

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

Form #2

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2015 JUN 26 P 2:59

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

OFFICE WEST VIRGINIA
SECRETARY OF STATE
42

AGENCY: West Virginia Division of Labor TITLE NUMBER: _____

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §21-3C-11

AMENDMENT TO AN EXISTING RULE: YES NO

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

TITLE OF RULE BEING AMENDED: Licensing of Elevator Mechanics and Technicians and Registration of Apprentices

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 27, 2015 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

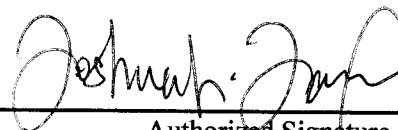
John R. Junkins, Acting Commissioner

West Virginia Division of Labor
State Capitol Complex

Building 6, Room B-749
Charleston, WV 25305

or by email: john.r.junkins@wv.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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 21A

Licensing of Elevator Mechanics and Technicians and Registration of Apprentices

The Elevator Safety Act, W. Va. Code 21-3C-1, *et seq.*, requires the annual inspection of existing elevators and similar devices and requires that new elevators are inspected prior to operation to ensure that they are installed in compliance with the American Society of Mechanical Engineers ("ASME") Codes A17.1 and A18.1. The actual edition date of the ASME codes are adopted and incorporated by reference in the current rule.

The Division of Labor proposes to amend the current rule in order to adopt newer editions of the ASME codes. New elevators are being manufactured with new technologies that are not covered in the editions of the ASME codes that are in the current rule. New elevators are also designed to meet the most current ASME code editions. Because the ASME codes in the current rule are inadequate for inspecting a new elevator, the elevator owner must request a variance from the Division before the elevator can be inspected and placed into use. This can be a cumbersome process.

The Division of Labor also proposes to amend the current rule to delete ASME Code A17.3-2008, "Safety Code for Existing Elevators and Escalators," from the proposed rule. As the title of the ASME code states, this is used to inspect existing elevators and escalators. Depending on the age of the existing elevator or escalator, compliance with A17.3 requires significant and expensive upgrades to older elevators. The cost involved in complying with A17.3 will likely cause undue financial hardship to the majority of the building owners in West Virginia, and place an especially harsh financial burden on small business and churches. For some older buildings and elevators, it would be impossible to bring the elevators up to the A17.3 code.

In lieu of using ASME A17.3 to inspect existing elevators and escalators, the Division uses a provision in ASME A17.1b, Part 8, that provides standards for existing installations, and requires that they conform to the ASME Code in effect at the time of installation.

The proposed amendments and revisions to Title 42, Series 21, of the West Virginia Code

of State Regulations are as follows:

- 4.1. ASME Code ~~A17.1-2009~~ A17.1-2013/CSA B44-13, "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;~~ A17.2-2014, "Guide for Inspection of Elevators, Escalators, and Moving Walks".
- ~~4.3. ASME Code A17.3-2008 "Safety Code for Existing Elevators and Escalators," effective July 9, 2009; and~~
- ~~4.4~~ 4.3 ASME Code ~~A18.1~~ A18.1-2014, "~~Safety Code~~ Standard for Platform Lifts and Stairway Chairlifts," ~~published on August 28, 2008.~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Licensing of Elevator Mechanics and Technicians and Registration of Apprentices

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.

The proposed rule will not have any 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: Licensing of Elevator Mechanics and Technicians and Registration of Apprentices

Rule Title:

Licensing of Elevator Mechanics and Technicians and Registration of Apprentices

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:

6-26-2015

Signature of Agency Head or Authorized Representative

Joshua H. Jantz

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

FILED

2015 JUN 26 P 2:59

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

SECRETARY OF STATE

§42-21A-1. General.

1.1. Scope. -- This 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. -- ~~June 3, 2013.~~

1.4. Effective Date. -- ~~July 1, 2013.~~

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

2.1. Application. This 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 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.

3.2. "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.

3.4. "Elevator apprentice" or "elevator mechanic apprentice" means a person who meets the requirements set forth in W. Va. Code §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.

3.6. "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~~ A17.1 - 2013/CSA B44-13, "Safety Code for Elevators and Escalators;"

4.2. ASME Code ~~17.2 - 2007~~ 2014, "Guide for Inspection of Elevators, ~~and Escalators, and Moving Walks;~~" ~~effective October 5, 2007;~~ and

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

~~4.4. 4.3. ASME Code A18.1 - 2014, "Safety Code Standard for Platform Lifts and Stairway Chairlifts;" published on August 28, 2008.~~

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

5.1. A person may not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevator, 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 not work as an elevator apprentice unless he or she is registered with the Commissioner and meets the requirements set forth in section 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 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.

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

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.

6.4. 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.*

6.5. 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 work performed pursuant to W. Va. Code §21-3C-1, *et seq.*

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

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

7.1. Governors;

7.2. Sheave wheels or bearings;

7.3. Cables and shackles;

7.4. Ring gears and worn gears;

7.5. Buffers;

7.6. Traveling cables;

7.7. Hydro pumps;

- 7.8. Hydro pump motors;
- 7.9. Hydro valve chests;
- 7.10. Jack packing and seals; or
- 7.11. Rope grippers.

§42-21A-8. Expiration and Renewal.

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

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.

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.

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 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 a declared emergency exists in the state, and the number of persons holding current elevator mechanic licenses or accessibility technician licenses granted by the Commissioner is insufficient to cope with the emergency, a licensed elevator 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 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 an applicant's certification of competency from a licensed elevator contractor, the Commissioner shall issue an emergency elevator mechanic license or an emergency accessibility technician license.

10.4. An emergency elevator mechanic license or an emergency accessibility technician license is valid for a period of not more than 30 days from the date of issuance, and shall identify those specific elevators, accessibility equipment, or geographical areas 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 an applicant's certification of competency from a licensed elevator contractor, the Commissioner shall issue a temporary elevator mechanic license.

11.4. A temporary elevator mechanic license is valid for not more than 30 days from the date of issuance, and shall identify particular elevators or geographical areas where the licensee is authorized to work.

§42-21A-12. Denial, Suspension, Revocation, or Reinstatement of License or Certificate of Registration; Hearings.

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.

12.2. The Commissioner shall not impose any disciplinary action against a licensee or registrant without notice and an opportunity for a hearing before the Commissioner, or his or her designee.

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.

12.3. If the Commissioner suspends a license or registration, the suspension 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.

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

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.

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-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-14. Disposition of Complaints.

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:

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

14.1.b. The date of the alleged violation;

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

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.

14.3.b. If the person is properly licensed or registered, 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. The licensee or registrant has 30 days to file a response to the complaint with the Commissioner.

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 13 of this rule.

§42-21A-15. Fees.

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).

15.2. The Commissioner shall charge the following fees:

15.2.a. Initial license .. \$180.00

15.2.b. Biannual renewal of license .. \$180.00

15.2.c. Temporary license .. \$90

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

15.2.e. Reinstatement of lapsed license .. \$230.00.

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.*