

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

Form #3

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2014 JUL 30 P 1:44

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 21-14-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 32

TITLE OF RULE BEING AMENDED: Supervision of Plumbing Work

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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: _____
Supervision of Plumbing Work

1. Authorizing statute(s) citation W. Va. Code §21-14-4

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

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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 32

Supervision of Plumbing Work

The West Division of Labor proposes the following amendments and revisions to Title 42, Series 32 of the West Virginia Code of State Regulations to better reflect the Division of Labor's current and proposed practices with regard to enforcement of the Supervision of Plumbing Work Act, W. Va. Code § 21-14-1, *et seq.*

- The definitions of "Commissioner," "direct supervision," "lapsed license," and "supervision" have either been clarified or added.
- The 2012 International Plumbing 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 "grandfathering" provisions, which expired on July 1, 2009, have been removed.
- The requirements for a plumber-in-training license have been clarified so that an applicant is not required to pass a written examination.
- The cost for a plumber-in-training license has been reduced from \$75.00 to \$50.00.
- Requirements concerning the supervision of a plumber-in-training have been added.
- A requirement for a \$25.00 late fee for an applicant who submits a renewal application more than 15 days after a license's expiration date has been added.
- A requirement for a \$10.00 duplicate fee for a license has been added.

Other technical changes include the reformatting of the proposed rule.



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Supervision of Plumbing 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: Supervision of Plumbing Work

Rule Title:

Supervision of Plumbing 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

Joshua H. Payne

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

FILED

2014 JUL 30 P 1:44

SERIES 32
SUPERVISION OF PLUMBING WORK

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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.*

1.2. Authority. -- W. Va. Code §21-14-4.

1.3. Filing Date. --

1.4. Effective Date. --

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.

§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. "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 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.

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

3.4. "Immediate family" is limited to one or more of the following: father, mother, spouse,

brother, sister, son, and/or daughter.

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

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

3.7. "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 reference.

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

5.1. Unless otherwise exempt under the provisions of W. Va. Code §21-14-3 (c), no person may 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.*, 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. 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.*, 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. Is at least 18 years of age;

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 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.*, 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.

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

8.2. A licensed master plumber may supervise licensed journeyman plumbers and licensed plumbers-in-training, as long as the supervision ratio set forth in subsection 8.1 of this rule is maintained.

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

9.1. A license issued pursuant to W. Va. Code §21-14-1, *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 or registration certificate for a period of 12 months.

9.4. The Commissioner may issue a duplicate license or registration certificate to a person who, by application and affidavit, states that the original license or registration certificate 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

10 of this rule.

9.5. A license or registration certificate that has lapsed cannot be renewed.

§42-32-10. Fees.

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

10.2. An applicant shall pay a \$50.00 application 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 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.

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 shall have the opportunity to 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 or registrant.

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 or registrant.

12.3. A violation of W. Va. Code §21-14-1, *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.

12.3.1. No disciplinary action against a licensee or registrant 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.

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 this article has occurred, he or she may impose any disciplinary action provided for in W. Va. Code §21-14-1, *et seq.*, or this rule.

12.4. The performance of plumbing work in violation of W. Va. Code §21-14-1, *et seq.*, 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; 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 requirements equivalent to W. Va. Code §21-14-1, *et seq.*, 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.