

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

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DIVISION OF LABOR TITLE NUMBER: 42

RULE TYPE: LEGISLATIVE CITE AUTHORITY: W.VA. CODE 21-3C-11

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21A

TITLE OF RULE BEING PROPOSED: SUPERVISION OF ELEVATOR MECHANICS AND APPRENTICES

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON AUGUST 18, 2008 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

DAVID W. MULLINS, COMMISSIONER

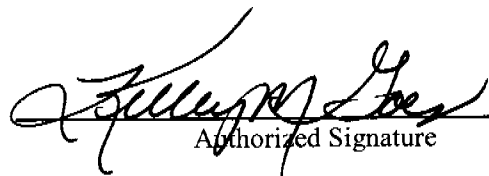
WEST VIRGINIA DIVISION OF LABOR

BUILDING 6, ROOM 749-B

CAPITOL COMPLEX

CHARLESTON, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

42CSR21A

SUPERVISION OF ELEVATOR MECHANICS AND APPRENTICES SUMMARY OF PROPOSAL

The Elevator Safety Act was amended during the 2008 legislative session to require licensing of elevator mechanics and apprentices. Elevators and other lifting devices are complicated combinations of mechanical, electronic and electrical systems that require extensive training and on-going education to install and maintain. This regulation governs the standards, qualifications and procedures for licensing the personnel performing those installation and maintenance tasks.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: SUPERVISION OF ELEVATOR MECHANICS AND APPRENTICES

Type of Rule: Legislative Interpretive Procedural

Agency: DIVISION OF LABOR

Address: BUILDING 6, ROOM 749-B
CAPITOL COMPLEX
CHARLESTON WV 25305

Phone Number: 304.558.7890 Email: jennifer.w.burgess@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.

The funds for this program will be used to offset the administrative costs for the program and will be revenue/cost neutral.

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		5,313.00	10,625.00
Personal Services		5,063.00	10,125.00
Current Expenses		250.00	500.00
Repairs & Alterations		0.00	0.00
Assets		0.00	0.00
Other		0.00	0.00
2. Estimated Total Revenues		10,800.00	10,800.00

Rule Title: _____

Rule Title: SUPERVISION OF ELEVATOR MECHANICS AND APPRENTICES

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

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

The first year costs are for six months as the program is effective January 1, 2010, which includes one half of fiscal year 2010. The revenue will be very close to the full amount expected as grandfathering of those working in the industry occurs over the first six months of the program and will conclude at the end of fiscal year 2010.

Future revenues will vary depending on the number of mechanics seeking reciprocity, a temporary license, duplicate license or reinstatement after a license lapse.

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.

[Empty box for identifying 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.]

Date: July 18, 2008

Signature of Agency Head or Authorized Representative

David W. Mullin

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

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SERIES 21A
SUPERVISION OF ELEVATOR MECHANICS AND APPRENTICES
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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 Labor and penalties for violations in accordance with W. Va. Code §21-3C.

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

1.3. Filing Date. -- July 18, 2008.

1.4. Effective Date. --

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

2.1. Application. This legislative rule applies to the West Virginia Commissioner of Labor and all persons working as elevator mechanics or apprentices as defined in W. Va. Code §21-3C.

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

§42-21A-3. Definitions.

3.1. "Commissioner" means the Commissioner of the Division of Labor.

3.2. "Direct supervision" means the supervision of an elevator apprentice by a licensed elevator mechanic who is physically present on the worksite premises *except* apprentices beyond 1700 hours of training who may perform only oiling; cleaning; greasing; painting; replacing of combplate teeth; relamping and fixture maintenance; the inspection, cleaning and lubrication of hoistway doors, car tops, bottoms and pits; and observing operation of equipment after being met on the first job daily by a licensed mechanic.

3.2. "Division" means the Division of Labor.

3.3. "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.

3.4. "Elevator apprentice" means a person who meets the requirements set forth in W. Va. Code §21-3C and this rule.

3.5. "Elevator mechanic" means a person who possesses an elevator mechanic's license in accordance with the provisions of this article and who is engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article.

3.6. "License" means a license issued to an elevator mechanic pursuant to this article.

§42-21A-4. Adoption of Standards.

4.1. The American Society of Mechanical Engineers (ASME) Code A17.1, "Safety Code for Elevators and Escalators" and ASME Code A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts" are incorporated by reference.

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

5.1. Effective January 1, 2010, no person may 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 without a license issued according to the provisions of this rule.

5.1. Effective January 1, 2010, no person may work as an elevator apprentice unless he or she is registered with the Commissioner of Labor and meets the requirements set forth in section seven (7) of this rule.

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

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

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

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

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) years work experience in the elevator industry, in construction, maintenance, service or repair or any combination thereof, as verified by current and previous employers licensed to do business in this state, and a score of seventy percent (70%) or better on the written examination approved by the Commissioner of Labor; or

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 of Labor; 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 of Labor.

6.2. On or before July 1, 2010, the Commissioner of Labor may 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 of Labor;

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 and immediate supervision in West Virginia for not fewer than three (3) years immediately preceding the date of application.

6.3. 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.

6.4. A license issued under this rule is not assignable or transferable, and is valid for a period not to exceed one (1) year from the date on which it was issued.

6.5. 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.

6.6. 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 of Labor.

7.2. The registrant must 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 direct supervision of a licensed

elevator mechanic.

7.4. Registration is not assignable or transferable, and is valid for a period not to exceed one (1) year from the date on which it was issued.

§42-21A-8. Expiration and Renewal.

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

8.2. It is the individual elevator mechanic's or elevator apprentice's responsibility to submit his or her license or registration renewal to the Commissioner of Labor prior to the expiration date.

8.3. An elevator mechanic or elevator apprentice who has not renewed his or her license or registration in accordance with the provisions of this rule shall submit a new application to the Commissioner of Labor.

8.4. The Commissioner of Labor may mail license and registration renewal notifications in a timely manner, to each elevator mechanic and elevator apprentice.

§42-21A-9. Emergency Licenses.

9.1. 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 licenses granted by the Commissioner is insufficient to cope with the emergency, the licensed elevator contractors may respond as necessary to assure the safety of the public. In this event, a licensed elevator contractor may request that the Commissioner issue a temporary 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. 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 business days after commencing work requiring a license.

9.3. 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. Each emergency license shall recite that it is valid for a period of 30 days from the date of issuance for particular elevators or geographical areas as the Commissioner designates, and entitles the licensee to the rights and privileges of an elevator mechanic license issued under the provisions of W. Va. Code §21-3C and this rule.

9.5. No fee may be charged for any emergency elevator mechanic license or renewal.

§42-21A-10. Temporary Licenses.

10.1. 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 must 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. 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. Upon receipt of proof of competency of the applicant from a licensed elevator contractor, the Commissioner may issue a temporary elevator mechanic license.

10.4. Each temporary license shall recite that it is valid for a period of 30 days from the date of issuance for particular elevators or geographical areas as the Commissioner designates, and entitles the licensee to the rights and privileges of an elevator mechanic license issued under the provisions of W. Va. Code §21-

3C and this rule.

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

§42-21A-11. Continuing Education.

11.1. 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. The courses must consist of not fewer than eight (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) hours.

11.3. 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. 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. Reciprocity.

12.1. The Commissioner may issue an elevator mechanic license to an applicant who documents that he or she holds a license issued by a state that has requirements substantially equivalent to those provided for by W. Va. Code §21-3C and this rule.

12.2. 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. Denial, Suspension, Revocation, or Reinstatement of License.

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

13.2. A violation of W. Va. Code §21-3C 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 a proper prior notice served under W. Va. Code §56-2, and an opportunity for a hearing held before the Commissioner or his or her designee under the provisions of W. Va. Code §29A-5, the Administrative Procedures Act. At the hearing, the licensee shall be provided the opportunity to present evidence in person, by counsel or both. After the hearing, if the Commissioner finds a violation of this rule has occurred, the Commissioner may impose any disciplinary action permitted by law.

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

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

§42-21A-14. 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 or this rule, after official notice that the work is unlawful, is a separate violation of this rule.

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

15.1. In the course of investigating complaints as authorized under W. Va. Code §21-3C, the Commissioner shall determine whether or not the person against whom the complaint has been filed is licensed under W.

Va. Code §21-3C.

15.2. 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 §21-3C 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, that office shall investigate the complaint. In addition to describing the alleged violation which prompted the complaint, the complaint shall contain as a minimum the following information:

- (a) The name and address of the person against whom the complaint is lodged;
- (b) The date of the alleged unlawful act;
- (c) The nature of the alleged unlawful act; and
- (d) The location of the alleged unlawful act or occurrence.

15.3. 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 of Labor 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 of Labor's office.

15.4. After receipt and review of a complaint, the Commissioner of Labor 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. Upon a finding of probable cause that a violation of W. Va. Code §21-3C or this rule has occurred, the Commissioner shall proceed in the manner described in subsection 13.2 of this rule.

15.6 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. 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. Fees.

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

16.2. The Commissioner may charge the following fees:

a. Initial license	\$90
b. Annual renewal of license	\$90
c. Temporary license	\$90
d. Duplicate license	
(original lost or destroyed)	\$20
e. Reciprocity confirmation	\$150
f. Approval of continuing education	
(paid by provider)	\$200
g. Reinstatement of lapsed license	\$140

16.3. The Commissioner may 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.