



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Labor TITLE-SERIES: 42-32

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 42-32 Supervision of Plumbing Work

PRIMARY CONTACT

NAME: Mitchell E Woodrum Commissioner

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CITE STATUTORY AUTHORITY: W. Va. Code §§21-14-4 and 21-1E-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

HB 2004, passed by the Legislature during the 2019 Regular Session, relating to career and technical education, mandated that the Division of Labor propose legislative rules that include standards and procedures for recognizing training hours obtained through career technical education, through apprenticeship programs, and through employer-sponsored training programs, and for applying those hours toward licensing or certification.

These HB 2004 requirements have been incorporated into the proposed amendments to the legislative rule.

The proposed rule includes a definition of an "employer-sponsored training program." Provisions for recognizing plumbing work experience and training hours have been added to the master plumber and journeyman plumber qualifications. The required amount of experience and training hours for the respective classifications are set by statute (W.Va. Code §21-14-2(b) and (c). An individual who does not meet the required number of experience and training hours can qualify for a plumber-in-training license (W. Va. Code §21-14-2(d).

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/10/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/11/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

No public hearing.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule includes the following: a definition section; adoption of the International Plumbing Code as adopted by the State Fire Commission in the State Building Code Legislative Rule, 87 CSR 4; the minimum qualifications and requirements for the master, journeyman, and plumber-in-training licenses; supervision of plumbers-in-training; the terms, validity, and renewal of a license; license fees; requirements for an examination to qualify for either a master or journeyman license, including the minimum passing score of 70%; procedures for the denial, suspension, revocation or reinstatement of a license; authorization for the Commissioner to issue cease and desist orders and an appeal process; and reciprocity provisions.

The proposed rule includes a definition of an "employer-sponsored training program." Provisions for recognizing plumbing work experience and training hours have been added to the master plumber and journeyman plumber qualifications. The required amount of experience and training hours for the respective classifications are set by statute (W.Va. Code §21-14-2(b) and (c)). An individual who does not meet the required number of experience and training hours can qualify for a plumber-in-training license (W. Va. Code §21-14-2(d)).

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

HB 2004, passed by the Legislature during the 2019 Regular Session, relating to career and technical education, mandated that the Division of Labor propose legislative rules that include standards and procedures for recognizing training hours obtained through career technical education, through apprenticeship programs, and through employer-sponsored training programs, and for applying those hours toward licensing or certification.

The HB 2004 requirements pertaining to the Division of Labor have been incorporated into the proposed amendments to the legislative rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Division does not anticipate that the proposed rule will have any economic impact on the revenues of state government.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The Division does not anticipate that the proposed rule will have any economic impact on the state or its residents.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 32
SUPERVISION OF PLUMBING WORK

§42-32-1. General.

1.1. Scope. -- This rule governs the licensure, fees, examinations, and requirements for individuals performing plumbing work, and sets forth the duties of the Commissioner in issuing licenses and penalties for violations, all in accordance with W. Va. Code §§21-14-1 *et seq.* and 21-1E-1 *et seq.*

1.2. Authority. -- W. Va. Code §§21-14-4 and 21-1E-4.

1.3. Filing Date. -- ~~April 22, 2015.~~

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

1.5. ~~Repeal of former rule. — This rule repeals and replaces 42 CSR 32, “Supervision of Plumbing Work” filed April 21, 2008 and effective July 1, 2008. Sunset Date. This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.~~

§42-32-2. Application and Enforcement.

2.1. Application. This rule applies to all persons, materials and transactions governed or otherwise defined under coverage of the Supervision of Plumbing Work Act, W. Va. Code §21-14-1 *et seq.*

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

§42-32-3. Definitions.

3.1. The “Act” means the Supervision of Plumbing Work Act, W. Va. Code §21-14-1 *et seq.*

3.2. “Commissioner” means the Commissioner of the West Virginia Division of Labor and his or her authorized representatives.

3.3. “Direct supervision” means the direction, oversight, and control of the work of a licensed plumber-in-training by a licensed master plumber or licensed journeyman plumber at least 75% of the time at each separate job site or location.

3.4. “Division” means the West Virginia Division of Labor.

3.5. “Employer-sponsored training program” means a planned curriculum, approved by the Commissioner, that must include training in workplace and technical competencies.

~~3.5~~ 3.6. “Immediate family” is limited to one or more of the following: father, mother, spouse, brother, sister, son or daughter.

~~3.6~~ 3.7. "International Code Council" or "ICC" means the organization located at 500 New Jersey Avenue NW, 6th Floor, Washington, DC 20001.

~~3.7~~ 3.8. "Lapsed license" means a license that has expired for 90 days or more.

~~3.8~~ 3.9. "Supervision" means the direction, oversight, and control of licensed journeyman plumbers and plumbers-in-training by a licensed master plumber on a plumbing project.

§42-32-4. Adoption of Standards.

The ~~2012~~ International Plumbing 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 by reference.

§42-32-5. License Required; Exemptions.

5.1. Unless otherwise exempt under the provisions of W. Va. Code §21-14-3 (c), a person may not perform or offer to perform plumbing work in this State without a license issued under the provisions of ~~W. Va. Code § 21-14-1 et seq.~~ the Act and this rule.

5.2. Pursuant to W. Va. Code §21-14-3(c)(1), a person who personally performs plumbing work on a single family dwelling owned or leased by a member of the person's immediate family as defined in subsection ~~3.4.~~ 3.6. of this rule is exempt from the requirements of the Act and this rule.

5.3. A licensed plumber or plumber-in-training shall carry proof of a valid license on his or her person at all times during the performance of plumbing work.

§42-32-6. Minimum Qualifications and Requirements for a Master or Journeyman Plumber License.

6.1. A person desiring a master or journeyman plumber license pursuant to the provisions of ~~W. Va. Code §21-14-1 et seq.~~ the Act and this rule shall submit an application to the Commissioner.

6.2. The Commissioner shall issue a master or journeyman plumber license to any applicant who:

~~6.2.1~~ 6.2.a. Is at least 18 years of age;

~~6.2.2~~ 6.2.b. Submits a properly completed application on forms provided by the Division;

~~6.2.3~~ 6.2.c. Submits a copy of the required written examination scores reflecting a score of at least 70%; ~~and~~

~~6.2.4~~ 6.2.d. For a master plumber license, provides acceptable documentation or a sworn affidavit which demonstrates that he or she has at least 12,000 hours of plumbing work experience, which may include, but is not limited to the successful completion of: a plumbing-related training program acquired through career technical education provided by the state's public schools or an apprenticeship program or an employer-sponsored training program;

6.2.e. For a journeyman plumber license, provides acceptable documentation or a sworn affidavit which demonstrates that he or she has at least 8,000 hours of plumbing work experience for a journeyman plumber license, which may include, but is not limited to the successful completion of: a plumbing-related training program acquired through career technical education provided by the state's public schools or an apprenticeship program or an employer-sponsored training program; and

6.2.f. Pays the application fee set forth in section 10 of this rule.

§42-32-7. Minimum Qualifications and Requirements for a Plumber-In-Training License.

7.1. A person desiring a plumber-in-training license pursuant to the provisions of ~~W. Va. Code § 21-14-1 et seq.~~ the Act and this rule shall submit an application to the Commissioner.

7.2. The Commissioner shall issue a plumber-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 10 of this rule.

§42-32-8. Supervision of Licensed Plumbers-in-Training.

A licensed plumber-in-training shall only work under the direct supervision of at least one licensed journeyman plumber or one licensed master plumber.

§42-32-9. Terms and Validity of a License; Renewal of a License; and Lapse.

9.1. A license issued pursuant to the Act 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 or registration certificate 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 the Act and this rule, and who pays the fee set forth in section 10 of this rule.

9.5. A license that has lapsed cannot be renewed.

§42-32-10. Fees.

10.1. An applicant shall pay a \$75.00 application fee and renewal fee for a journeyman or master plumber license.

10.2. An applicant shall pay a \$50.00 application fee and renewal fee for a plumber-in-training license.

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

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

§42-32-11. Examination Required.

11.1. A person desiring a master plumber or journeyman plumber license under the provisions of the Act and this rule shall pass a written examination with a score of at least 70% in the license classification desired.

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

11.3. The Commissioner may:

11.3.1. Contract with a private testing agent to conduct the written examinations. 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

11.3.2. Develop a written examination process within the Division to include a fee 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.

11.4. 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 may be re-examined immediately upon the payment of the fees required.

§42-32-12. Denial, Suspension, Revocation or Reinstatement of License.

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

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

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

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

12.3. A violation of ~~W. Va. Code §21-14-1 et seq.~~ the Act or this rule is grounds for the denial, suspension, revocation or refusal to reinstate a license and permits the imposition of disciplinary action.

12.3.1. A disciplinary action against a licensee or registrant may not 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.

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

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

12.3.4. After the hearing, if the Commissioner finds a violation of the Act or this rule has occurred, he or she may impose any disciplinary action provided for in ~~W. Va. Code §21-14-1, et seq.,~~ the Act or this rule.

12.4. The performance of plumbing work in violation of ~~W. Va. Code §21-14-1, et seq.,~~ the Act or this rule, may result in the suspension of a license for not more than one year, or revocation of the license until reinstated.

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

§42-32-13. Cease and Desist Order; Penalties; and Appeals.

13.1. The Commissioner may issue a cease and desist order to any person performing or offering to perform plumbing work without a license issued by the Commissioner.

13.2. Any person continuing to engage in plumbing work after the issuance of a cease and desist order is subject to the penalties set for in W. Va. Code §21-14-7.

13.3. 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.*

§42-32-14. Reciprocity.

To the extent that other states license master plumbers, journeyman plumbers, or plumbers-in-training, and ~~has~~ have requirements equivalent to ~~W. Va. Code §21-14-1 et seq.,~~ the Act and this rule, the Commissioner, in his or her discretion, may grant licenses of the same classification without examination to plumbers licensed by other states, 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 10 of this rule.