TITLE 103
LEGISLATIVE RULE
STATE FIRE MARSHAL

SERIES 5
ELECTRICIAN LICENSING RULES

§103-5-1. General.

1.1. Scope. -- These rules establish the procedures to be followed to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform electrical work through licensure by the State Fire Marshal of the State Fire Commission.

1.2. Authority. -- W. Va. Code §29-3B-5

1.3. Filing Date. – April 26, 2018

1.4. Effective Date. – July 1, 2018

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on July 1, 2023.

1.6. Subject. -- Standards and Procedures relating to the Issuance of Certificates of Competency to Master, Journeyman, Apprentice or and Specialty Electricians.

§103-5-2. Definitions.

2.1. "Master Electrician" - means a person with at least five (5) years of electrical work experience, including experience in all phases of electrical wiring and installation, who holds a master electrician's license issued by the West Virginia State Fire Marshal who is competent to instruct and supervise the electrical work of Journeyman and Apprentice Electricians. A master electrician must have a comprehensive knowledge and understanding of the National Electrical Code, and the ability to read electrical plans, drawings and designs to calculate demand loads in compliance with the National Electrical Code.

2.2. "Journeyman Electrician" - means a person qualified by at least four (4) years of electrical work experience to do any work installing wires, conduits, apparatus, equipment, fixtures, and other appliances subject to supervision by a master electrician, and who holds a journeyman electrician's license issued by the West Virginia State Fire Marshal. A journeyman electrician shall have a knowledge and understanding of the National Electric Code as it pertains to the installation of wires, conduits, apparatus, equipment, fixtures and other appliances. A journeyman electrician shall not design any part of an electrical system as defined in § 2.2.12 of this rule.

2.3. "Apprentice Electrician" - means a person with interest in and an aptitude for performing electrical work, and who holds an apprentice electrician's license issued by the West Virginia State Fire Marshal . The Apprentice is not capable of installing wires, conduits, apparatus, equipment, fixtures and other appliances by himself. An apprentice electrician shall not design any part of an electrician system as defined in § 2.2.12 of this rule.

2.4. "Specialty Electrician License" - means a person qualified to perform electrical work in a limited or specialized area. The following specialty electrician licenses may be issued by the State Fire Marshal.

2.4.1. A specialty plumbing, heating, and air conditioning electrician license (SP-PH) authorizes the licensee to install, maintain, or repair electric wiring or devices only as an incident to the licensee's plumbing, heating, and air conditioning business. Furthermore, the license authorizes the licensee to install, maintain, or repair only wiring that is directly related to plumbing, heating, and air conditioning equipment and that:

2.4.1.a. is restricted to circuits or parts of circuits that operate at voltages not exceeding 600 volts, phase-to-phase;

2.4.1.b. is electrically isolated from the building wiring system by an overcurrent protective isolating device, such as a fused switch or circuit breaker, that:

2.4.1.b.1. has been installed, complete with line-side connections, by a master or journeyman electrician;

2.4.1.b.2. is permanently and legibly marked to identify the equipment served by the device; and

2.4.1.b.3. is located within an enclosure intended solely for, and limited to, serving the specific plumbing, heating, and air conditioning equipment involved, or is located within a panel-board that serves the building wiring system and is likewise permanently and legibly marked to identify the equipment served by the device, provided the wiring is installed by a master or journeyman electrician from the load-side terminals of the device to a junction box, auxiliary gutter, or similar disconnecting means located outside the panelboard, but in sight of and within 50 feet of, the plumbing, heating, or air conditioning equipment served;

2.4.1.c. originates at the load-side terminals of the protective isolating device;

2.4.1.d. except for control wiring, is physically adjacent to the plumbing, heating, and air conditioning equipment involved and is in sight of and not more than 50 feet from the equipment. Control wiring that receives its control power from the plumbing, heating, and air conditioning equipment involved may extend beyond these limits if the control voltage does not exceed 120 volts to ground and the wiring is protected from overcurrent; and

2.4.1.e. is not installed in a location considered as hazardous under the National Electrical Code.

2.4.2. A specialty electric sign electrician license (SP-ES) authorizes the licensee to install, maintain, or repair electric wiring or devices only as an incident to the licensee's electric sign business. Furthermore, the license authorizes the licensee to install, maintain, or repair only wiring that is directly related to electric signs and is electrically isolated from the building wiring system. Wiring that is directly related differs depending on the type sign involved.

2.4.2.a. Except for electric signs described in subdivisions B, C, and D of this Section, related wiring is the portion of the electric sign wiring that originates at the load-side terminals of a disconnecting means located immediately adjacent to the electric sign involved, or originates within a junction box so located. Related wiring does not include the installation of the disconnecting means, complete with line-side connections, or the installation of the junction box, complete with free-length circuit conductors to accommodate the connection of the related wiring in the box.

2.4.2.b. For electric sign installations having sign transformers installed physically apart from the sign, related wiring is the portion of the electric sign wiring that originates at the load-side terminals of a

disconnecting means located immediately adjacent to the sign transformer supplying the electric sign involved, or originates within a junction box located immediately adjacent to the electric sign involved. Related wiring does not include the installation of the disconnecting means, complete with line-side connections, or the installation of the junction box, complete with free-length circuit conductors to accommodate the connection of the related wiring in the box.

2.4.2.c. for permanent free-standing electric sign installations supplied through underground circuit conductors, related wiring is the portion of the electric sign wiring that originates at a wiring termination point located at, within, or immediately above the permanent base for the sign structure.

2.4.2.d. Related wiring does not include the installation of:

2.4.2.d.1. a junction box, located at, within, or immediately above the permanent base for the sign, complete with free-length circuit conductors to accommodate the connection of the related wiring; or

2.4.2.d.2. if the base of the sign structure is suitable for use as a raceway, the installation of bushing, complete with free-length circuit conductors extending through to accommodate the connection of the related wiring within the sign structure raceway.

2.4.2.e. For electric signs specifically designed to be connected directly to the building wiring raceway or cable supply, related wiring is the portion of the electric sign wiring that originates at the point where the free-length circuit conductors extend through the building wiring raceway or cable at the specifically designed supply location for the electric sign involved. Related wiring does not include the installation of the building wiring raceway or cable system to the specifically designated point of supply for the electric sign involved, complete with free-length circuit conductors extending through the building wiring raceway or cable to accommodate the connection of the related wiring.

2.4.3. A specialty single family residential dwelling electrician license (SP-SFD) which authorizes the licensee to install, maintain, or repair only electrical wiring and devices that are in or on a single family residential dwelling or an ancillary to a single family residential dwelling. Electrical work that is covered by another special restricted license can be performed by a SP-SFD licensee without obtaining the other special restricted license as long as it is in or on a single family residential dwelling or an ancillary to a single family residential dwelling.

2.4.3.a. A "single family residential dwelling" is a building or a manufactured home that is designed and used only for habitation by one family and is not physically attached to any other building or structure. Cabanas, porches, room additions, and similar structures are considered part of a single family dwelling if they are designed for and used only for residential purposes by the occupants of the dwelling.

2.4.3.b. An "ancillary" to a single family residential dwelling is an appurtenance or an out-building or similar structure associated with the single family dwelling such as a detached residential garage or carport, a farm or household equipment storage shed, a barn, a pump house, an electric fence, or yard lighting.

2.4.3.c. "Habitation" means the occupancy of a dwelling primarily or exclusively for residential purposes.

2.4.4. A specialty low voltage electrician license (SP-LV) (Fire and Burglar Alarm Communication Systems) which authorizes the licensee to install, maintain, or repair only low voltage wiring, 80 volts or less, and directly related wiring. Wiring is directly related if it:

2.4.4.a. originates at the load-side terminals of a disconnecting means or junction box that:

2.4.4.a.1. has been installed, complete with line-side connections, by others for the specific purpose of supply the low voltage wiring system involved; and

2.4.4.a.2. is permanently and legibly marked to identify the low voltage wiring system supplied; and

2.4.4.b. is not installed in a location considered as hazardous under the National Electrical Code.

2.4.5. A specialty elevator electrician license (SP-EL) (Elevators, Dumbwaiter(s), Escalator(s), Moving Walk(s) and Personnel Hoist(s)) which authorizes the licensee to install, maintain, or repair electric wiring only as an incident to the licensee's elevator, dumbwaiter, escalator, moving walk, or personnel hoist business. Furthermore, the license authorizes the licensee to install, maintain, or repair only electrical wiring that:

2.4.5.a. is an integral part of an elevator, dumbwaiter escalator, moving walk, or personnel hoist;

2.4.5.b. is electrically isolated from the building wiring system by means of an overcurrent protective device, such as a safety switch or circuit breaker, that has been installed, complete with line-side connections, by others; and

2.4.5.c. originates at the load-side terminals of the protective isolating device, referred to as "beyond the disconnection means."

2.5. "Electrical Work" - means the installation of wires, conduits, apparatus, fixtures, other appliances, equipment, or systems for transmitting, carrying, controlling, or using electricity for light, heat, or power purposes. Controlling is not intended to mean low voltage thermostat temperature controls.

2.6. "License" - means a valid and current certificate of competency issued by the State Fire Marshal.

2.7. "Electrical Contractor" - means a person, firm or corporation who engages in the business of electrical work or employs master electricians, journeyman electricians, apprentice electricians for the construction, alteration or repair of any electrical wiring, equipment or systems for the purpose of controlling or furnishing heat, light or power.

2.8. "Supervise or Supervision" means the drafting, coordinating and directing of the design, layout and load calculations of electrical systems. It is the intent of the word "supervise or supervision" that electrical design, layout and calculations be done by a Master Electrician. Supervision does not require that a master electrician to be physically present with a journeyman electrician during the electrical work. Apprentice electricians shall be supervised by a Master or Journeyman electrician. A Master or Journeyman electrician may not supervise more than three apprentice electricians on the job site. Provided, That upon notice to the State Fire Marshal from an approved WV Department of Education electrical vocational program; an instructor who holds a master electrician's license shall supervise his or her students performing work under the licensed instructor's direct and constant supervision.

2.9. "Appliance" means utilization equipment sold at retail, generally other than industrial, normally built in standardized sizes or types, which is installed or connected as a unit to perform one or more functions such as clothes washing, air conditioning, food mixing, deep frying, etc.

2.10. "Posting of the License" as required by W. Va. Code §29-3B-2 means placing a copy of the electrician license issued by the State Fire Marshal on each job site where electrical work is being performed.

2.11. "Offer to do Electrical Work" means to agree to perform electrical work for compensation or hire.

2.12. "Design" - means to plan or layout electrical systems in sketches or drawings for use by licensed electricians. It includes, but is not limited to, determining the service components of electrical systems, the type and sizes of conductors, circuit breakers and other components of electrical systems necessary to accommodate the demand load.

2.13. "National Electrical Code" - The National Electrical Code for licensing of electricians is that Code promulgated by the National Fire Protection Association. Copies of the National Electrical Code may be obtained at the expense of the party making request by writing: The National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

2.14. "State Fire Commission" - means the members of the West Virginia State Fire Commission appointed in accordance with W. Va. Code §29-3-1 et seq.

2.15. "State Fire Marshal" - means the West Virginia State Fire Marshal and/or his designated representatives.

2.16. "Firm or Corporation" - means a lawful business entity which is qualified and authorized to do business in the State of West Virginia.

§103-5-3. Necessity of License and Local Ordinances.

3.1. Necessity of License - Under provisions of applicable law, no electrical work may be performed, offered or engaged in for compensation or hire within the State of West Virginia by any person, firm, or corporation unless such person, firm, or corporation possesses a license issued by the State Fire Marshal in accordance with W. Va. Code §29-3B-1 et seq. and a copy of such license is posted on any job in which electrical work is being performed for hire. If any firm or corporation applies for, is granted and holds a valid electrician license, such license does not exempt electricians employed by, working directly or indirectly for, subcontracting for, or providing services to such firm or corporation from the requirement of also possessing an apprentice, journeyman or master electrician license.

3.1.1. Any non-compensation work not otherwise exempted from licensure under §3.3 of this rule shall be conducted under the supervision of a West Virginia licensed master electrician.

3.2. Nonapplicability of Local Ordinances, Exclusive License - No municipality, local government, or county may require any license or other evidence of competence as an electrician from any person, firm, or corporation who or which holds a valid and current license issued by the State Fire Marshal, as a condition for the performance of electrical work within the State of West Virginia.

3.3. Exemptions; Nonapplicability of License Requirements

These rules do not apply to and no license is required for:

3.3.1. Any person who performs electrical work with respect to property owned or leased by such person. For the purpose of this subparagraph: (1) "property owner" includes the property owner~~,~~ and lessee; and (2) "performs electrical work" includes routine maintenance, repairs, and improvements to;

3.3.2. Any person who performs electrical work at any manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating such plant or establishment, i.e. chemical industry, coal mining, manufacturing, and any other industries recognized in the Life Safety Code published by the National Fire Protection Association~~.~~;

3.3.3. Any person who, while employed by an employer engaged in the business of selling appliances at retail, performs electrical work with respect to installation and repair of appliances as part of his regular duties provided the installation or repair of appliances does not require the entering of the electrical panel;

3.3.4. Any person who, while employed by a public utility or any of its affiliates, performs electrical work in connection with the furnishing of public utility service; or

3.3.5. Any person who performs electrical work as a government employee at property owned/leased by the government.

§103-5-4. Qualifications for Examination.

4.1. "Master License": To apply for a "master electrician license" a person must have five (5) years of experience as a journeyman electrician in electrical work of such breadth, independence and quality that such work indicates that the applicant is competent to perform all types of electrical work and can direct and instruct journeyman electricians and apprentice electricians in the performance of electrical work.

4.2. "Journeyman License": To apply for a "journeyman electrician's license", a person must: (1) have at least four (4) years of experience as an apprentice electrician in performing electrical work under the direction or instruction of a master electrician; (2) have completed a United States Department of Labor/Bureau of Apprenticeship and training registered electrical apprenticeship program~~,~~; or (3) have completed an electrical vocational education program of at least one thousand eighty hours in length approved by the WV Board of Education which should include an on-the-job training/work hours module, successfully passed all final written and practical testing required by the WV Department of Education, and obtained an affidavit showing competency to sit for the journeyman electrician examination from the program instructor.

4.3. "Apprentice License": To apply for an "apprentice electrician license", a person must have an interest in and an aptitude for performing electrical work. The apprentice is not capable of installing wires, conduits, apparatus, equipment, fixtures and other appliances by himself. Any student enrolled in a WV Department of Education electrical vocational educational program of at least one thousand eighty hours may apply for the said license. It shall be encouraged that all apprentice license holders shall become familiar with the National Electrical Code, NFPA 70.

4.4. "Specialty License": To apply for a Specialty electrician license, a person must have at least two (2) years experience in their area of specialty of which one (1) year may be obtained through educational programs.

§103-5-5. Examinations.

5.1. Examination Required - After the effective date of these rules the State Fire Marshal shall issue an electrician license only to that person who has satisfactorily passed an examination for the level of licensure applied for, and who has otherwise met and complied with the requirements of these rules.

5.2. Form of Request - An applicant requesting an examination under the provisions of these rules must, as a condition precedent to such examination, furnish the State Fire Marshal with:

5.2.1. The class of license for which he/she seeks licensure, i.e. Master, Journeyman, Apprentice, or Specialty; and

5.2.2. A twenty-five dollar ($25.00) fee, for the Master, Journeyman or Specialty examination or ten dollars ($10.00) for the Apprentice examination. The fee is not returnable.

5.2.3. A history of experience and qualifications which must equal the years experience required for the level of licensure that the applicant is seeking.

5.3. Classification Levels - An applicant must meet the minimum experience requirement in order to determine the appropriate licensure level for which to seek examination:

Minimum Experience As	Examination
Less than 4 years	Apprentice Electrician
4 years or more	Journeyman Electrician
5 years or more	Master Electrician
2 years or more	Specialty Electrician

5.4. The examination fee for testing will be forfeited by any applicant who fails to appear for examination unless at least 24 hours notification is given to the State Fire Marshal's Office prior to examination date. An additional examination fee must be paid to the State Fire Marshal if the applicant reapplies for the examination after not appearing for the first examination.

5.5. Failure to Meet Experience and/or Qualifications - Any person who fails to meet the required experience or qualifications for a certain level of licensure, when applying for an examination may change their application and select a lower level of licensure for which they do qualify without having to pay an additional fee.

5.6. Age Requirement - An applicant must be eighteen (18) years of age in order to take any examination or to be issued a license.

5.7. Time of Request - An applicant must comply with the requirements of Subsection 5.2 of this rule no later than ten (10) working days in advance of the next scheduled examination in order to receive the authorization for testing.

5.8. Authorization Form Required - An applicant complying with Subsection's 5.2 and 5.7 of this rule will be issued a written authorization form acknowledging receipt of the application fee and setting forth the level of competency for which testing is authorized. No person will be permitted to take the examination who is unable to present the authorization form at the place of examination.

5.9. License Fee - Upon passing the examination, the applicant will receive the appropriate license.

5.10. Scheduling of Examinations - Under provisions of applicable law, the State Fire Marshal shall prepare and arrange for the giving of examinations at least four (4) times each year. Such examinations will regularly be held on the second Tuesday (excluding holidays) in the months of January, April, July and October. The State Fire Marshal may schedule examinations at such additional times as he deems necessary.

5.11. Location of Testing Centers - Tests will be given at the Capitol Complex, Charleston, WV at least four (4) times a year. Tests at other locations may be scheduled provided a sufficient number of applications have pre-registered. Notification of test locations to each applicant will be provided as required in subsection 5.8 of this rule.

5.12. Source of Questions - All examinations will be derived from the National Electrical Code published by the National Fire Protection Association. Each examination for each class of license will be appropriate in subject matter, difficulty and depth of understanding.

5.13. Passing Grade - a passing grade of at least eighty percent (80%) on any test is required to permit the State Fire Marshal to issue an electrician license to any applicant.

5.14. Failing Grade - An applicant who fails to make the required passing score on any examination may retake the same examination or a lesser class examination upon the payment of a fee of ten dollars ($10.00) and upon submission of a new application for examination.

§103-5-6. License Without Examination.

6.1. License - An applicant who is enrolled in a formal electrical apprenticeship program and registered with the United States department of labor/bureau of apprenticeship and training or enrolled in an electrical vocational education program of at least one thousand eighty hours in length and approved by the state board of education may be issued a one time nonrenewable temporary apprentice license for a period of one hundred eighty (180) days.

6.2. An applicant who has completed a United States department of labor/bureau of apprenticeship and training registered electrical apprenticeship program, or an electrical vocational education program of at least one thousand eighty hours in length and approved by the state board of education and has at least four (4) years of experience in performing electrical work may be issued a one time nonrenewable temporary master or journeyman license for a period of ninety (90) days.

6.3. An applicant for a one time temporary license under Subsection 6.1 shall pay a fee of twenty-five dollars ($25.00) and under Subsection 6.2 shall pay a fee of fifty dollars ($50.00).

§103-5-7. Expiration and Renewal.

7.1. Expiration - All electrician licenses issued by the State Fire Marshal expire on the thirtieth (30th) day of June each year.

7.2. Renewal Fee Required - The State Fire Marshal shall renew annually the electrician license of any licensee who makes application and upon payment of a renewal fee of fifty dollars ($50.00). It shall be the individual's responsibility to submit their license renewal request to the State Fire Marshal.

7.3. Renewal After Expiration - All electricians licenses not renewed in accordance with the provisions of Subsection 7.2 of this rule may be renewed by paying the fifty dollar ($50.00) license fee and a fifteen ($15.00) penalty fee within the licensure year. No person, firm, or corporation may perform electrical work during the period of time their license is expired. An electrician previously licensed by the WV State Fire Marshal who did not renew his or her electrician license, may renew without retesting within three years of the date of the last renewal, provided that: the electrician's license had not been revoked and that the applicant pays double the current fee if his or her license has been lapsed for two renewal periods or triple the fee if his or her license has been lapsed for three renewal periods.

§103-5-8. Denial, Revocation or Suspension of License.

8.1. Denial of License - A license will be denied any applicant who:

8.1.1. fails to make a passing score of 80% on any examination; or

8.1.2. fails to provide evidence of the required experience and/or qualifications for the class of license.

8.2. Suspension or Revocation of License - The State Fire Marshal may upon written complaint or his own inquiry, after notice and hearing as provided by W. Va. Code §29A-5-1 et seq. suspend or revoke the license of any person who holds a license if:

8.2.1. The license was granted upon an application or documents supporting such application which materially misstated the terms of the applicant's qualifications or experience; or

8.2.2. The licensee subscribed or vouched for such misstatement by an applicant; or

8.2.3. The licensee incompetently or unsafely performs electrical work; or

8.2.4. The licensee violated any statute of the state of West Virginia, any rule lawfully promulgated by an agency of the state of West Virginia or any ordinance of any municipality or county of the state of West Virginia which protects the consumer or public against unfair, unsafe, unlawful or improper business practices; or

8.2.5. The licensee fails to comply with any rule of the State Fire Marshal promulgated to fulfill his responsibilities under W. Va. Code §29-3B-1 et. seq.

§103-5-9. Licensing Reciprocity.

9.1. General Requirements

9.1.1. The state fire marshal may enter into formal reciprocal agreements with other jurisdictions whereby nonresident electricians licensed by the other jurisdictions may obtain a West Virginia electrician license without written examination provided:

9.1.1.a. The applicant furnishes to the State Fire Marshal a written statement from his/her jurisdiction certifying that he or she holds a current electrician license issued by that jurisdiction;

9.1.1.b. The individual is duly qualified for the license currently issued to the applicant by his or her jurisdiction;

9.1.1.c. The applicant files an application on a form provided by the State Fire Marshal requesting a license under the formal licensing reciprocity agreement currently in effect between the State Fire Marshal and the applicant's jurisdiction;

9.1.1.d. Except for the written examination requirement, the applicant furnishes to the State Fire Marshal information satisfactorily verifying to the State Fire Marshal that he or she meets all the applicable sections of these rules; and

9.1.1.e. The applicant furnishes to the State Fire Marshal his or her check or money order for the annual license fee as required in Section 7 of these rules for the specific license classification requested.

9.2. All licenses issued under a formal reciprocal agreement expire on the thirtieth (30th) day of June each year.

9.3. The renewal due date and late filing penalty apply to licenses issued under a formal reciprocal agreement.

9.4. The State Fire Marshal shall not renew any license issued under a specific formal reciprocal agreement if the formal reciprocal agreement becomes invalid for any reason.

9.5. Exact copies of all formal reciprocal agreements entered into by the State Fire Marshal shall be maintained in the office of the State Fire Marshal.

9.6. A person is not eligible for a reciprocal electrician license who has taken an examination in the State of West Virginia and failed the examination or who has failed to renew an electrician license in accordance with Section 7 of this rule.

§103-5-10. Effect of Noncompliance.

10.1. Any person, firm, corporation or employee thereof, or any representative, member or officer of such firm or corporation, individually, entering upon or engaging in the business of performing any electrical work as defined in W. Va. Code §29-3B-1 et seq. and these rules, without possessing the required license or otherwise complying with W. Va. Code §29-3B-1 et seq., is for the first offense guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars ($100), nor more than five hundred dollars ($500.00). For a second and each subsequent offense, the penalty and punishment is a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00).

Each day during which such electrical work is performed without the required license or while in non-compliance with any of the provisions of W. Va. Code §29-3B-1 et seq., after official notice that such work is unlawful, is a separate offense.

Any electrical work performed by a person, firm or corporation which is determined by the State Fire Marshal to constitute a safety or health hazard to members of the public or any electrical work of an extensive nature being performed by any person without the required license or otherwise in noncompliance with the requirements of this article or contrary to an order or rule promulgated lawfully by the State Fire Marshal, is subject to a civil action in the name of the state in the circuit court of the county, where such work is being performed for an injunction against such person, firm or corporation, enjoining such work or violation. A circuit court by mandatory or prohibitory injunction may compel compliance with the provisions of W. Va. Code §29-3B-1 et seq., with the lawful orders of the State Fire Marshal and with any final decision of the State

Fire Marshal or State Fire Commission. The State Fire Marshal shall be represented in all such proceedings by the attorney general or his assistants.

§103-5-11. Disposition of Fees, Fines and Other Receipts.

11.1. All fees and other monies received as a result of actions under this article shall be paid to the State Fire Marshal and deposited by him in a special account with the State Treasurer.

11.2. The fees deposited in the special account shall be used as provided by W. Va. Code §29-3-12(b).

§103-5-12. Enforcement.

12.1. Enforcement of Licensure Requirements - In the course of investigating complaints as authorized under the West Virginia Code, the State Fire Marshal and/or his designated representative shall inquire respecting the licensure of person(s), firm(s), or corporation(s) in compliance with W. Va. Code §29-3B-1, et seq. and these rules.

12.2. Enforcement by Others - Any citizen, law enforcement official or other official of any state, county, or municipal government agency, upon observing an infraction of the licensure requirements of W. Va. Code §29-3B-1 et seq. may make a written complaint to the office of the State Fire Marshal or alternatively may initiate a complaint with any magistrate, court or law enforcement agency. When a complaint is made to the Office of the State Fire Marshal, that Office shall investigate the complaint, make a written report respecting its findings and take any enforcement measures required by W. Va. Code §29-3B-1 et seq.

§103-5-13. Orders and Decisions of State Fire Marshal and Appeals and Procedures for Appeals from Such Orders and Decisions.

Any person aggrieved by an order or final written decision of the State Fire Marshal based upon or made in the course of the administration or enforcement of the provisions of W. Va. Code §29-3-1 et seq. or based upon or made pursuant to these State rules, and desiring to contest such order or written decision with the State Fire Commission. Preservation of the right to an appeal and the procedure for the contested case is governed by this section and by the W. Va. Code §29-3-1, et seq. and W. Va. Code, Chapter 29A.

13.1. State Fire Marshal's Order and Decisions are Final and Conclusive - Any order or final written decision of the State Fire Marshal based upon or made in the course of the administration or enforcement of the provisions of W. Va. Code §29-3-1 et seq. or based upon or made pursuant to these rules is final unless vacated or modified upon review pursuant to the appeal rights and procedures provided by the official Code of West Virginia and this rule.

13.2. Appeal Petition - The appeal petition shall be typewritten, styled "Appeal Petition", and submitted with an original and one (1) copy. It 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 petition shall contain and include the following:

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

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

13.2.3. a clear and concise statement of fact upon which the petitioner relies as sustaining his assignment of errors;

13.2.4. the address petitioner desires to have all notices, documents, and the final order of the State Fire Commission mailed to;

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

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

13.2.7. a prayer setting forth the relief sought; and (H) the signature of the petitioner or its duly authorized officer.

13.3. Time Requirement and Manner of Filing Appeal Petition - An appeal petition must be personally delivered or mailed to the State Fire Marshal within thirty (30) days following service upon the petitioner, or within thirty (30) days following actual receipt if service be not required or for some reason not made of the order or decision being contested. Appeal petitions shall be sent by certified mail, return receipt requested, and are timely if postmarked within the thirty (30) day period. Any appeal petition not delivered or mailed within the thirty (30) day period is not timely filed and the order or decision of the State Fire Marshal being contested is final.

13.4. Copy of Appeal Petition to State Fire Commission - Upon receipt of an appeal petition, the State Fire Marshal shall forthwith supply a copy of the petition to the State Fire Commission together with an opinion by the State Fire Marshal regarding the urgency of the matter being contested. If The State Fire Marshal elects to file a response to the appeal petition, he shall deliver a copy of the response to the State Fire Commission and mail a copy to the petitioner.

13.5. Scheduling Appeal Petition for and Notice of Hearing - The State Fire Commission through the State Fire Marshal shall schedule a hearing on the appeal petition giving the petitioner and the State Fire Marshal at least ten (10) days written notice of the date, time, and place of the hearing. The notice to the petitioner shall be by personal delivery or by certified mail, return receipt requested, shall contain a short and plain statement of the matters to be considered at the hearing, shall contain 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 thirty (30) days after receipt of the appeal petition. A copy of the notice to the petitioner shall be supplied to the State Fire Marshal. Any hearing shall be conducted at a designated location at the State Capitol in Charleston, West Virginia.

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

13.7. Continuances - A motion for continuance shall not be granted unless made in writing three (3) days before the hearing, or during the hearing, in either case for good and sufficient cause. Upon consideration of a motion for continuance, the urgency of the situation shall be determined and taken into consideration. Conflicting engagements of counsel or the employment of new counsel are not good grounds for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown, which the State Fire Commission or hearing examiner considers adequate.

13.8. Absence of Petitioner or Counsel at the Scheduled Hearing - A hearing shall not be delayed or continued due to the absence of the petitioner or his legal counsel at a hearing, after service of notice of time,

date, and place. The hearing shall proceed and the case shall be submitted for decision on the part of the absent petitioner or petitioners.

13.9. Hearing Examiner - Any member of the State Fire Commission may conduct a hearing on an appeal petition, issue subpoenas and subpoenas duces tecum, and shall have full authority to conduct the proceedings on an appeal petition, and when acting in such capacity shall be referred to as the hearing examiner. Alternatively, the State Fire Commission may authorize and empower an impartial attorney as a hearing examiner with the specific powers listed in W. Va. Code 29A-5-1(d).

13.10. Subpoenas and Subpoenas Duces Tecum - At any hearing held hereunder, the testimony of witnesses and the production of documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. Subpoenas or subpoenas duces tecum may be issued at the request of the petitioner, the State Fire Marshal, or of the State Fire Commission, and shall be issued by and in the name of the State Fire Commission.

Every subpoena and/or subpoena duces tecum is required to prove service at least five (5) days before the return date thereof, either by personal service made by any person eighteen (18) years of age, or older, or by registered or certified mail, but a return acknowledgement signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail.

Any party requesting a subpoena or subpoena duces tecum must see that it is properly served. Service of a subpoena or subpoena duces tecum issued at the insistence of the State Fire Commission is the responsibility of such Commission.

Any public official who serves any subpoena or subpoena duces tecum shall be 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 be the same as for witnesses before the circuit courts of this state. All fees shall be paid by the State Fire Commission if the subpoena or subpoena duces tecum is issued at the instance of the Commission. All such 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 such subpoena or subpoena duces tecum.

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.

Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it were issued by a circuit court of the state, and shall appear as a witness and/or produce such books, records, or papers in response to such subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, upon application by the State Fire Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.

13.11. Evidence

13.11.1. All witnesses appearing at such hearing shall testify under oath or affirmation. Every adverse party shall have the right to cross-examination witnesses who testify, and shall have the right to submit rebuttal evidence.

13.11.2. 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, may be offered and made a part of the record in the case.

13.11.3. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Except as otherwise herein stated, 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 as certain facts not reasonably susceptible of proof under those rules, reasonably authenticated evidence not admissible thereunder may be admitted, except where precluded by the official Code of West Virginia or privilege, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

13.12. Record of Proceeding - All of the testimony, evidence and rulings on admissibility of evidence at any such hearing shall be recorded by a certified court reporter. An official record of the hearing will be prepared by the State Fire Commission, but a transcript shall only be prepared if this Commission's final decision is appeal. The cost of the transcript shall be paid by the party requesting it.

13.13. 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.

13.14. Decision by the State Fire Commission - Upon the conclusion of the hearing, the person designated by the State Fire Commission as hearing examiner shall prepare a decision supported by findings of fact and conclusions of law affirming, modifying, or vacating the earlier order of decision of the State Fire Marshal. The State Fire Commission may either accept, modify, or reject the hearing examiner's decision. If the Commission accepts the hearing examiner's decision it shall sign the decision. If the Commission rejects or modifies the hearing examiner's decision, it shall prepare a written decision setting forth findings of facts and conclusions of law. In either event, the order signed by the State Fire Commission shall be final unless vacated or modified upon judicial review 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.

13.15. Judicial Review - The petitioner or by the State Fire Marshal may appeal the Commission's decision to the circuit court of the county where the premises are totally or partially located, if the appeal is filed within thirty (30) days after the date upon which party was served with a copy of the final order or decision of the State Fire Commission. The final order signed by the State Fire Commission is final if the proceedings for judicial review are not instituted within the said thirty (30) day period.

§103-5-14. Severability.

14.1. 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 section s shall remain in full force and effect.