

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

Do Not Mark In This Box

FILED

2015 APR 22 P 2:10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S. B. 170

SECTION 64-10-3(e), PASSED ON March 14, 2015

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: July 1, 2015


Authorized Signature

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

FILED

2015 APR 22 P 2:10

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

OFFICE WEST VIRGINIA
SECRETARY 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. -- April 22, 2015.

1.4. Effective Date. -- July 1, 2015.

§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. "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, an individual may not 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. On or before July 1, 2016, the Commissioner shall issue an HVAC technician license to an applicant without written examination if the applicant:

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. Provides acceptable documentation or a 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 §21-16-5(2), which may include the successful completion of an HVAC-related training program.

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

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

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

of at least 70%; 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 may 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; and 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 §21-16-5(2) and subsection 6.2 of this rule, a person desiring an HVAC technician 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 that are applicable to the duties and knowledge required by an HVAC technician for the installation, repair and maintenance of HVAC.

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; and Disciplinary Action.

11.1. Pursuant to the grounds set forth in W. Va. Code §21-16-7, 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. The Commissioner may not impose a disciplinary action against a licensee 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.

§42-34-12. Cease and Desist Order; Penalties; and 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 and a renewal fee for an HVAC technician license: *Provided*, That no fee may be charged for an HVAC technician license for a person who holds an HVAC contractor's license pursuant to article eleven, chapter twenty-one of the W. Va. Code .

13.2. The Commissioner shall charge a \$50.00 application fee and a renewal 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.