when required, (2) fire detection and alarm system panels, (3) status indicators for the heating, ventilation, and air conditioning (HVAC), smoke control system, fire pumps and emergency generator and a (4) telephone approved by designated fire authority having jurisdiction. Emergency lighting shall be provided at the Central Control Station.

2.1.a.1.F. Emergency Power. -- A permanently installed emergency power generation system conforming to The National Fire Codes adopted by section 2 of this rule shall be provided in every high rise building 75 feet in height or greater, as measured in accordance with subparagraph 2.1.a.1.A. of this section. All power, lighting, signal, and communication facilities, required by this rule or otherwise, shall be transferable automatically to the emergency power system. The emergency power system shall be of sufficient capacity to provide service for, but not limited to, the following:

- 2.1.a.1.F.1. the Fire Alarm System;
- 2.1.a.1.F.2. Exit & Other Emergency Lighting;
- 2.1.a.1.F.3. Fire Protection Equipment;
- 2.1.a.1.F.4. the Smoke Management System;
- 2.1.a.1.F.5. the Fire Department Elevator;
- 2.1.a.1.F.6. the Fire Department Voice Communication System; and
- 2.1.a.1.F.7. the Fire Pumps.

2.1.a.1.G. Smoke Management. -- In all high rise buildings as defined in subparagraphs 2.1.a.1.A. and 2.1.a.1.B. of this section, a smoke management system designed in accordance with NFPA 92 Smoke-Control Systems, shall be provided and acceptable to the State Fire Marshal.

2.1.a.1.H. Floor Designation. -- All stairway doors, both on the stairway and entrance side, shall indicate the floors by number. The floor number shall be in at least 6" inch block letters in a contrasting color.

2.1.b. Except as otherwise provided in this rule, the standards set forth in section 2.2 of NFPA 1 are modified as follows:

- 2.1.b.1. NFPA 5000 is excluded in its entirety;
- 2.1.b.2. NFPA 472 is excluded in its entirety;
- 2.1.b.3. NFPA 120 is excluded in its entirety;
- 2.1.b.4. NFPA 101A is excluded in its entirety.

2.1.c. Except as otherwise provided in this rule, the following NFPA standards are incorporated as if set forth fully in this subdivision:

2.1.c.1. The referenced codes and standards found in the National Fire Protection Association NFPA 1 (2021 Edition), Referenced Publications, NFPA Publications shall be incorporated in this rule in its entirety.

2.1.c.2. SUPPLEMENT VOLUME 1: Tentative Interim Amendment to NFPA 70, Revise Article 517.41(E) to read as follows: (E) Receptacle Identification. The cover plates for the electrical receptacles or the electrical receptacles themselves supplied from the essential electrical system shall have a distinctive color or marking so as to be readily identifiable. [99:6.5.2.2.4.2]

2.1.d. All Plan Reviews conducted shall meet the requirements of the State Fire Code, NFPA 1 Sections 1.7.12 through 1.7.14, NFPA 1 Section 1.14, NFPA 101, and other applicable NFPA codes. All Inspections conducted shall meet the requirements of the State Fire Code, NFPA 1 Section 1.7.7, NFPA 101, and other applicable NFPA codes.

- 2.1.d.1. The owner or occupant of a new building, existing Industrial and Storage occupancies,

or an existing building that has had 50% or more of the space renovated or reconstructed, shall obtain a certificate of occupancy including but not be limited to the State Fire Marshal's Office alone, before the building is occupied or used for its intended purpose.

2.1.d.2. The projects, where applicable, shall be designed by an Architect licensed by the West Virginia Board of Architects or a Professional Engineer licensed by the West Virginia State Board of Registration for Professional Engineers. Any such licensed professional shall affix his or her seal to the design documents per the respective licensing board and obtain a review approval from the Authority Having Jurisdiction ("AHJ") prior to construction or noted renovation or reconstructed as noted in part 2.1.a.1.C.1. of this rule.

2.1.d.3. The State Fire Marshal's Office shall provide a system for the electronic filing of all documents submitted for the plan review of projects, including payments, attachments, drawings, or other requirements. The State Fire Marshal's Office shall have the system in place by January 1, 2025. After that date, the owner or occupant applying for a final inspection or certificate of occupancy shall submit all documents for a plan review electronically.

2.1.d.4. The appropriate AHJ shall complete a plan review for a project within 45 days of receiving the project plan's submission. If the submitted project plans do not meet the requirements of this subdivision, the AHJ shall notify the owner or occupant of the project plan's deficiencies with specificity. The owner or occupant has 10 days to submit additional required documentation to the AHJ. The AHJ has 10 days to complete the plan review once all of the requirements of this subdivision have been met.

2.2. For purposes of this rule, the following shall be in addition to any standard set forth in NFPA 1, or NFPA 101.

2.2.a. Sprinkler Protection and Area Limitations.

2.2.a.1. Approved automatic sprinkler systems in accordance with the applicable NFPA Standard for Sprinkler Systems will be installed in all new buildings used for any occupancy except Industrial occupancies without special or high hazard use or structures with the exception of Industrial occupancies as previously described, exceeding the area limitations noted in the chart at the end of this subsection, or as required by occupancy chapters of the applicable NFPA codes and other NFPA codes. Sprinkler protection for occupancies covered by section 2 of this rule are required to provide sprinkler protection regardless of area limitations. *See* Table 2.2.a. below.

2.2.a.2 All residential occupancies, except one- and two-family dwellings, shall prominently display signage stating whether the building contained an approved automatic sprinkler and whether the windows are capable of being opened or broken in an emergency.

**TABLE 2.2.a.**  
**SPRINKLER PROTECTION & AREA LIMITATION\*\***  
**BUILDING HEIGHT**

Type of Construction	1 Story	2 Story	More than 2 Stories and Up to 40 ft.	More than 40 feet	More than 75 feet
Type I					
443 Fire Resistive	60,000	60,000	40,000	35,000	High Rise
332 Fire Resistive	40,000	40,000	30,000	25,000	High Rise
Type II					
222 Protected Non-Com.	35,000	25,000	10,000	Sprinklered	High Rise
111 Protected Limited Combustible	30,000	20,000	8,000	Sprinklered	High Rise
000 Unprotected Limited Unprotected Non-Com.	12,000	8,000	Sprinklered	Not Permitted	Not Permitted
Type III					
211 Protected Ordinary	14,000	14,000	Sprinklered	Not Permitted	Not Permitted
200 Non-Protected Ordinary	9,000	6,000	Sprinklered	Not Permitted	Not Permitted
Type IV					
2HH Heavy Timber	15,000	15,000	Sprinklered	Not Permitted	Not Permitted
Type V					
111 Protected Wood Frame	11,500	11,500	Sprinklered	Not Permitted	Not Permitted
000 Non-Protected Wood Frame	6,000	6,000	Not Permitted	Not Permitted	Not Permitted

\*\*Notes to Table 2.2.a.:

- (1) The word "area" means that area enclosed by exterior or foundation walls, fire walls, or a combination of exterior or foundation walls. A fire wall shall be constructed in accordance with NFPA 221, Standard for Fire Walls and Fire Barrier Walls, with a minimum of a 2 hour fire rating.
- (2) The phrase "not permitted" means that buildings of these heights are not permitted for the type of construction indicated.
- (3) The phrase "High Rise" means that the building shall also comply with subsection 2.1. of this Rule.

(4) Types of building construction indicated in the chart are located in NFPA 220 and 221, Standard on Types of Building Construction.

(5) Exception: Automatic sprinklers shall not be required in open parking structures as defined in NFPA 88A of Type I or Type II construction that are less than 40 feet in height as measured per part 2.1.a.1.A. of this Rule.

2.2.b. Sprinkler Protection (Certain Occupancies).

2.2.b.1. In Lodging and Rooming occupancies, a sprinkler system shall not be required where there is directing outside exiting from each sleeping room and an approved electrically supervised fire alarm system is installed.

2.2.b.2. Homes or institutions caring for more than three patients shall meet the requirements of this section.

2.2.b.3. Buildings commencing construction after July 1, 2023, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems; *Provided*, That emergency services buildings that house only equipment, are less than 5,000 square feet, and do not have designated sleeping areas or quarters within them, regardless of when constructed or commencing construction, are exempt from this requirement.

2.2.c. Fire Alarm System.

2.2.c.1. General Requirements for All Occupancies.

2.2.c.1.A. The following requirements apply in addition to NFPA 101, Life Safety Code, Chapter 9, Section 9.6, Chapters 11 through 43, and other applicable NFPA codes as adopted by this Rule:

2.2.c.1.A.1. All Hotels that are 3 or more stories high and Motels that are 3 or more stories high, shall be tied into a listed central supervising station or a communication center with 24-hour supervision which is responsible for receiving emergency calls.

2.2.c.1.A.2. Exception: Hotels and motels with direct to outside exits from all guests' rooms.

2.2.d. Inspection Tags

2.2.d.1. An inspection tag shall be attached to each fire protection system near the main control valve, main panel, or other such appropriate and visible location as determined by the authority having jurisdiction ("AHJ"). The inspection tag shall contain the following information:

2.2.d.2. The individual performing the work;

2.2.d.3. The date of the test;

2.2.d.4. Results of the inspection and test.

2.2.e. Requirements for Educational Occupancies.

2.2.e.1. Classroom door locking to prevent unwanted entry- NFPA 101 section 15.2.2.2.4 shall be amended to read as follows:

- (1) the locking mechanism shall be capable of being engaged without opening the door.
- (2) The unlocking and unlatching from the classroom side of the door can be accomplished without the use of a key, tool, or special knowledge or effort.
- (3) Locks, if remotely engaged, shall be unlockable from the classroom side of the door without the use of a key, tool, or special knowledge or effort.
- (4) the locking means shall not modify the door closer, panic hardware, or fire exit hardware, provided that any device purchased and approved by the Fire Marshal prior to July 1, 2020, is exempt from this subdivision.
- (5) Two non-simultaneous releasing operations shall be permitted.
- (6) The temporary door locking device can be opened by school staff, school administrators, and first responders from the ingress side of the door, provided that any device purchased and approved by the Fire Marshal, prior to July 1, 2020, is exempt from this subdivision if the school has notified the first responders that it is exempt from this subdivision.
- (7) Modifications to fire door assemblies, including door hardware shall be in accordance with NFPA 80.
- (8) Staff shall be drilled in the engagement and release of the locking means, from within and outside the room, as part of the emergency egress drills required by 14.7.2.
- (9) Any locking mechanism purchased, installed, or utilized pursuant to this section shall be approved by the State Fire Marshal in accordance with policies promulgated by him.
- (10) In addition, a temporary door locking device shall only be used under the following conditions:
  - a. Proof is provided by the administrative authority of a school building that a school safety plan has been adopted and filed; and
  - b. The temporary door locking device shall only be used in an emergency and during active shooter drills; and
  - c. During any type of training event, the temporary door locking device is engaged only by a staff member of the school building; and
  - d. The temporary door locking device shall only be engaged for a finite period of time as determined by the administrative authority of a school building in accordance with the approved and adopted school safety plan or during an actual active shooter event until first responders instruct them to disengage the said device;
  - e. Proof is provided by the administrative authority of a school building that all appropriate fire responder agencies having jurisdiction for the school building have been notified prior to the use of the temporary door locking device; and
  - f. In-service training on the use of the temporary door locking device is provided for school staff members and local first responders; records verifying this training



shall be maintained on file and provided to the State Fire Marshal's Office upon request.

2.2.e.2. All Modular classroom structures with Manufacturer's Statements of Origin after January 1, 2018, shall be considered a new building and fall under New Educational Occupancy requirements of NFPA 101 Code. All other classroom structures with Manufacturer's Statements of Origin prior to January 1, 2018, shall be considered an existing building and fall under Existing Educational Occupancy requirements of NFPA 101 Code, regardless of the date of installation of the structure at the educational facility's location.

2.2.f. Explosives.

2.2.f.1. As soon as practical after all loaded blast holes (shot) are linked, they shall be immediately connected to a source of ignition and fired by a person legally permitted to do so.

2.2.f.2. Pre-loading blast holes (shots) to be fired at a later time are prohibited unless a waiver has been granted to do so by the State Fire Marshal.

2.2.f.3. Section 4.6.2 of the National Fire Protection Association (NFPA) 495, Explosive Material Code, the provisions of which are incorporated in NFPA 1 and adopted by reference in subsection 2.1 of this rule, is amended to provide that persons 18 years and older may be issued a Class G Special "Helper" permit to use explosives.

2.2.f.4. A valid explosives storage permit shall be obtained from the State Fire Marshal for any explosives stored overnight. Provided that type III portable magazines and type V trailers which have not been disabled for over the road use shall not be counted as magazines for the purposes of the storage permit only. Also provided that a storage permit for explosives stored exclusively underground shall not be required.

2.2.f.5. A valid permit to use explosives ("Blaster License") shall be obtained from the State Fire Marshal for all persons detonating explosives for legal purposes and persons possessing and handling explosives. Exception: persons handling and possessing explosives for the sole purpose of inventory and accounting, and who also shall possess an "Employee Possessor/Responsible Person" clearance as issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives where applicable.

2.2.f.6. Control of Adverse Effects.

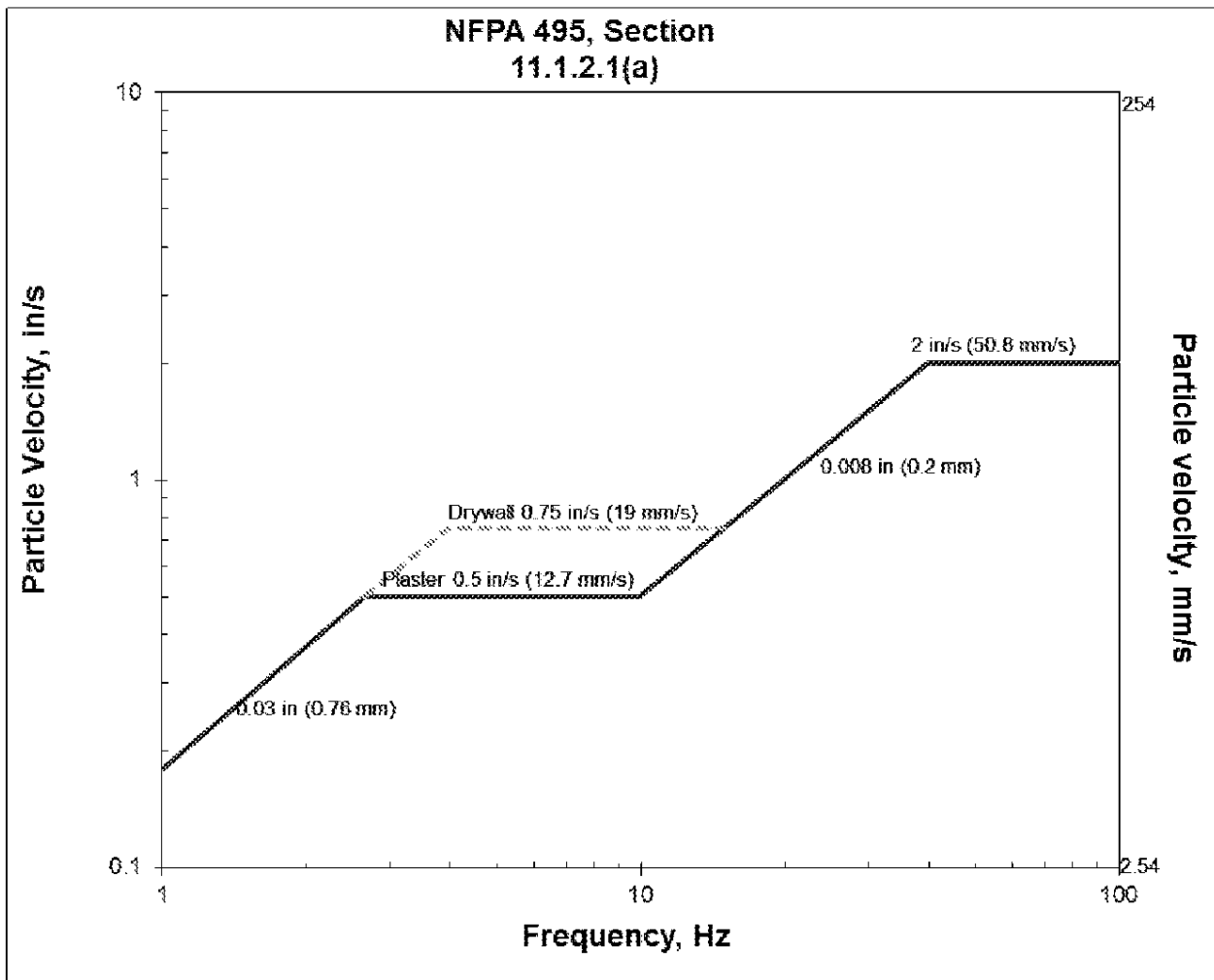
2.2.f.6.A. Blasting shall be conducted in a manner that prevents injury to persons and damage to public or private property outside the permit or blast area for which blasting activity occurs. For purposes of this rule, the definition of blast area is the area in which concussion (shock wave), flying material, or gases from an explosion can cause injury to persons (NFPA 495).

2.2.f.6.B. "Flyrock" defined as rock, mud, or debris (excluding dust or detonation byproducts) ejected from the blast site by the force of a blast, shall not be cast beyond the operational boundary of the permit or blast area.

2.2.f.6.B.1. If flyrock is cast beyond the operational boundary of the permit or blast area, the licensed blaster shall notify the State Fire Marshal by telephone within 2 hours after learning of the flyrock incident, and submit a flyrock incident report to the State Fire Marshal within 3 business days after learning of the incident. The report shall be signed by the blaster-in-charge who conducted the blast. The report shall include, at a minimum, a copy of the blast record and all available seismograph data, a

sketch of the blast site and rock deposition area, and a detailed explanation of: how the blasts were designed and loaded; who witnessed the blasts and where they were located and what they observed; the location and nature of the flyrock deposition (including property owners, type and approximate number of rocks, size and distance range), property damages (if any) and personal injuries (if any); the probable cause of the flyrock incident; and the corrective measures to be taken to prevent another flyrock incident.

2.2.f.6.C. Ground vibration, when measured at any dwelling, public or commercial building, school, church, dam, earthen impoundment, or community or institutional building located outside the operational boundary of the permit or work area not owned or leased by the permittee, shall not exceed the limitations as defined and illustrated in NFPA 495, Section 11.1.2.1(a). *Provided, that the requirements set forth in this subsection shall not apply to blasting operations on surface coal extraction sites, and quarries otherwise permitted and regulated by the West Virginia Department of Environmental Protection, Office of Explosives and Blasting within the Division of Mining and Reclamation. Alternatively, a waiver of this requirement from the owner of the structure may be filed with the State Fire Marshal's Office.*



2.2.f.6.D. Airblast, when measured at any dwelling or building listed in subparagraph 2.2.f.6.C. of this rule shall be in compliance with NFPA 495, Table 11.2. Air Overpressure Limits.

Table 11.2 Air Overpressure Limits

Lower Frequency of Measuring System [Hz (+/- 3 dBL)]	Measurement Level (dBL)
0.1 Hz or lower – flat response*	134 peak
2 Hz or lower- flat response	133 peak
6 Hz or lower – flat response	129 peak
C-Weighted – slow response*	105 peak

\*Only where approved by the state fire marshal.

2.2.f.6.E. A seismograph shall be used beside the nearest dwelling or building listed in subparagraph 2.2.f.6.C. of this rule to demonstrate compliance with the ground vibration and airblast limits listed in subparagraph 2.2.f.6.C and 2.2.f.6.D. of this rule. As an alternate to seismographic monitoring, the blast shall comply with scaled distance equation,  $W = (D/50)^2$ , where W is the maximum weight of explosives, in pounds, that can be detonated within any period less than 8 milliseconds, D is the distance, in feet, from the nearest blasthole to the nearest dwelling or building listed in subsection 2.2.f.6.C. of this rule, and fifty is the applicable scaled distance factor.

2.2.f.6.F. For structures not listed in subsection 2.2.f.6.C. of this rule, such as oil or gas wells, oil or gas transmission and distribution lines, high-voltage steel transmission towers, public water lines, and silos, located outside the operational boundary of the blasting operation not owned or leased by the permittee, a seismograph shall be used beside the nearest structure to demonstrate that the peak particle velocity did not exceed 2.0 inches per second. As an alternate to seismographic monitoring, the blast shall comply with scaled distance equation,  $W = (D/50)^2$ , where W is the maximum weight of explosives, in pounds, that can be detonated within any period less than 8 milliseconds, D is the distance, in feet, from the nearest blasthole to the nearest dwelling or building listed in subparagraph 2.2.f.6.C. of this rule, and fifty is the applicable scaled distance factor. Alternatively, a waiver of this requirement from the owner of the structure may be filed with the State Fire Marshal's Office.

2.2.g. Monitoring instruments – All seismographs used to prove compliance with the ground vibration and airblast limits required by this rule shall be deployed in the field according to the ISEE Field Practice Guidelines for Blasting Seismographs (2009 Edition). Whenever possible, the seismographic measurement shall be made within 10 feet of the building or structure being monitored, on the side of the building or structure closest to the blast site.

2.2.g.1. A monitoring instrument for recording ground vibration, at a minimum, shall have:

- a. A frequency range of 2 Hz to 250 Hz;
- b. Particle velocity range of .02 to 4.0 inches per second or greater; and
- c. An internal dynamic calibration system.

2.2.g.2. A monitoring instrument used to record airblast shall have:

- a. A lower frequency limit of 0.1, 2.0 or 6 Hz;

- b. An upper end flat-frequency response of at least 250 Hz; and
- c. A dynamic range that, at a minimum, extends from 106 to 142 dBL.

2.2g.3. A monitoring instrument shall be calibrated annually and when an instrument is repaired and then the repair may effect the response of the instrument. Calibration shall be done by the manufacturer of the equipment, or by an organization approved by the manufacturer, or by an organization having verifiable knowledge of the calibration procedures developed by the manufacturer. The calibration procedure shall include testing the response of the entire system to externally-generated dynamic inputs. These inputs shall test the entire monitoring system at a sufficient number of discrete frequency intervals to assure flat response throughout the frequency ranges specified by this rule. Dynamic reference standards used for calibration shall be traceable to the National Institute of Standards and technology (NIST). Calibration procedures and documentation of calibration shall immediately be made available upon demand by the State Fire Marshal, or other law enforcement or regulatory personnel.

2.2.g.4. A certificate that indicates the name of the calibration facility, the calibration technician, the date of calibration and frequency range of the airblast monitor shall be made available upon request by the State Fire Marshal, or other law enforcement or regulatory agency.

#### 2.2.h. Monitoring Records.

2.2.h.1. Any person who operates a seismograph for the purpose of demonstrating compliance with the ground vibration and airblast limits of this rule shall receive appropriate training for the specific seismograph model(s) in use in: programming the seismograph(s) to record the blast; positioning the geophone and microphone; coupling the geophone to the ground; extracting the data after the blast in digital and printed forms; and understanding the results. Such training shall be received from a representative of the seismograph manufacturer or distributor, or other competent person(s). A record of such training shall be maintained by the seismograph operator or his or her employer, and made immediately available for inspection by the State Fire Marshal or other law enforcement or regulatory agency. All persons who operate a seismograph for the purpose of demonstrating compliance with the ground vibration and airblast limits of this rule shall also receive refresher training every two years.

#### 2.2.h.2. Monitoring records, at a minimum, shall contain:

2.2.h.2.A. A calibration pulse on each of the mutually-perpendicular ground vibration traces. These pulses shall represent the dynamic response of the entire recording system to an internally-generated calibration signal, and shall allow the State Fire Marshal, or other law enforcement or regulatory personnel to verify that the seismograph is recording ground vibration to its specific accuracy.

2.2.h.2.B. The time history of particle velocities for three mutually perpendicular ground vibration traces and one air-overpressure trace, including time base, amplitude scales and peak values for all traces.

2.2.h.2.C. The results of a field calibration test for each channel.

2.2.h.2.D. The frequency content of all vibration signals using either single degree of freedom (SDF) response spectrum, Fast Fourier Transform (FFT) or half-cycle zero-crossing analysis methods.

2.2.h.2.E. Frequency versus particle velocity plots as indicated in NFPA 495, Table

11.1.2.1(b).

2.2.h.2.F. The name of the individual taking the recording.

2.2.h.2.G. The GPS NAD 83 or 27 location of the monitoring instrument, and the date and time of the recording; and

2.2.h.2.H. The last calibration date of the monitoring instrument.

2.2.h.3. If the State Fire Marshal questions the validity of a ground vibration or airblast record, or the interpretation of the record, the State Fire Marshal may require a ground vibration or airblast recording to be analyzed or certified by the seismograph company supplying and calibrating the seismograph. When the State Fire Marshal requires that a recording be analyzed or certified, it shall be performed and included with the blast report within 30 days.

2.2.i. Blasting Activity Registration.

2.2.i.1. "Applicant" is defined as any user of commercial explosives that has obtained applicable Bureau of Alcohol Tobacco & Firearms ("BATF") clearances and intends to legally detonate any amount of commercial explosives for authorized purposes.

2.2.i.2. An agency approved form shall be submitted for any and all blasting activity, excluding surface coal extraction activities already permitted by the West Virginia Department of Environmental Protection, Office of Explosives and Blasting within the Division of Mining and Reclamation, to the State Fire Marshal no less than 2 business prior to the blasting activity commencing, and shall include the following information:

2.2.i.2.A. The applicant's name, address, telephone number and type of business;

2.2.i.2.B. A contact person's name, title, and telephone number;

2.2.i.2.C. The identity of independent subcontractors who will be performing the blasting activity;

2.2.i.2.D. The type of explosive to be used;

2.2.i.2.E. The location of the blasting activity; and

2.2.i.2.F. Job duration and times of the blasting activity.

2.2.j. Blast logs.

2.2.j.1. Blast logs shall be maintained for a period of five years by anyone conducting blasting activities. Those logs shall immediately be made available upon demand by the State Fire Marshal, or other law enforcement or regulatory personnel.

2.2.j.2. The blast log shall include as a minimum:

2.2.j.2.A. The name of the blasting activity applicant;

2.2.j.2.B. The date and time of the blast;

- 2.2.j.2.C. The location of the blast using GPS NAD 83 or 27 coordinate system;
- 2.2.j.2.D. The owner name and address or the GPS NAD 83 or 27 coordinates of the nearest building location not owned by the blasting activity applicant or customer;
- 2.2.j.2.E. The direction and distance in feet from the blast site to the nearest structure not owned by the blasting activity applicant or its customer;
- 2.2.j.2.F. The direction and distance to the closest utility not owned by the blasting activity applicant or its customer;
- 2.2.j.2.G. The type of material to be blasted;
- 2.2.j.2.H. The type of stemming/decking material used;
- 2.2.j.2.I. The measures taken to control flyrock, including whether or not mats were used;
- 2.2.j.2.J. The weather conditions including temperature, wind direction and estimated speed, cloud cover;
- 2.2.j.2.K. The total number of holes, diameters, depths, burdens, spacings, subdrill, top and deck stemming heights, pounds per hole;
- 2.2.j.2.L. Explosives product densities and pounds used and/or units, not including detonating cord;
- 2.2.j.2.M. The total weight in pounds of explosives and primer cartridges used;
- 2.2.j.2.N. The type and total length in feet of detonating cord(s) used;
- 2.2.j.2.O. The type, length, delay period(s), of each detonator and the total quantity each type of detonator used: *Provided, that for the purposes of this subparagraph, if an electronic detonator is used, a delay period is not required to be reported on the blast log;*
- 2.2.j.2.P. The type(s) of initiation system used;
- 2.2.j.2.Q. The maximum weight in pounds of explosives detonated per delay period of less than 8 milliseconds;
- 2.2.j.2.R. The scaled distance to the closest structure and/or utility not owned by the applicant or client;
- 2.2.j.2.S. The powder factor(s) in pounds per cubic yard, tons per pound, or pounds per square foot;
- 2.2.j.2.T. The monitoring records required shall be made a part of the blast report within 24 hours of the blast if required by subparagraph 2.2.f.6.C.;

2.2.j.2.U. A technical illustration (sketch) showing north arrow, the direction to the nearest structure and/or utility, the arrangement of blast hole burdens and spacings, firing time(s) and/or delay patterns for each blast charge, point of initiation, and free faces;

2.2.j.2.V. A technical illustration (sketch) showing typical borehole load cross sections;

2.2.j.2.W. The printed name, signature, and permit number of the blaster-in-charge for each blast; and

2.2.j.2.X. Any unusual conditions or comments.

### 2.3. Necessity of Installation and Maintenance of Carbon Monoxide Alarms or Detectors.

2.3.a. An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered with battery backup shall be in all new construction; and, in existing construction, shall either be plugged directly into an electrical outlet that is not controlled by a switch or hardwired into an alternating current (AC) electrical source, with battery backup. Carbon Monoxide Alarms or Detectors shall be installed, maintained, tested, repaired, or replaced, if necessary, in accordance with the manufacturer's direction:

2.3.a.1. In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove;

2.3.a.2. In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed or bar, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove;

2.3.a.3. In either a common area where the general public has access or all rooms in which a person will be sleeping that are adjoining to and being directly below and above all areas or rooms that contain permanently installed fuel-burning appliances and equipment that emit carbon monoxide as a byproduct of combustion located within all apartment buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two- family dwellings intended to be rented or leased, hotels and motels.

2.3.a.3.A. All single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector shall be hardwired into an alternating current (AC) electrical source, with battery backup, when installed in all newly constructed apartment buildings, boarding houses, dormitories, hospitals, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two- family dwellings intended to be rented or leased, hotels and motels.

2.3.a.3.B. In any long-term care facility that is staff on a 24 hour, 7 day a week basis, the single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector shall only be required to be installed in an area of the facility that permits the detector to be audible to the staff on duty.

2.3.a.3.C. In every public or private school or daycare facility that uses a fuel-burning heating system or other fuel-burning device that produces combustion gases. A carbon monoxide detector shall be located in each area with a fuel-burning heating system or other fuel-burning device that produces combustion gases.

2.3.a.3.D. Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.

2.3.a.3.E. When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

2.3.b. Carbon monoxide detectors shall be permitted to be connected to an approved fire alarm system. Activation of the carbon monoxide detector shall signal a supervisory alarm on the fire alarm control panel.

#### 2.4. Necessity of NICET Certification for Fire Protection and Fire Alarm Systems.

2.4.a. No fire protection and fire alarm system maintenance, repair or inspection work may be performed, offered, or engaged in for compensation or hire within the State of West Virginia by any company unless the company maintains at least 1 employee possessing a valid certificate of competency of level 2 issued by the National Institute of Certification in Engineering Technologies (NICET). All companies shall be registered with the State Fire Commission and shall provide annual information on NICET certificate holders employed by their company for the purpose of maintenance, repair or inspection activities and shall include, but not be limited to, other qualified personnel who meet one or more of the following: (1) Personnel who are factory trained and certified for the specific type and brand of system being serviced; (2) Personnel who are certified by a nationally recognized certification organization acceptable to the authority having jurisdiction; (3) Personnel who are registered, licensed, or certified by a state or local authority to perform service on systems addressed within scope of this Code, either individually or through their affiliation with an organization; (4) Personnel who are employed and qualified by an organization listed by a nationally recognized testing laboratory for the servicing of systems within the scope of this Code.

2.4.b. All fire protection extinguishment devices or systems not covered by subsection 2.4.a. shall adhere to the following: No fire protection equipment or system installation, maintenance, repair, or inspection work may be performed, offered, or engaged in for compensation or hire within the State of West Virginia by any company unless the company maintains at least 1 employee possessing a valid certificate of competency issued by the equipment or system manufacturer. All companies shall be registered with the State Fire Commission and shall provide annual information on certificate holders employed by their company for the purpose of installation, maintenance, repair, or inspection activities.

2.4.c. All fire protection systems plans and specifications shall be developed in accordance with applicable codes pertaining to the specific system for submittal and review and shall have at least 1 employee possessing a valid certificate of competency issued by the National Institute of Certification in Engineering Technologies (NICET) level 3 for design purposes. The system designer shall be identified on the system design documents. The system designer shall provide evidence of their qualifications and/or certification to the agency.

#### § 87-1-3. Reporting of Fire Incidents.

3.1. The fire chief of any organized public fire brigade, department or company shall report every fire and non-fire incident to the State Fire Marshal. Every fire and non-fire incident response shall be reported



within 180 days after the date of the incident. Provided, that any fire or explosion involving human fatality, arson or suspected arson shall be reported immediately.

**§ 87-1-4. Unvented Heaters.**

4.1. All unvented fuel fired heaters are prohibited for all occupancies except 1 and 2 family dwellings. Provided, that a single unvented fuel fired heater is permitted for demonstration purposes in authorized mercantile applications when installed in accordance with the manufacturer's recommendations. The single heater shall be connected to a permanent source of fuel and shall not be used as a permanent or alternate source of heating. The unvented heater shall be shut off at the end of each business day.

**§ 87-1-5. Maintenance of Fire Hazard; Order for Correcting Condition, Removal of Material, Repair, Demolition, etc.; Order to Contain Notice to Comply and Right to Appeal.**

5.1. Whenever the State Fire Marshal, by and through persons working under his or her direction, determines based upon the State Fire Code and/or on the experience and knowledge applied in the operation of his or her office (1) that any building or structure has been constructed, altered, or repaired in a manner violating the State Fire Code as promulgated prior to the commencement of the construction, alterations, or repairs, or (2) that any building or structure is being maintained or used in such a way as to endanger life or property from the hazards of fire or explosion, or (3) that any building or other structure or property of any kind, which, for want of repairs, or by reason of its age, dilapidated, or abandoned condition or for any other reason constitutes a fire hazards and is located or constructed so as to constitute a danger to other buildings, property, persons, life, or limb, or (4) that in any building or upon any premises there is located any combustible, flammable, or explosive substance or material or other condition dangerous to the safety of persons occupying the building or premises and adjacent premises and property, the State Fire Marshal shall order the condition or thing to be corrected, or combustible, flammable or explosive, items to be removed, or the building or buildings to be repaired, closed to occupants, or removed, as required by the circumstances. The order shall be promptly complied with by the owner, agent, occupant, and lessee of the premises, place, property, or thing. Any order may be expressed in the alternative, e.g., allowing repair but on the failure to repair requiring demolition. Any order by the State Fire Marshal which concludes that a fire hazard exists, shall state what repairs and/or demolition must be accomplished, and that compliance must be completed within thirty (30) days of issuance. In the event of noncompliance, the State Fire Marshal is authorized by statute to enter into and upon the premises affected by the order and cause the building, structure, premises, or thing to be repaired, or torn down, materials removed, and all dangerous conditions remedied (as the case may be) at the expense of the owner, and shall advise that the order can be contested by entering an appeal to the State Fire Commission as outlined in section 17 of this rule.

**§ 87-1-6. Interference with Fire Protection Equipment.**

6.1. No person shall render any portable or fixed fire extinguishing system or device or any fire warning system inoperative or inaccessible except as may be necessary during emergencies, maintenance, drills, or prescribed testing.

6.1.a. Any person responsible for maintenance, prescribed testing, or for drill purposes, shall contact the local 911 center to make them aware of the said activities at the commencement and conclusion of the above activities.

**§ 87-1-7. Exit Inspections and Public Life Safety Announcements.**

7.1. Inspection of Exits. Not more than 90 minutes prior to the scheduled commencement of any noncontinuous activity, event, performance, show, meeting, function, or other occasion for which people

will gather in a place of assembly, the owner or his or her designee pursuant to written authority, instructions, or procedures shall inspect every required exit, way of approach to an exit, and way of departure from an exit. If the inspection reveals that any required means of egress is obstructed, inaccessible, locked, fastened, or otherwise unsuited for immediate use, the scheduled program shall not begin, nor shall admittance to the place of assembly be permitted, until necessary corrective action has been completed.

7.2. Announcements. Immediately prior to the start of a program for which 300 or more people will gather in a place of assembly, the owner or his or her authorized agent shall orally notify all attendees concerning the location of the exits to be used in case of fire or other emergency.

7.3. Records. An accurate record of all inspections, corrections, and notifications shall be kept and retained for at least 2 years in the offices of the respective building owners. The records shall contain:

7.3.a. A brief description of each activity, event, performance, etc., including its date, time, and location; and

7.3.b. The name and signature of the person who performed each requirement of this section; and

7.3.c. The date and time when each requirement was performed.

7.4. Alternatives. In case of practical difficulty or undue hardship, or in which compliance would not significantly increase life safety, the State Fire Marshal may approve or accept alternative means of accomplishing the objectives of this section.

#### **§ 87-1-8. Forest Fire Season.**

8.1. The periods of each year between March 1<sup>st</sup> and May 31<sup>st</sup>, inclusive, and October 1<sup>st</sup> and December 31<sup>st</sup>, inclusive, are designated as forest fire seasons. No person shall during any fire season, except between the hours of 5:00 PM and 7:00 AM prevailing time, set fire to, or procure another to set fire to, any brush, leaves, grass, debris, or field containing dry grass or other inflammable material capable of spreading fire, located in or within 300 feet of any woodland, brushland, or field containing dry grass or other inflammable material. Any fire set during this time shall be extinguished prior to 7:00 AM prevailing time. The prohibition of fires between 7:00 AM and 5:00 PM prevailing time does not include (1) small fires set for the purpose of food preparation, or providing light or warmth around which all grass, brush, stubble, or other debris has been removed for a distance of 10 feet from the fire, and (2) burning which may be conducted at any time when the ground surrounding the burning site is covered by 1 inch or more of snow. Any person who sets or causes to be set any fire permitted by this section shall not leave the fire unattended for any period of time.

8.2. Any person or his or her agent or employee who sets or causes to be set any fire at any time in the use and occupation of any kind on which the burning was being done is in violation of this section if fire escapes beyond the safety strip. Any person who, by himself or herself, or by his or her employees, agents, or guides or as an employee, agent, or guide of any other person, at any time builds or uses any fire in any field, on any public or private road, or in any area adjacent to or on any forest land in this state, shall before leaving the fire for any period of time, totally extinguish the fire. A person shall not at any time throw or place any lighted match, cigar, cigarette, firecracker or lighted material on any forest land, private road, public highway, or railroad right-of-way within this state.

#### **§ 87-1-9. Executive Order by the Governor on Open Burning.**

9.1. On those occasions when the Governor of the State issues an Executive Order or Proclamation to ban open burning due to weather conditions, the State Fire Marshal may assist in the enforcement of the provisions of the Proclamation or Executive Order.

**§ 87-1-10. Outdoor Storage of Used Tires.**

The storage of used tires shall comply with the following:

10.1. All outdoor storage of used tires shall be free from all trash and debris within the site;

10.2. The owner and operators of outdoor storage of used tires shall maintain controlled access to the property with only one entrance/exit, and shall install security lighting for use during evening and night time hours as designated by the State Fire Marshal;

10.3. All outdoor storage of used tires shall have a perimeter security chain link fence of a minimum height of six feet;

10.4. All storage of used tires, shredded or unshredded, shall be separated into individual piles on the property. No pile may exceed 50 feet wide by 50 feet deep by 15 feet in height;

10.5. In the absence of an available water supply of at least 500 GPM (gallons per minute) provided by fire hydrants within 1000 feet of the facility, a minimum of 10,000 thousand gallon water supply on the site for exclusive use of fire fighting personnel shall be established;

10.6. Fire lanes having a minimum of 45 foot lanes capable of supporting fire apparatus shall be established and maintained between all tire piles;

10.7. A minimum of a 50 foot wide zone around the site perimeter inside the fence line shall be maintained;

10.8. All storage piles shall have a minimum of a 30 inch high earthen dike around each tire pile as the piles are established;

10.9. A maximum of 18 tire piles may be established on a single site; and

10.10. No site may exceed the storage of more than three hundred thousand tires without the approval of the State Fire Marshal.

**§ 87-1-11. Stopping, Standing or Parking Prohibited in Specified Areas.**

11.1. No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic-control device, in any of the following places:

11.1.a. Within 15 feet of a fire hydrant; or

11.1.b. Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly sign-posted.

**§ 87-1-12. Crossing Fire Hose.**

12.1. No person shall drive a streetcar or vehicle over any unprotected hose of a fire department when it is laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

**§ 87-1-13. Emergency Vehicle Permits.**

13.1. Authorization for all fire department vehicles and firefighters to operate Class A vehicles shall be designated by their fire chief and the State Fire Marshal's Office. Vehicles authorized by W. Va. Code § 17C-15-26 shall have red flashing warning lights and an audible signaling device, such as a siren, whistle or bell capable of emitting sound audible from a distance of not less than 500 feet.

13.2. Upon receipt of written notification from the Fire Chief of the local fire department to the State Fire Marshal requesting that an Emergency Vehicle Permit be revoked, the State Fire Marshal shall cause the permit to be revoked.

**§ 87-1-14. Fire Safety Separation Requirements for Mobile Home Sites.**

14.1. No portion of a manufactured home, excluding the tongue, shall be located closer than 3 m (10ft) side to side, 2.4 m (8 ft) end to side, or 1.8 m (6 ft) end to end horizontally from any other manufactured home or community building unless the exposed composite walls and roof of either structure are without openings and constructed of materials that will provide a 1-hour fire resistance rating or the structures are separated by a 1-hour fire-rated barrier.

14.2. Manufactured homes shall not be positioned vertically, stacked with one over the other, in whole or in part, unless the structure is designed and approved for such installation and permitted by the authority having jurisdiction.

**§ 87-1-15. Propane Gas Training Program Certification.**

15.1. Any person who installs or maintains liquefied petroleum gas systems shall complete training standards and qualifications as established by the Propane Education and Research Council (PERC) Training Program. Exemption: Any person who installs, fuels, maintains, or services a fuel gas system on a single family dwelling owned or leased, and occupied by that person.

**§87-1-16. Exemption for agricultural purposes.**

16.1. If a property owner or other responsible party claims exemption from the State Fire Code based on the agricultural purposes exemption identified in subsection 1.6. of this rule, it would be based upon W. Va. Code §15A-11-3, that “buildings or structures utilized primarily for agricultural purposes shall be exempt from the provisions of the State Building Code, the State Fire Code, and any county or municipal building code or ordinance that is or may be adopted”.

16.2. The term “agricultural purposes” means the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production.

**§ 87-1-17. Orders and Decisions of the State Fire Marshal; and Appeals and Procedure for Appeals from such Orders or Decisions.**

17.1. 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 § 15A-10-1 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 W. Va. Code § 51-11-1 et seq. and this rule.

17.2. 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 § 15A-10-1 et seq. or made pursuant to this rule, and desiring to contest the order or written decision may file an appeal from the order or written decision with the Office of Administrative Hearings, as set forth in W.Va. Code §15A-9-1 *et seq.* Preservation of the right to an appeal and the procedure for the contested case is governed by this section 15A-10-1 et seq.

17.3. W. Va. Code § 15A-10-3(g) and (i) Inquiry and Investigation. -- The testimony which may be obtained by the State Fire Marshal pursuant to the authority in W. Va. Code § 15A-10-3(g) and (i) shall be obtained without compliance with the provisions in this rule governing "Procedure in Contested Cases." Where appropriate, a subsequent order by the State Fire Marshal relating to the testimony obtained is the same as any other order by the State Fire Marshal subject to the appeal rights provided in W. Va. Code § 15A-10-1 et seq.

17.4. Appeal Petition. -- When any person aggrieved by an order or final written decision of the State Fire Marshal desires to appeal such order or final written decision, the appeal petition shall be typewritten, styled "Appeal Petition", and the appellant shall submit an original and 1 copy to the Office of Administrative Hearings. The Appeal Petition shall be complete in itself so as to fully state the matters contested. No telegram, telephone call, or similar communication will be regarded as an appeal petition. The appeal petition shall contain and include the following:

17.4.a. a copy of the order or decision of the State Fire Marshal being contested;

17.4.b. a clear and concise assignment of each error which the petitioner alleges to have been committed by the State Fire Marshal in issuing the order or decision with each assignment of error being shown in separately numbered paragraphs;

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

17.4.d. the address to which the petitioner desires to have all notices, documents, and the final order of the Office of Administrative Hearings mailed;

17.4.e. the telephone number or numbers where the petitioner can be contacted;

17.4.f. the names and addresses of all persons having any ownership interest in the property which is the subject of the State Fire Marshal's order being contested;

17.4.g. a prayer setting forth the relief sought; and

17.4.h. the signature of the petitioner or its duly authorized officer.

17.5. Time Requirement and Manner of Filing Appeal Petition. -- The petitioner shall submit an appeal petition by personal delivery or mailed to the Office of Administrative Hearings within 30 days following service upon the petitioner, or within 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 30 day period. Any appeal petition not delivered or mailed within the 30 day period is not timely filed and the order or decision of the State Fire Marshal being contested is final.

17.6. Copy of Appeal Petition to Office of Administrative Hearings. -- Upon receipt of an appeal petition, the Chief Hearing Examiner, or hearing examiner with the Office of Administrative Hearings, through office staff, shall supply a copy of the petition to the State Fire Marshal. 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 Chief Hearing Examiner, or hearing examiner with the Office of Administrative Hearings and a copy to the petitioner.

17.7. Scheduling Appeal Petition for and Notice of Hearing. -- The Chief Hearing Examiner, or hearing examiner with the Office of Administrative Hearings, through office staff, shall schedule a hearing on the appeal petition giving the petitioner and the State Fire Marshal at least 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, 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, and shall be mailed or personally delivered by the State Fire Marshal no later than 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 Chief Hearing Examiner, or hearing examiner with the Office of Administrative Hearings at a location within the county where the premises in question are located.

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

17.9. Continuances -- A motion for continuance shall not be granted unless made in writing three 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 new counsel are not good grounds for a continuance unless a motion is filed promptly after the notice of hearing has been mailed or unless extenuating circumstances are shown, which the hearing examiner considers adequate.

17.10. Absence of Petitioner or Counsel at the Scheduled Hearing -- A hearing being conducted pursuant to this rule 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.

17.11. Subpoenas and Subpoenas *Duces Tecum*.

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

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

17.11.c. Any party requesting a subpoena or subpoena *duces tecum* shall see that it is properly served.

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

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

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

#### 17.12. Evidence.

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

17.12.b. 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 of which either party desires to avail himself or herself, may be offered and made a part of the record in the case.

17.12.c. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded by the hearing examiner. Except as otherwise in this section, the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed in considering the admissibility of evidence. However, when necessary to ascertain facts not reasonably susceptible of proof under those rules, reasonably authenticated evidence not admissible under those Rules may be admitted, except where precluded by the W. Va. Code or privilege, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

17.13. 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, or electronic means. 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.

17.14. Informal Disposition. -- At any stage of the proceedings, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

17.15. Decision by the hearing examiner. -- Upon the conclusion of the hearing, the 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 decision signed by the hearing examiner shall be final unless vacated or modified upon judicial review thereof. A copy of the order shall be served on all parties to the hearing and all attorneys of record, if any, in person or by certified mail, return receipt requested.

17.16. Judicial Review. -- The petitioner or the State Fire Marshal may appeal the hearing examiner's decision to the Intermediate Court of Appeals as the Intermediate Court of Appeals has appellate jurisdiction over all "[f]inal judgments, orders, or decisions of an agency or administrative law judge entered after June 30, 2022" per West Virginia Code §51-11-4(b)(4).