

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

Form #2

Do Not Mark In This Box

FILED  
JUN 18 A 11:19  
STATE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §21-16-5.

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: 34

TITLE OF RULE BEING PROPOSED: Regulation of Heating, Ventilating and Cooling Work

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 July 18, 2014 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

John R. Junkins, Acting Commissioner

West Virginia Division of Labor

State Capitol Complex, Building 6, Room B-749

Charleston, WV 25305

Or by email to: john.r.junkins@wv.gov

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

# 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

EARL RAY TOMBLIN  
Governor



JOHN R. JUNKINS  
Acting Commissioner

## Statement of Facts and Circumstances

and

## Summary of Proposed Amendments to Title 42, Series 34

### Regulation of Heating, Ventilating and Cooling Work

The West Division of Labor proposes the following new rule to implement the provisions of H.B. 4392, passed by the Legislature on March 6, 2014, to reflect the Division of Labor's proposed practices with regard to enforcement of the Regulation of Heating, Ventilating and Cooling Work Act, W. Va. Code § 21-16-1, *et seq.*

- The definitions of "Commissioner," "direct supervision," "Division," "HVAC," "immediate family," and "lapsed license" have been included.
- The 2012 International Mechanical Code, published by the International Code Council, as adopted by the State Fire Commission in the State Building Code Legislative Rule, 87 CSR 4, effective September 1, 2013, is adopted and incorporated by reference.
- The minimum qualifications and requirements for an HVAC technician license and an HVAC technician-in-training license, including supervision requirements, are included.
- The terms and validity of a license, the renewal of a license, and the lapse of a license are included.
- Requirements for a written examination and a grandfathering period are included.
- Provisions for the investigation of complaints, and the denial, suspension, revocation and reinstatement of a license are included.
- Provisions for the issuance of cease and desist orders, penalties and appeals are included.
- Provisions for fees for licenses, late fees, and duplicate licenses are included.
- Provisions for reciprocity are included.



APPENDIX B  
**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Regulation of Heating, Ventilating and Cooling Work

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Division of Labor

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

Phone Number: 304.558.7890 x 58018 Email: john.r.junkins@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.

This is a new rule to implement H.B. 4392, passed by the Legislature on March 6, 2014. The operation of the program will be funded by license fees of \$75.00 per applicant for an HVAC technician license and \$50.00 per applicant for an HVAC technician-in-training license. The Division anticipates \$100,000.00 in special revenue to fund the program's operation. The Division does not anticipate a need for additional personnel.

**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.

| <b>FISCAL YEAR</b>                 |   |                                      |   |
|------------------------------------|---|--------------------------------------|---|
| Effect of Proposal                 | Current Increase/Decrease<br>(use "--") | Next Increase/Decrease<br>(use "--") | Fiscal Year<br>(Upon Full Implementation) |
| <b>1. Estimated Total Cost</b>     | 0.00                                    | 100,000.00                           | 130,000.00                                |
| Personal Services                  | 0.00                                    | 100,000.00                           | 100,000.00                                |
| Current Expenses                   | 0.00                                    | 0.00                                 | 25,000.00                                 |
| Repairs & Alterations              | 0.00                                    | 0.00                                 | 5,000.00                                  |
| Assets                             | 0.00                                    | 0.00                                 | 0.00                                      |
| Other                              | 0.00                                    | 0.00                                 | 0.00                                      |
| <b>2. Estimated Total Revenues</b> | 0.00                                    | 10,000.00                            | 355,000.00                                |

Rule Title: Regulation of Heating, Ventilating and Cooling Work

Rule Title:

Regulation of Heating, Ventilating and Cooling Work

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

The Division anticipates that this program will be self-supporting from the special revenues collected in the form of license application and renewal fees.

### MEMORANDUM

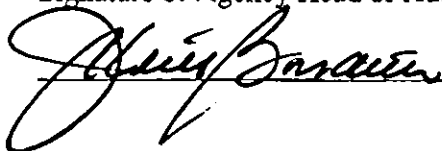
Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A.

Date:

6/17/14

Signature of Agency Head or Authorized Representative



TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR

FILED

2014 JUN 18 A 11:19

SERIES 34  
REGULATION OF HEATING, VENTILATING AND COOLING WORK

WEST VIRGINIA  
DEPT. OF STATE

**§42-34-1. General.**

1.1. Scope. -- This rule governs the licensure, fees, examinations, and requirements for individuals performing heating, ventilation and cooling work, and sets forth the duties of the Commissioner in issuing licenses and penalties for violations, all in accordance with W. Va. Code §21-16-1, *et seq.*

1.2. Authority. -- W. Va. Code §21-16-5.

1.3. Filing Date. --

1.4. Effective Date. --

**§42-34-2. Application and Enforcement.**

2.1. Application. This rule applies to all persons, materials and transactions governed or otherwise defined under coverage of the Regulation of Heating, Ventilating and Cooling Work Act, W. Va. Code §21-16-1, *et seq.*

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

**§42-34-3. Definitions.**

3.1. "Commissioner" means the Commissioner of the West Virginia Division of Labor, and his or her authorized representatives.

3.2. "Direct supervision" means the direction, oversight, and control of the work of a licensed HVAC technician-in-training by a licensed HVAC technician at least 75% of the time at each separate job site or location.

3.3. "Division" means the West Virginia Division of Labor.

3.4. "HVAC" means heating, ventilating and air conditioning or cooling work, but does not include refrigeration lines, steam lines or hydronics.

3.5. "Immediate family" means and includes a person's parents, spouse, sibling, or child.

3.6. "International Code Council" or "ICC" means the organization located at 500 New Jersey Avenue NW, 6<sup>th</sup> Floor, Washington, DC 20001.

3.7. "Lapsed license" means a license that has expired for 90 days or more.

**§42-34-4. Adoption of Standards.**

The 2012 International Mechanical Code, published by the ICC, as adopted by the State Fire Commission in the State Building Code Legislative Rule, 87 CSR 4, effective September 1, 2013, is adopted and incorporated reference.

**§42-34-5. License Required.**

5.1. Unless otherwise exempt under the provisions of W. Va. Code § 21-16-3 (c), beginning January 1, 2016, no individual may perform or offer to perform HVAC work in this State without a license issued under the provisions of W. Va. Code § 21-16-1, *et seq.*, this rule, and the applicable provisions of the Contractor Licensing Act, W. Va. Code §21-11-1, *et seq.*

5.2. A licensed HVAC technician or technician-in-training shall carry proof of a valid license on his or her person during the performance of HVAC work

**§42-34-6. Minimum Qualifications and Requirements for an HVAC Technician License.**

6.1. A person desiring an HVAC technician license pursuant to the provisions of W. Va. Code § 21-16-1, *et seq.*, and this rule shall submit an application to the Commissioner.

6.2. The Commissioner shall issue an HVAC technician license to an applicant who:

6.2.1. Is at least 18 years old;

6.2.2. Submits a properly completed application on forms provided by the Division;

6.2.3. Submits a copy of the required written examination scores reflecting a score of at least 70%; and

6.2.4. Pays the application fee set forth in section 13 of this rule.

6.3. On or before July 1, 2016, the Commissioner may issue an HVAC technician license to an applicant without written examination if the applicant:

6.3.1. Is at least 18 years old;

6.3.2. Submits a properly completed application on forms provided by the Division;

6.3.3. Provides acceptable documentation or sworn affidavit which demonstrates that

he or she meets the minimum work and experience requirements for the HVAC technician license as set forth in W. Va. Code §21-16-4(b), which can include the following:

6.3.3.a. The successful completion of an HVAC-related training program at an accredited community college in combination with work experience; or

6.3.3.b. The successful completion of an HVAC-related apprenticeship program approved by the United States Department of Labor; and

6.3.4. Pays the application fee set forth in section 13 of this rule.

**§42-34-7. Minimum Qualifications and Requirements for an HVAC Technician-In-Training License.**

7.1. A person desiring an HVAC technician-in-training license pursuant to the provisions of W. Va. Code § 21-16-1, *et seq.*, and this rule shall submit an application to the Commissioner.

7.2. The Commissioner shall issue an HVAC technician-in-training license to an applicant who:

7.2.1. Is at least 18 years old;

7.2.2. Submits a properly completed application on forms provided by the Division;  
and

7.2.3. Pays the application fee set forth in section 13 of this rule.

**§42-34-8. Supervision of an HVAC Technician-In-Training.**

A licensed HVAC technician-in-training shall only work under the direct supervision of at least one licensed HVAC technician.

**§42-34-9. Terms and Validity of a License; Renewal of a License; Duplicate; Lapse.**

9.1. A license issued pursuant to W. Va. Code §21-16-1, *et seq.* and this rule is valid throughout the State, is not assignable or transferable, and is valid for 1 year from the date of issuance.

9.2. The Commissioner shall provide a licensee with a renewal application at least 45 days in advance of the license's expiration date.

9.3. Upon receipt of a properly completed renewal application and payment of the applicable fee, the Commissioner shall renew the license for a period of 12 months.

9.4. The Commissioner may issue a duplicate license to a person who, by application and

affidavit, states that the original license has been permanently lost or destroyed and that the applicant is otherwise in full compliance with the requirements of W. Va. Code §21-16-1, *et seq.* and this rule, and who pays the fee set forth in section 13 of this rule.

9.5. A license that has lapsed cannot be renewed.

#### **§42-34-10. Examination Required.**

10.1. Unless otherwise exempt from examination pursuant to the provisions of W. Va. Code §21-16-4 and subsection 6.3 of this rule, a person desiring license under the provisions of W. Va. Code § 21-16-1, *et seq.*, and this rule shall pass a written examination.

10.2. The examination's minimum passing score is 70%.

10.3. The contents of the examination shall be based on the standards adopted under section four of this rule.

10.4. The Commissioner shall provide for the written examination of all license applicants. The examination shall test the applicant's knowledge of the standards as adopted in section 4 of this rule.

10.4.1. The Commissioner may:

10.4.1.a. Contract with a private testing agent to conduct the written examinations; and

10.4.1.b. The private testing agent shall charge examination fees according to a rate schedule developed by the Commissioner and the applicant shall pay all examination fees directly to the testing agent; or

10.4.1.c. Develop a written examination process within the Division to include a fees schedule not to exceed the actual cost of administering the examinations. The license applicant shall pay all fees directly to the Division in advance of the examination.

10.5. Upon request of an applicant who fails the examination, the Division or private testing agent shall provide the applicant with an analysis of his or her performance on the failed examination. An applicant who fails the examination shall have the opportunity to be re-examined immediately upon the payment of the fees required.

#### **§42-34-11. Denial, Suspension, Revocation, or Reinstatement of a License; Investigation; Disciplinary Action.**

11.1. Pursuant to the grounds set forth in W. Va. Code §21-16-8, the Commissioner may deny, suspend, or revoke a license.



11.2. The Commissioner shall, upon receipt of a written complaint or upon his or her own inquiry, conduct an investigation to determine whether there are grounds for disciplinary action against a licensee.

11.2.1. The Commissioner may provide a form for this purpose, but a complaint may be filed in any form.

11.2.2. The Commissioner shall provide a copy of the complaint to the licensee.

11.3. A violation of W. Va. Code §21-16-1, *et seq.*, or this rule, is grounds for the denial, suspension, revocation or refusal to reinstate a license and permits the imposition of disciplinary action.

11.3.1. No disciplinary action against a licensee may be imposed without a proper notice served under W. Va. Code §56-2-1, and an opportunity for hearing held before the Commissioner or his or her designee.

11.3.2. The hearing shall be conducted pursuant to the provisions of W. Va. Code §29A-5-1, *et seq.*, the Administrative Procedures Act.

11.3.3. At the hearing, the licensee shall have the opportunity to present evidence in person, by counsel or both.

11.3.4. After the hearing, if the Commissioner finds a violation of this article has occurred, he or she may impose any disciplinary action provided for in W. Va. Code §21-16-1, *et seq.*, or this rule.

11.4. The performance of HVAC work in violation of W. Va. Code §21-16-1, *et seq.*, or this rule, may result in the suspension of a license for not more than 1 year, or revocation of the license until reinstated.

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

#### **§42-34-12. Cease and Desist Order; Penalties; Appeals.**

12.1. The Commissioner shall issue a cease and desist order to any person performing or offering to perform HVAC work without a license issued by the Commissioner.

12.2. A person continuing to engage in HVAC work after the issuance of a cease and desist order is subject to the penalties set for in W. Va. Code §21-16-8.

12.3. Any person adversely affected by an action of the Commissioner may appeal the action pursuant to the provisions of W. Va. Code § 29A-5-1, *et seq.*

**§42-34-13. Fees.**

13.1. The Commissioner shall charge a \$75.00 application fee for an HVAC technician license.

13.2. The Commissioner shall charge a \$50.00 application fee for an HVAC technician-in-training license.

13.3. If a renewal application is received or postmarked more than 15 days after the license's expiration date, the applicant shall pay a late fee of \$25.00 in addition to the annual renewal fee.

13.4. The Commissioner shall charge a \$10.00 fee for a duplicate license.

**§42-34-14. Reciprocity.**

To the extent that another state licenses HVAC technicians and technicians-in-training and has requirements equivalent to W. Va. Code § 21-16-1 *et seq.*, and this rule, the Commissioner, in his or her discretion, may grant licenses without examination to an HVAC technician or technician-in-training licensed by that state, as follows:

14.1. The applicant has provided satisfactory proof of his or her qualifications; and

14.2. The applicant has paid the fee established in section 13 of this rule.