

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

Form #3

Do Not Mark In This Box

FILED

2014 JUL 30 P 1:47

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

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

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, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor
State Capitol Complex,
Building 6, Room B-749
Charleston, WV 25305
304.558.7890 x 58018

LEGISLATIVE RULE TITLE: _____
Regulation of Heating, Ventilating and Cooling Work

1. Authorizing statute(s) citation W Va Code §21-16-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 18, 2014

b. What other notice, including advertising, did you give of the hearing?
A number of trade organizations were informed of the proposed rule and comment period.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 18, 2014

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, 2014

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

John R. Junkins, Acting Commissioner

Division of Labor

State Capitol Complex

Building 6, Room B-749

Charleston, WV 25305

304.558.7890 x 58018 (phone) 304.558.2273 (fax) john.r.junkins@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)

Elizabeth Farber, Assistant Attorney General

State Capitol Complex

Building 6, Room B-749

Charleston, WV 25305

304.558.7890 x 58012 (phone) 304.558.2273 (fax) elizabeth.g.farber@wv.gov

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

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 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

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.

N/A

MEMORANDUM

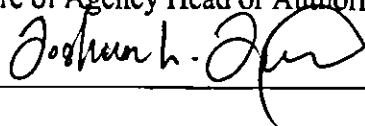
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date:

7-30-2014

Signature of Agency Head or Authorized Representative



**TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR**

**SERIES 34
REGULATION OF HEATING, VENTILATING AND COOLING WORK**

§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, 6th 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.