

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2010 JUL 30 AM 11:01

RECEIVED
SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code 21-3C-11

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21A

TITLE OF RULE BEING AMENDED: Supervision of Elevator Mechanics and Apprentices

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

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

DATE: July 30, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305
304.558.7890 x 111

LEGISLATIVE RULE TITLE: Supervision of Elevator Mechanics and Apprentices

1. Authorizing statute(s) citation W. Va. Code 21-3C-11

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 29, 2010 - Public Comment Period

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 29, 2010

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received x

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

July 30, 2010

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David W. Mullins, Commissioner

WV Division of Labor

State Capitol Complex

Building 6, Room B-749

Charleston, WV 25305

304.558.7890 x 111

david.w.mullins@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

JOE MANCHIN, III
Governor



DAVID W. MULLINS
Commissioner

Statement of Facts and Circumstances

and

Summary of Proposed Amendments to Title 42, Series 21A

Supervision of Elevator Mechanics and Apprentices

The West Virginia Division of Labor proposes the following amendments and revisions to Title 42, Series 21A, of the West Virginia Code of State Regulations.

Specifically, the Division proposes to incorporate the 2010 amendments to the Elevator Safety Act, W. Va. Code § 21-3C-1, *et seq.*, which prohibit the installation of private residence elevators in non-residential settings, require the annual inspection of private residence elevators in non-residential settings for all such elevators in use on or after July 1, 2007, require new private residence elevators to undergo an acceptance test, require a private residence elevator to be inspected upon the transfer of the property, and allow employees of historic resort hotels to obtain a limited technician license.

In addition, the proposed amendments eliminate the “grandfathering” provisions which expire on July 1, 2010, and reduce or eliminate some of the fees charged to applicants and providers.

Other technical changes are also proposed to clarify current administrative practices and eliminate redundant provisions.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Supervision of Elevator Mechanics and Apprentices

Type of Rule: Legislative Interpretive Procedural

Agency: WV Division of Labor

Address: State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

Phone Number: 304.558.7890 x 111 Email: david.w.mullins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

It is anticipated that the changes to the proposed rule will have no impact on the costs or revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

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

Supervision of Elevator Mechanics and Apprentices

Rule Title: _____

Rule Title: _____

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

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

N/A

MEMORANDUM

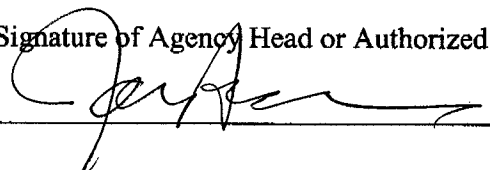
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The changes in the proposed rule reflect the 2010 amendments to the Elevator Safety Act, W. Va. Code 21-3C-1, et seq., which are as follows:

- * prohibit the installation of private residence elevators in non-residential settings;
- * require the annual inspection of private residence elevators in non-residential settings for all such elevators in use on or after July 1, 2007;
- * require an acceptance test for all new private residence elevators;
- * require the inspections of a private residence elevator upon the transfer of the property; and
- * allow employees of historic resort hotels to apply for a limited technician license.

Date: 7/30/10

Signature of Agency Head or Authorized Representative



TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

JUL 30 AM 11:01
STATE

SERIES 21A
SUPERVISION OF ELEVATOR MECHANICS AND APPRENTICES

§42-21A-1. General.

1.1. Scope. -- This legislative rule governs standards, qualifications, requirements and procedures for licensing elevator mechanics and apprentices, the powers and duties of the West Virginia Commissioner of the Division of Labor and penalties for violations in accordance with W. Va. Code §21-3C-1, *et seq.*

1.2. Authority. -- W. Va. Code §21-3C-11.

1.3. Filing Date. -- ~~May 8, 2009.~~

1.4. Effective Date. -- ~~June 1, 2009.~~

§42-21A-2. Application and Enforcement.

2.1. Application. This legislative rule applies to the Commissioner and all persons working as elevator mechanics, limited technicians or elevator mechanic apprentices as defined in W. Va. Code §21-3C-1, *et seq.*

2.2. Enforcement. The enforcement of this legislative rule is vested with the Commissioner.

§42-21A-3. Definitions.

~~3.1. "Elevator" means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides and includes all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.~~

3.1. "ASME" refers to the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016-5990.

3.2. "Elevator apprentice" or "elevator mechanic apprentice" means a person who meets the requirements set forth in W. Va. Code §21-3C-1, *et seq.*, and this rule.

3.3. "Limited technician license" means a license issued to a person employed by a historic resort hotel.

§42-21A-4. Adoption of Standards.

~~4.1.~~ The American Society of Mechanical Engineers ("ASME") Code A17.1 through A17.3 inclusive, "Safety Code for Elevators and Escalators," issued or effective on October 6, 2007, October 5, 2007 and March 31, 2006, respectively, and ASME Code A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts," published on August 28, 2008, are incorporated by reference.

§42-21A-5. Licensure and Registration Required.

~~5.1. Effective January 1, 2010, a~~ A person may not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by W. Va. Code §21-3C-1, *et seq.*, ~~Without~~ without a license issued according to the provisions of W. Va. Code § 21-3C-1, et seq., or this rule.

~~5.2. Effective January 1, 2010, a~~ A person may not work as an elevator apprentice unless he or she is registered with the Commissioner and meets the requirements set forth in section ~~seven (7)~~ 7 of this rule.

§42-21A-6. Minimum Qualifications for Licensure; Requirement to Work under Contractor's License.

6.1. The Commissioner shall issue a license to an applicant who:

6.1.a. Is at least ~~eighteen~~ 18 years of age;

6.1.b. Submits an application on forms provided by the Commissioner;

6.1.c. Pays the application fee; and

6.1.d. Meets one of the following requirements:

6.1.d.1. Submits documentation of not less than ~~three (3)~~ 3 years work experience in the elevator industry, in construction, maintenance, service or repair or any combination thereof, as verified by current and previous employers, and a score of ~~seventy percent (70%)~~ 70% or better on the written examination approved by the Commissioner;

6.1.d.2. Submits certificates of completion and of successful passage of the examination of a nationally recognized training program for the elevator industry as approved by the Commissioner; or

6.1.d.3. Submits certificates of completion of an apprenticeship program for elevator mechanics registered with the Bureau of Apprenticeship and Training of the U. S. Department of Labor and as approved by the Commissioner.

~~6.2. On or before July 1, 2010, the Commissioner shall certify an applicant for a license without written examination if the applicant:~~

~~6.2.a. Is at least eighteen years of age;~~

~~6.2.b. Submits an application on forms provided by the Commissioner;~~

~~6.2.c. Pays the application fee; and~~

~~6.2.d. Provides acceptable documentation or a sworn affidavit which demonstrates he or she has worked as an elevator mechanic without direct supervision for at least three (3) years immediately preceding the date of application.~~

~~6.3. 6.2.~~ The Commissioner shall reject any application containing willfully submitted false or untrue information.

~~6.4. If a license issued under subsection 6.2 of this section subsequently lapses, the former licensee may, at the discretion of the Commissioner, be subject to all licensure requirements, including the examination.~~

~~6.5. 6.3.~~ A license issued under pursuant to the provisions of W. Va. Code § 21-3C-1, et seq. or this rule is not assignable or transferable, and is valid for a period not to exceed ~~one (1)~~ 1 year from the date on which it was issued.

~~6.6 6.4.~~ A licensee performing the work of an elevator mechanic must be, or be employed by, a contractor licensed pursuant to the provisions of W. Va. Code §21-11-1, *et seq.*

~~6.7. 6.5.~~ Each licensed elevator mechanic shall carry proof of valid licensure on his or her person during the performance of elevator mechanic work.

§42-21A-7. Qualifications and Supervision Requirements for Elevator Apprentices.

7.1. A person desiring to work as an elevator apprentice in this state shall register with the Commissioner on a form provided by the Commissioner.

7.2. The registrant shall provide documentation of enrollment in an elevator apprentice program recognized by the U. S. Department of Labor, on forms provided by the Commissioner.

7.3. An elevator apprentice may work only under the supervision of a licensed elevator

mechanic, as specifically set forth in W. Va. Code § ~~21-3C-10(a)(c)~~: 21-3C-10a (e).

7.4. A Registration registration issued pursuant to the provisions of W. Va. Code § 21-3C-1, et seq., or this rule is not assignable or transferable, and is valid for a period not to exceed ~~one (1)~~ 1 year from the date on which it was issued.

§ 42-21A-8. Limited Technician License.

8.1. The Commissioner shall issue a limited technician license to an applicant who:

8.1.a. Is at least 18 years of age;

8.1.b. Submits an application on forms provided by the Commissioner;

8.1.c. Pays the application fee; and

8.1.d. Provides current documentation that he or she is regularly employed by a historic resort hotel and who is paid regular wages and not a contract price.

8.2. A limited technician license issued pursuant to the provisions of W. Va. Code §21-3C-1, et seq., or this rule is not assignable or transferable, and is valid for a period not to exceed 1 year from the date on which it was issued.

8.3. A limited technician license is valid only for work performed on property owned or leased by the historic resort hotel as identified on the face of the license.

8.4. A person licensed as a limited technician shall not replace any of the following:

8.4.a. Governors;

8.4.b. Sheave wheels or bearings;

8.4.c. Cables and shackles;

8.4.d. Ring gears and worn gears;

8.4.e. Buffers;

8.4.f. Traveling cables;

8.4.g. Hydro pumps;

8.4.h. Hydro pump motors;

8.4.i. Hydro valve chests;

8.4.j. Jack packing and seals; or

8.4.k. Rope grippers.

§42-21A-8 9. Expiration and Renewal.

~~8.1~~ 9.1. All licenses and registrations expire on the last day of the anniversary month from the month of issuance of the license.

~~8.2~~ 9.2. An elevator mechanic, limited technician, or elevator apprentice is responsible for submitting his or her license or registration renewal to the Commissioner prior to the expiration date.

~~8.3~~ 9.3. An elevator mechanic, limited technician, or elevator apprentice who has not renewed his or her license or registration in accordance with the provisions of W. Va. Code § 21-3C-1, et seq., or this rule shall submit a new application to the Commissioner.

~~8.4~~ 9.4. The Commissioner shall mail license and registration renewal notifications in a timely manner to each elevator mechanic, limited technician, and elevator apprentice.

§42-21A-9 10. Emergency Licenses.

~~9.1~~ 10.1. Whenever an emergency exists in the state due to disaster, act of God, or work stoppage, as declared by the President of the United States or Governor of West Virginia, and the number of persons in the state holding elevator mechanic licenses granted by the Commissioner is insufficient to cope with the emergency, the licensed elevator contractors may request that the Commissioner issue an emergency elevator mechanic license to a person certified by the licensed elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct supervision.

~~9.2~~ 10.2. Any person certified by a licensed elevator contractor pursuant to this section who responds to an emergency as set forth in this section shall apply for an emergency elevator mechanic license from the Commissioner within ~~five~~ 5 business days after commencing work requiring a license.

~~9.3~~ 10.3. Upon receipt of proof of competency of the applicant from a licensed elevator contractor, the Commissioner shall issue an emergency elevator mechanic license.

~~9.4~~ 10.4. Each emergency license shall state that it is valid for a period of 30 days from the date of issuance for particular elevators or geographical areas designated by the Commissioner, and entitles the licensee to the rights and privileges of an elevator mechanic license issued under the

provisions of W. Va. Code §21-3C-1, *et seq.*, and this rule.

~~9.5-~~ 10.5. The Commissioner shall not charge for an emergency elevator mechanic license.

§42-21A-~~10~~ 11. Temporary Licenses.

~~10.1.~~ 11.1. In the event that there are no licensed elevator mechanics available to engage in the work of an elevator mechanic, a licensed elevator contractor may request that the Commissioner issue a temporary elevator mechanic license. The licensed elevator contractor shall certify by sworn affidavit that the person for whom the temporary license is sought has an acceptable combination of documented experience and education to perform elevator work without direct supervision.

~~10.2.~~ 11.2. Any person certified by a licensed elevator contractor pursuant to this section shall apply for a temporary elevator mechanic license from the Commissioner before commencing work requiring a license.

~~10.3.~~ 11.3. Upon receipt of proof of competency of the applicant from a licensed elevator contractor, the Commissioner shall issue a temporary elevator mechanic license.

~~10.4.~~ 11.4. Each temporary license shall state that it is valid for a period of 30 days from the date of issuance for particular elevators or geographical areas designated by the Commissioner, and entitles the licensee to the rights and privileges of an elevator mechanic license issued under the provisions of W. Va. Code §21-3C-1, *et seq.*, and this rule.

~~10.5.~~ 11.5. The Commissioner shall charge a fee for a temporary elevator mechanic license, as set forth in this rule.

§42-21A-~~11~~ 12. Continuing Education.

~~11.1.~~ 12.1. As a condition of the renewal of an elevator mechanic's license, the licensee shall complete continuing education courses as set forth in this section.

~~11.2.~~ 12.2. The courses shall consist of not fewer ~~that eight (8)~~ than 8 hours of instruction, which must be attended and successfully completed within the year immediately preceding the renewal. The training need not be continuous but may be an accumulation of shorter periods that total at least ~~eight (8)~~ 8 hours.

~~11.3-~~ 12.3. The courses shall be taught by continuing education providers approved by the Commissioner, including but not limited to, trade association seminars, labor training programs, career technology centers and the Division.

~~11.4-~~ 12.4. A licensee who is unable to complete the continuing education courses required under this section prior to the expiration of his or her license due to a temporary disability, military service or other good cause shown, may apply to the Commissioner for a waiver. The Commissioner

may grant a waiver under this subsection in his or her sole discretion.

§42-21A-~~12~~ 13. Reciprocity.

~~12.1.~~ 13.1. For any state that has requirements substantially equivalent to those provided for by W. Va. Code §21-3C-1, *et seq.*, and this rule, and has entered into a reciprocity agreement with the Commissioner, the Commissioner may issue an elevator mechanic license to an applicant who documents that he or she holds a valid license issued by that state.

~~12.2.~~ 13.2. An out of state applicant must submit a written application as provided for in ~~§42-21A-6~~ section 6 of this rule, and upon renewal, must comply with the continuing education requirements in ~~§42-21A-11~~ section 11 of this rule.

~~12.3.~~ 13.3. The Commissioner is not required to issue a reciprocal license to an applicant who is the subject of disciplinary action or against whom there is an unresolved complaint in another state.

§42-21A-~~13~~ 14. Denial, Suspension, Revocation, or Reinstatement of License.

~~13.1.~~ 14.1. The Commissioner may deny, suspend, revoke or reinstate a license.

~~13.2.~~ 14.2. A violation of W. Va. Code §21-3C-1, *et seq.*, or this rule is grounds for the denial, suspension, revocation or refusal to reinstate a license and permits the Commissioner to impose disciplinary action: Provided, that no disciplinary action may be imposed against a licensee without notice and an opportunity for a hearing before the Commissioner, or his or her designee. The hearing shall be conducted pursuant to the provisions of W. Va. Code §29A-5-1, *et seq.*, the Administrative Procedures Act. At the hearing, the licensee shall be allowed to present evidence and testimony in person, by counsel or both, and may cross-examine witnesses and submit rebuttal evidence. After the hearing, if the Commissioner finds a violation of this rule has occurred, the Commissioner may impose any disciplinary action permitted by law.

~~13.3.~~ 14.3. The Commissioner may suspend or revoke the license of a licensee who performs elevator mechanic work in violation of W. Va. Code §21-3C-1, *et seq.*, or this rule. The suspension of a license shall be for not less than ~~twenty-four~~ 24 hours nor more than ~~one~~ 1 year. The Commissioner may reinstate the license upon satisfactory proof that the licensee is in full compliance with the provisions of W. Va. Code §21-3C-1, *et seq.*, and this rule.

~~13.4.~~ 14.4. A person whose license has been revoked may apply for a new license ~~one~~ 1 year after the date of the revocation.

§42-21A-~~14~~ 15. Effect of Noncompliance.

~~14.1.~~ Each day during which a person performs elevator mechanic work without the required license or while in non-compliance with any of the provisions of W. Va. Code §21-3C-1, *et seq.*, or

this rule, after ~~official~~ written notice from the Commissioner and/or a Division inspector that the work is unlawful, is a separate violation of the provisions of W. Va. Code §21-3C-1, et seq., and this rule.

§42-21A-15 16. Disposition of Complaints.

~~15.1.~~ 16.1. In the course of investigating complaints, the Commissioner shall determine whether or not the person against whom the complaint has been filed is properly licensed under the provisions of W. Va. Code §21-3C-1, et seq.

~~15.2.~~ 16.2. Any citizen, law enforcement official or other official of any state, county, or municipal government agency, upon observing or learning of ~~an infraction~~ a violation of the licensure requirements of W. Va. Code §21-3C-1, *et seq.*, or this rule, may file a written complaint with the ~~office of the~~ Commissioner. The Commissioner may provide a form for this purpose, but a complaint may be filed in any written form. When a complaint is filed with the ~~office of the~~ Commissioner, it shall be investigated the complaint. In addition to describing the alleged violation which prompted the complaint, the complaint shall contain as a minimum the following information:

~~15.2.a.~~ 16.2.a. The name of the person against whom the complaint is lodged;

~~15.2.b.~~ 16.2.b. The date of the alleged ~~infraction~~ violation;

~~15.2.c.~~ 16.2.c. The nature of the alleged ~~infraction~~ violation; and

~~15.2.d.~~ 16.2.d. The location of the ~~infraction~~ violation or occurrence.

~~15.3.~~ 16.3. A copy of the complaint sent to the licensee shall be considered properly served when sent to his or her last known address. It is the responsibility of the licensee to keep the Commissioner informed of his or her current address. The licensee has 30 days to file a response or appeal petition to the complaint with the Commissioner.

~~15.4.~~ 16.4. After receipt and review of a complaint, the Commissioner shall cause to be conducted any reasonable inquiry or investigation he or she considers necessary to determine the truth and validity of the allegations set forth in the complaint.

~~15.5.~~ 16.5. Upon a finding of probable cause that a violation of W. Va. Code §21-3C-1, *et seq.*, or this rule has occurred, the Commissioner shall proceed in the manner described in ~~subsection 13-2~~ 14 of this rule.

~~15.6.~~ 16.6. Any party adversely affected by a decision of the Commissioner entered after a hearing may seek review by appeal to a circuit court of West Virginia, as set forth in W. Va. Code §29A-5-4.

~~15.7.~~ 16.7. Any party adversely affected by the final judgment of the circuit court may seek

review by appeal to the Supreme Court of Appeals of West Virginia, as set forth in W. Va. Code §29A-6-1.

§42-21A-16 ~~16~~ 17. Fees.

~~16.1.~~ 17.1. The Commissioner shall deposit all fees paid pursuant to this rule in a special revenue account with the State Treasurer for the use of the Commissioner as provided under W. Va. Code §21-3C-11(c).

~~16.2.~~ 17.2. The Commissioner shall charge the following fees:

~~16.2.a.~~ 17.2.a. Initial license \$90

~~16.2.b.~~ 17.2.b. Annual renewal of license \$90

~~16.2.c.~~ 17.2.c. Temporary license \$90

~~16.2.d.~~ 17.2.d. Duplicate license (original lost or destroyed) ~~\$20~~ \$10

~~16.2.e.~~ Reciprocity confirmation \$150

~~16.2.f.~~ Approval of continuing education (paid by provider) \$200

~~16.2.g.~~ 17.2.g. Reinstatement of lapsed license ~~\$140~~ \$115.

~~16.3.~~ 17.3. The Commissioner shall waive the license fee for a licensee who is a contractor and who has paid a contractor license fee under the provisions of W. Va. Code 21-11-1, *et seq.*