

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

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Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code Section 21-3C-11.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21A

TITLE OF RULE BEING AMENDED: Supervision of Elevator Mechanics and Apprentices

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Authorized Signature

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

2012 DEC 21 AM 11:19

SERIES 21A
SUPERVISION LICENSING OF ELEVATOR MECHANICS AND TECHNICIANS AND
REGISTRATION OF APPRENTICES

§42-21A-1. General.

1.1. Scope. -- This legislative rule governs standards, qualifications, requirements and procedures for licensing elevator mechanics, accessibility technicians, limited use/limited application elevator technicians, limited technicians, and apprentices, the powers and duties of the West Virginia Commissioner of the Division of Labor, and penalties for violations, in accordance with W. Va. Code §21-3C-1, *et seq.*

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

1.3. Filing Date. -- ~~March 30, 2012.~~

1.4. Effective Date. -- ~~July 1, 2012.~~

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

2.1. Application. This legislative rule applies to the Commissioner and all persons working as elevator mechanics, accessibility technicians, limited use/limited application elevator technicians, limited technicians or elevator mechanic apprentices as defined in W. Va. Code §21-3C-1, *et seq.*

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

§42-21A-3. Definitions.

3.1. "Accessibility technician license" means a license issued to a person who meets the requirements set forth in W. Va. Code §21-3C-10a(d) and this rule.

~~3.1.~~ 3.2. "ASME" refers to the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016-5990.

3.3. The "Commissioner" means the Commissioner of the West Virginia Division of Labor or his or her authorized representatives.

~~3.2.~~ 3.4. "Elevator apprentice" or "elevator mechanic apprentice" means a person who meets the requirements set forth in W. Va. Code §21-3C-1, et seq., §21-3C-10a(f) and this rule.

3.5. “Emergency” means a disaster, act of God, or work stoppage, when so declared by the President of the United States or Governor of West Virginia.

3.3. 3.6. “Limited technician license” means a license issued to a person who meets the requirements set forth in W. Va. Code §21-3C-10a(e) and this rule, and is employed by a historic resort hotel.

3.7. “Limited use/limited application elevator endorsement” or “LULA elevator endorsement” means an endorsement to an accessibility technician license issued to a person who meets the requirements set forth in W. Va. Code §21-3C-10a(d)(3) and this rule.

§42-21A-4. Adoption of Standards.

The following American Society of Mechanical Engineers (ASME) standards are incorporated by reference:

4.1. ASME Code A17.1b - 2009, “Safety Code for Elevators and Escalators,” effective June 30, 2010;

4.2. ASME Code 17.2 - 2007, “Guide for Inspection of Elevators and Escalators,” effective October 5, 2007;

4.3. ASME Code 17.3 - 2008, “Safety Code for Existing Elevators and Escalators,” effective July 9, 2009; and

4.4. ASME Code A18.1, “Safety Code for Platform Lifts and Stairway Chairlifts,” published on August 28, 2008.

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

5.1. A person may shall not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators, accessibility equipment, LULA elevators or related conveyances covered by W. Va. Code §21-3C-1, *et seq.*, without a license issued according to the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule.

5.2. A person may shall not work as an elevator apprentice unless he or she is registered with the Commissioner and meets the requirements set forth in section ~~7~~ 6 of this rule.

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

6.1. The Commissioner shall issue a license or registration certificate to an applicant who:

6.1.a. Is at least 18 years of age;

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

6.1.c. Pays the application fee; and

6.1.d. Meets ~~one of the following requirements:~~ the qualifications for an elevator mechanic license, an accessibility technician license, a limited use/limited application elevator endorsement, a limited technician license, or an apprentice, as set forth in W. Va. Code §§21-3C-10a.

~~6.1.d.1. Completion of a four-year apprenticeship program, registered by the United States Department of Labor, to qualify for a commercial license;~~

~~6.1.d.2. Completion of a two-year apprenticeship program, registered by the United States Department of Labor, to qualify for an accessibility license; or~~

~~6.1.d.3. Completion of a certified apprenticeship program, registered by the United States Department of Labor established at a historic hotel, to qualify for a limited technician license;~~

~~6.2. A license which was issued without examination and which was applied for on or before July 1, 2010, pursuant to the provisions of W. Va. Code §21-3C-11(a)(3) may be renewed in the same manner as a license issued pursuant to the provisions of subsection 6.1.a through 6.1.c. of this section. *Provided* That if a license issued pursuant to this subsection subsequently lapses, the applicant may, at the Commissioner's discretion, be subject to all of the licensure requirements in effect at the time of the renewal application.~~

~~6.3. 6.2.~~ The Commissioner shall reject any application containing willfully submitted false or untrue information.

~~6.4. 6.3.~~ A license or registration certificate issued pursuant to the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule is not assignable or transferable, and is valid for a period not to exceed ± 2 years from the date on which it was issued.

~~6.5. 6.4.~~ A licensee or registrant performing the work of an elevator mechanic, an accessibility technician, a LULA elevator technician, a limited technician, or an apprentice must be, or be employed by, a contractor licensed pursuant to the provisions of W. Va. Code §21-11-1, *et seq.*

~~6.6. 6.5.~~ Each licensed elevator mechanic, accessibility technician, LULA elevator technician, limited technician, or apprentice shall carry proof of valid licensure or registration on his or her person during the performance of elevator mechanic work performed pursuant to W. Va. Code §21-3C-1, et seq.

§ 42-21A-8 7. Work Not Permitted Under a Limited Technician License.

8.1. The Commissioner shall issue a limited technician license to an applicant who:

~~8.1.a. meets the requirements of paragraph 6.1.d.3 of this rule;~~

~~8.1.b. Provides current documentation that he or she is regularly employed by a historic resort hotel and is paid regular wages and not a contract price;~~

8.2. A limited technician license issued pursuant to the provisions of W. Va. Code §21-3C-1, et seq., or this rule is not assignable or transferable, and is valid for a period not to exceed 1 year from the date on which it was issued.

~~8.3. A limited technician license is valid only for work performed on property owned or leased by the historic resort hotel as identified on the face of the license.~~

8.4. A person licensed as a limited technician shall not replace any of the following:

8.4.a. 7.1. Governors;

8.4.b. 7.2. Sheave wheels or bearings;

8.4.c. 7.3. Cables and shackles;

8.4.d. 7.4. Ring gears and worn gears;

8.4.e. 7.3.e. Buffers;

8.4.f. 7.3.f. Traveling cables;

8.4.g. 7.3.g. Hydro pumps;

8.4.h. 7.3.h. Hydro pump motors;

8.4.i. 7.3.i. Hydro valve chests;

8.4.j. 7.3.j. Jack packing and seals; or

8.4.k. 7.3.k. Rope grippers.

~~§42-21A-7. Qualifications and Supervision Requirements for an Elevator Apprentices.~~

~~7.1A~~ person desiring to work as an elevator apprentice in this state shall register with the Commissioner on a form provided by the Commissioner.

~~7.2.~~ The registrant shall provide documentation of enrollment in an elevator apprentice program recognized by the United States Department of Labor, on forms provided by the Commissioner.

~~7.3.~~ An elevator apprentice may work only under the supervision of a licensed elevator mechanic, as specifically set forth in W. Va. Code § 21-3C-10a (c).

~~7.4.~~ A registration issued pursuant to the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule is not assignable or transferable, and is valid for a period not to exceed 1 year from the date on which it was issued.

§42-21A-9 8. Expiration and Renewal.

~~9.1:~~ 8.1. All licenses and registrations expire biennially on the last day of the anniversary month from the month of issuance of the license.

~~9.2:~~ 8.2. An elevator mechanic, an accessibility technician, a LULA elevator technician, a limited technician, or elevator apprentice is responsible for submitting his or her license or registration renewal to the Commissioner prior to the expiration date.

8.3. A license or registration which is not renewed on or before the renewal date lapses.

~~9.3.~~ An elevator mechanic, limited technician, or elevator apprentice who has not renewed his or her license or registration in accordance with the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule shall submit a new application to the Commissioner.

8.4. The Commissioner shall not renew a license or registration which has lapsed for a period of 90 days or more.

8.5. An elevator mechanic, accessibility technician, a LULA elevator technician, a limited technician, or an elevator apprentice whose license or registration has lapsed for 90 days or more shall submit a new application to the Commissioner.

~~9.4:~~ 8.6. The Commissioner shall mail license and registration renewal notifications in a timely manner to each elevator mechanic, accessibility technician, LULA elevator technician, limited technician, and elevator apprentice.

§42-21A-9. Continuing Education Required for Elevator Mechanics to Renew Their License.

9.1. An elevator mechanic shall complete 16 hours of continuing education instruction

during the 2 year period immediately preceding the renewal of his or her license.

9.2. An elevator mechanic shall submit documentation of his or her successful completion of continuing education with the his or her renewal application.

9.3. Acceptable continuing education instruction shall be taught by providers approved by the Commissioner, including but not limited to trade association seminars, labor training programs, career technology centers and the Division.

9.4. If a licensee is unable to complete the required continuing education instruction prior to the expiration of his or her license due to a temporary disability, military service or other good cause shown, the licensee may submit a written request for a waiver to the Commissioner. The Commissioner may approve or deny the waiver request.

§42-21A-10. Request and Application for an Emergency Elevator Mechanic License or an Emergency Accessibility Technician License.

10.1. Whenever an a declared 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 current elevator mechanic licenses or accessibility technician licenses granted by the Commissioner is insufficient to cope with the emergency, the a licensed elevator contractors contractor may request that the Commissioner issue an emergency elevator mechanic license or an emergency accessibility technician license to a person certified by the licensed elevator contractor by sworn affidavit to have an acceptable combination of documented experience and education to perform elevator work or accessibility equipment work without direct supervision.

10.2. 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 or an emergency accessibility technician license from the Commissioner within 5 business days after commencing work requiring a license.

10.3. Upon receipt of proof an applicant's certification of competency of the applicant from a licensed elevator contractor, the Commissioner shall issue an emergency elevator mechanic license or an emergency accessibility technician license.

10.4. Each An emergency elevator mechanic license or an emergency accessibility technician license shall state that it is is valid for a period of not more than 30 days from the date of issuance, and shall identify those specific for particular elevators, accessibility equipment, or geographical areas designated by the Commissioner, and entitles the licensee to the rights and privileges of an elevator mechanic license issued under the provisions of W. Va. Code §21-3C-1, et seq., and this rule. where the licensee is authorized to work.

10.5. The Commissioner shall not charge a fee for the issuance of an emergency elevator mechanic license or an emergency accessibility technician license.

§42-21A-11. Request and Application for a Temporary Elevator Mechanic License.

11.1. 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 shall 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.

11.2. 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.

11.3. Upon receipt of proof an applicant's certification of competency of the applicant from a licensed elevator contractor, the Commissioner shall issue a temporary elevator mechanic license.

11.4. ~~Each A temporary elevator mechanic license shall state that it is valid for a period of not more than 30 days from the date of issuance, and shall identify for particular elevators or geographical areas designated by the Commissioner, and entitles the licensee to the rights and privileges of an elevator mechanic license issued under the provisions of W. Va. Code §21-3C-1, et seq., and this rule: where the licensee is authorized to work.~~

~~11.5. The Commissioner shall charge a fee for a temporary elevator mechanic license, as set forth in this rule:~~

~~§42-21A-12. Continuing Education:~~

~~12.1. 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:~~

~~12.2. The courses shall consist of not fewer than 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 8 hours:~~

~~12.3. 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:~~

~~12.4. 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-13. Reciprocity.~~

~~13.1. For any state that has requirements substantially equivalent to those provided for by W. Va. Code §21-3C-1, et seq., and this rule, and has entered into a reciprocity agreement with the Commissioner, the Commissioner may issue an elevator mechanic license to an applicant who documents that he or she holds a valid license issued by that state.~~

~~13.2. An out of state applicant must submit a written application as provided for in section 6 of this rule, and upon renewal, must comply with the continuing education requirements in section 11 of this rule.~~

~~13.3. 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-14~~ **12. Denial, Suspension, Revocation, or Reinstatement of License or Certificate of Registration; Hearings.**

~~14.1. 12.1. The Commissioner may deny, suspend, revoke or refuse to reinstate a license or certificate of registration for a violation of W. Va. Code §21-3C-1, et seq., or this rule.~~

~~14.2. 12.2. A violation of W. Va. Code §21-3C-1, et seq., 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 The Commissioner shall not impose any no disciplinary action may be imposed against a licensee or registrant without notice and an opportunity for a hearing before the Commissioner, or his or her designee. The hearing shall be conducted pursuant to the provisions of W. Va. Code §29A-5-1, et seq., the Administrative Procedures Act. At the hearing, the licensee shall be allowed to present evidence and testimony in person, by counsel or both, and may cross-examine witnesses and submit rebuttal evidence. After the hearing, if the Commissioner finds a violation of this rule has occurred, the Commissioner may impose any disciplinary action permitted by law.~~

~~12.2.a. The hearing shall be conducted pursuant to the provisions of W. Va. Code §29A-5-1, et seq., the State Administrative Procedures Act.~~

~~12.2.b. At the hearing, the licensee or registrant shall be allowed to present evidence and testimony in person, by counsel or both, and may cross-examine witnesses and submit rebuttal evidence.~~

~~12.2.c. After the hearing, if the Commissioner finds that the licensee or registrant has violated any provision of W. Va. Code §21-3C-1, et seq., or this rule, he or she may impose any~~

disciplinary action permitted by law.

~~14.3.~~ 12.3. ~~The Commissioner may suspend or revoke the license of a licensee who performs elevator mechanic work in violation of W. Va. Code §21-3C-1, et seq., or this rule. If the Commissioner suspends a license or registration, the~~ The suspension of a license shall be for not less than 24 hours nor more than 1 year. The Commissioner may reinstate the license upon satisfactory proof that the licensee is in full compliance with the provisions of W. Va. Code §21-3C-1, et seq., and this rule.

~~14.4.~~ 12.4. A person whose license has been revoked may apply for a new license 1 year after the date of the revocation.

~~16.6.~~ 12.5. 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.

~~16.7.~~ 12.6. 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-15 13. Effect of Noncompliance.

Each day during which a person performs elevator mechanic work without the required license or certificate of registration or while in non-compliance with any of the provisions of W. Va. Code §21-3C-1, et seq., or this rule, after written notice from the Commissioner or a Division inspector that the work is unlawful, is a separate violation of the provisions of W. Va. Code §21-3C-1, et seq., and this rule.

§42-21A-16 14. Disposition of Complaints.

~~16.1.~~ 14.1. ~~In the course of investigating complaints, the Commissioner shall determine whether or not the person against whom the complaint has been filed is properly licensed under the provisions of W. Va. Code §21-3C-1, et seq.~~

~~16.2.~~ 14.1. Any citizen, law enforcement official or other official of any state, county, or municipal government agency, upon observing or learning of a violation of the licensure requirements of W. Va. Code §21-3C-1, et seq., or this rule, may file a written complaint with 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 Commissioner, it shall be investigated. In addition to describing the alleged violation which prompted the complaint, the complaint shall contain as a minimum the following information:

~~16.2.a.~~ 14.1.a. The name of the person against whom the complaint is lodged;

~~16.2.b.~~ 14.1.b. The date of the alleged violation;

~~16.2.c.~~ 14.1.c. The nature of the alleged violation; and

~~16.2.d.~~ 14.1.d. The location of the violation or occurrence.

14.2. After receipt and review of a complaint, the Commissioner 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.

14.3. In the course of investigating a complaint, the Commissioner shall determine whether or not the person against whom the complaint has been filed is properly licensed or registered under the provisions of W. Va. Code §21-3C-1, et seq.

14.3.a. If the person is not properly licensed or registered and is performing work for which a license or certificate of registration is required pursuant to W. Va. Code §21-3C-1, et seq. or this rule, the Commissioner shall issue a cease and desist order requiring the person to immediately cease work.

~~16.3.~~ 14.3.b. If the person is properly licensed or registered, a A copy of the complaint shall be sent to the licensee or registrant, which 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 informed of his or her current address. The licensee or registrant has 30 days to file a response or appeal petition to the complaint with the Commissioner.

~~16.4. After receipt and review of a complaint, the Commissioner 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.~~

~~16.5.~~ 14.4. Upon a finding of probable cause that a violation of W. Va. Code §21-3C-1, et seq., or this rule has occurred, the Commissioner shall proceed in the manner described in section ~~14~~ 13 of this rule.

~~16.6. 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.~~

~~16.7. 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-17~~ 15. Fees.

~~17.1.~~ 15.1. The Commissioner shall deposit all fees paid pursuant to this rule in a special revenue account with the State Treasurer for the use of the Commissioner as provided under W. Va.

Code §21-3C-11(c).

~~17.2.~~ 15.2. The Commissioner shall charge the following fees:

~~17.2.a.~~ 15.2.a. Initial license .. \$~~90~~ 180.00

~~17.2.b.~~ 15.2.b. ~~Annual~~ Biannual renewal of license .. \$~~90~~ 180.00

~~17.2.c.~~ 15.2.c. Temporary license .. \$90

~~17.2.d.~~ 15.2.d. Duplicate license (original lost or destroyed) .. \$10

~~17.2.e.~~ 15.2.e. Reinstatement of lapsed license .. \$~~115~~ 230.00.

~~17.3.~~ 15.3. The Commissioner shall 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 21-11-1, *et seq.*