



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/25/2018 8:38:38 AM

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: 42-34  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Regulation of Heating, Ventilating, and Cooling Work

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W. Va. Code §21-16-5

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:

W. Va. Code §21-16-5(a) requires the Commissioner to propose rules for the implementation and enforcement of the Regulation of Heating, Ventilating and Cooling Work Act. The statutory authority states that the rules must include the following 7 provisions: (1) standards and procedures for issuing and renewing licenses, including applications, qualifications and examinations; (2) grandfathering provisions for HVAC technician licenses; (3) reciprocity provisions; (4) procedures for investigating complaints, and suspending or revoking licenses and appeal procedures; (5) fees for the issuance and renewal of licenses; (6) enforcement procedures; and (7) other rules necessary to effectuate the purposes of the statute.

Pursuant to this statutory authority, the proposed rule includes the following sections, along with a citation to the applicable statutory provision(s):

Definitions of terms, W. Va. Code §21-16-5(a)(7);

Adoption of Standards, W. Va. Code §21-16-5(a)(7);

License required, W. Va. Code §21-16-5(a)(1 and 7);

Minimum qualifications and requirements for an HVAC Technician license, W. Va. Code §21-16-5(a)(1);

Minimum qualifications and requirements for an HVAC Residential Technician license and the HVAC Residential Technician scope of work, W. Va. Code §21-16-5(a)(1 and 2);

Minimum qualifications and requirements for an HVAC Technician-in-Training license, W. Va. Code §21-16-5(a)(1);

Supervision ratios, W. Va. Code §21-16-5(a)(7);

Terms and validity of a license, license renewal, and license lapse, W. Va. Code §21-16-5(a)(1);

Examination required, W. Va. Code §21-16-5(a)(1);

Denial, suspension, revocation or reinstatement of license; investigation; disciplinary action, W. Va. Code §21-16-5(a)(4);

Cease and desist orders, penalties, appeals, W. Va. Code §21-16-5(a)(6);

Fees, W. Va. Code §21-16-5(a)(5); and

Reciprocity, W. Va. Code §21-16-5(a)(3).

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/15/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/16/2018

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?

The Division of Labor invited interested stakeholders from the private sector and organized labor to participate in a review of the proposed rule. Eight stakeholders met with Division staff on 4/25/18, and reviewed, discussed and approved the proposed rule.

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

See explanation above.

The proposed amendments to the rule are as follows:

the definition of direct supervision has been amended to include the newly created HVAC Residential Technician category;

a new definition for nonresidential heating, ventilating, and cooling system has been added;

the International Residential Code for One and Two Family Dwellings as adopted in the State Fire Commission in the State Building Code has been incorporated by reference;

a new section concerning the minimum qualifications, requirements and scope of work for the new HVAC Residential Technician category has been added;

the supervision ratios with respect to the new HVAC Residential Technician category have been amended;

the required examination with respect to the new HVAC Residential Technician category has been amended;

and

fees for the new HVAC Residential Technician category have been established.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

SB 506, passed during the 2018 Regular Legislative Session, created a new category for licensure - the HVAC Residential Technician - which included grandfathering provisions through the end of 2019 for qualified individuals, authorized the filing of an emergency rule to address the new technician category, required the development of an examination for the new technician category in consultation with HVAC industry representatives, and specified that HVAC residential technicians may work on nonresidential HVAC systems as established by 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 proposed rule will have an economic impact on the revenues of state government due to the newly-created HVAC Residential Technician category of licensure.

The Division proposes an initial application and annual renewal fee of \$60 for this category of licensure.

The Division estimates that 800 individuals will apply for licensure in the new category in FY 2019, and that 1200 individuals will apply for or renew licensure in FY 2020.

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

The proposed rule will have no economic impact on the State.

For those residents who desire to become licensed as an HVAC Residential Technician, the proposed annual fee is \$60.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	0	\$48,000	\$72,000

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

See explanation above.

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

Yes

Elizabeth Farber -- 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.

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TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR

SERIES 34  
REGULATION OF HEATING, VENTILATING, AND COOLING WORK

**§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.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.

**§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. "Act" means the Regulation of Heating, Ventilating and Cooling Work Act, W. Va. Code §21-16-1 *et seq.*

~~3.1.~~ 3.2. "Commissioner" means the Commissioner of the West Virginia Division of Labor, and his or her authorized representatives.

~~3.2.~~ 3.3. "Direct supervision" means the direction, oversight, and control of ~~the work of~~ a licensed HVAC technician-in-training's work by a licensed HVAC technician or a licensed HVAC residential technician at least 75% of the time at each separate job site or location. "Direct supervision" also means the direction, oversight, and control of a licensed HVAC residential technician by a licensed HVAC technician on non-residential HVAC systems.

~~3.3.~~ 3.4. "Division" means the West Virginia Division of Labor.

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~~3.4.~~ 3.5. "HVAC" means heating, ventilating and air conditioning or cooling work, but does not include refrigeration lines, steam lines or hydronics.

~~3.5.~~ 3.6. "Immediate family," as used in W. Va. Code §21-16-3(c)(1), means and includes a person's parents, spouse, sibling, or child.

~~3.6.~~ 3.7. "Lapsed license" means a license that has expired for 90 days or more.

3.8. "Nonresidential heating, ventilating, and cooling system" means any system:

3.8.a. consisting of more than 4 separate heating, ventilating, and cooling units with a combined capacity of more than 20 tons - 520,000 BTUs; or

3.8.b. used in commercial structures over 5,000 square feet; or

3.8.c. where fire dampers are used or required; or

3.8.d. consisting of packaged rooftop units.

### **§42-34-4. Adoption of Standards.**

The ~~2012~~ International Mechanical Code and the International Residential Code for One and Two Family Dwellings, 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.

### **§42-34-5. License Required.**

5.1. Unless otherwise exempt under the ~~provisions of W. Va. Code § 21-16-3(c) Act,~~ 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. Act and~~ 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, HVAC residential 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., Act~~ 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.~~ 6.2.a. Is at least 18 years old;

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

~~6.2.3.~~ 6.2.c. 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.~~ 6.2.d. Pays the application fee set forth in section ~~13~~ 14 of this rule.

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

~~6.3.1.~~ 6.3.a. Is at least 18 years old;

~~6.3.2.~~ 6.3.b. Submits a properly completed application on forms provided by the Division;

~~6.3.3.~~ 6.3.c. Submits a copy of the required written examination scores reflecting a score of at least 70%; and

~~6.3.4.~~ 6.3.d. Pays the application fee set forth in section ~~13~~ 14 of this rule.

**§42-34-7. Minimum Qualifications and Requirements for an HVAC Residential Technician License; HVAC Residential Technician Scope of Work.**

7.1. A person desiring an HVAC residential technician license pursuant to the Act and this rule shall submit an application to the Commissioner.

7.2. On or before December 31, 2019, the Commissioner shall issue an HVAC residential technician license to an applicant without written examination if the applicant:

7.2.a. Is at least 18 years old;

7.2.b. Submits a properly completed application on forms provided by the Division; and

7.2.c. Provides acceptable documentation or a sworn affidavit which demonstrates that he or she meets the minimum work, training and experience requirements for the HVAC residential technician license as set forth in W. Va. Code §21-16-3(a), which may include the successful completion of an HVAC-related training program.

7.2.d. Pays the application fee set forth in section 14 of this rule.

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

7.3.a. Is at least 18 years old;

7.3.b. Submits a properly completed application on forms provided by the Division;

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

7.3.d. Pays the application fee set forth in section 14 of this rule.

7.4. A licensed HVAC residential technician may perform work on any HVAC system other than a nonresidential HVAC system as defined in this rule.

7.5. A licensed HVAC residential technician may perform work on any nonresidential HVAC system as defined in this rule, provided that he or she works under the direct supervision of a licensed HVAC technician and the required supervision ratio in section 9 of this rule is maintained.

**§42-34-~~7~~ 8. Minimum Qualifications and Requirements for an HVAC Technician-In-Training License.**

~~7.1.~~ 8.1. A person desiring an HVAC technician-in-training license pursuant to the ~~provisions of W. Va. Code § 21-16-1 et seq.,~~ Act and this rule shall submit an application to the Commissioner.

~~7.2.~~ 8.2. The Commissioner shall issue an HVAC technician-in-training license to an applicant who:

~~7.2.1.~~ 8.2.a. Is at least 18 years old;

~~7.2.2.~~ 8.2.b. Submits a properly completed application on forms provided by the Division; and

~~7.2.3.~~ 8.2.c. Pays the application fee set forth in section ~~13~~ 14 of this rule.

**§42-34-~~8~~ 9. Supervision of an HVAC Technician In-Training Ratios.**

~~A licensed HVAC technician in training may only work under the direct supervision of at least one licensed HVAC technician.~~

9.1. On residential HVAC work, a licensed HVAC technician or a licensed HVAC residential technician may directly supervise no more than 4 licensed HVAC technicians-in-training.

9.2. On nonresidential HVAC work, a licensed HVAC technician may directly supervise no more than 2 licensed technicians-in-training and licensed HVAC residential technicians.

**§42-34-~~9~~ 10. Terms and Validity of a License; Renewal of a License; Duplicate; and Lapse.**

~~9.1.~~ 10.1. A license issued pursuant to ~~W. Va. Code § 21-16-1 et seq.,~~ 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.~~ 10.2. The Commissioner shall provide a licensee with a renewal application at least 45 days in advance of the license's expiration date.

~~9.3.~~ 10.3. 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.~~ 10.4. 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.~~ the Act and this rule, and who pays the fee set forth in section ~~13~~ 14 of this rule.



9.5. ~~10.5.~~ A license that has lapsed cannot be renewed.

**~~§42-34-10~~ 11. Examination Required.**

~~10.1.~~ 11.1. Unless otherwise exempt from examination pursuant to the ~~provisions of W. Va. Code §21-16-5(2) Act and subsection 6.2 of this rule,~~ a person desiring an HVAC technician license or an HVAC residential technician license ~~under the provisions of W. Va. Code § 21-16-1 et seq.,~~ and this rule shall pass a written examination.

~~10.2.~~ 11.2. The examination's minimum passing score is 70%.

~~10.3.~~ 11.3. The contents of the HVAC technician examination shall be based on the standards adopted ~~under in~~ section ~~four~~ 4 of this rule that are applicable to the ~~duties~~ scope of work and knowledge required by an HVAC technician for the installation, repair and maintenance of HVAC systems.

11.4. The contents of the HVAC residential technician examination shall be developed in consultation with HVAC industry representatives and shall be based on the standards adopted in section 4 of this rule that are applicable to the scope of work and knowledge required by an HVAC residential technician for the installation, repair, and maintenance of residential HVAC systems.

~~10.4.~~ 11.5. The Commissioner shall provide for the written examination of all license applicants and shall establish an examination fee schedule for the administration of the examination by the Division or by a private testing agent. ~~The examination shall test the applicant's knowledge of the standards as adopted in section 4 of this rule.~~

~~10.4.1.~~ 11.6. The Commissioner may:

~~10.4.1.a.~~ 11.6.a. Contract with a private testing agent to conduct the written examinations; ~~and~~  
or

~~10.4.1.c.~~ 11.6.b. 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.~~

~~10.4.1.b.~~ 11.7. The ~~private testing agent~~ license applicant shall ~~charge~~ pay the examination fees according to a rate schedule developed by the Commissioner and the applicant shall pay all examination fees directly to either the private testing agent or to the Division according to who administers the examination.

~~10.5.~~ 11.8. 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~~ 12. Denial, Suspension, Revocation or Reinstatement of a License; Investigation; and Disciplinary Action.**

~~11.1.~~ 12.1. Pursuant to the grounds set forth in W. Va. Code §21-16-7, the Commissioner may deny, suspend, or revoke a license.

~~11.2.~~ 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 grounds for disciplinary action against a licensee.

~~11.2.1.~~ 12.2.a. The Commissioner may provide a form for this purpose, but a complaint may be filed in any form.

~~11.2.2.~~ 12.2.b. The Commissioner shall provide a copy of the complaint to the licensee.

~~11.3.~~ 12.3. A violation of ~~W. Va. Code §21-16-1 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.

~~11.3.1.~~ 12.3.a. 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.~~ 12.3.b. 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.~~ 12.3.c. At the hearing, the licensee shall have the opportunity to present evidence in person, by counsel or both.

~~11.3.4.~~ 12.3.d. 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., the Act~~ or this rule.

**~~§42-34-12~~ 13. Cease and Desist Order; Penalties; and Appeals.**

~~12.1.~~ 13.1. The Commissioner shall issue a cease and desist order to any person performing or offering to perform HVAC work without a the required license issued by the Commissioner.

~~12.2.~~ 13.2. A person continuing to engage in HVAC work after the issuance of a cease and desist order is subject to the penalties set forth in W. Va. Code §21-16-8.

~~12.3.~~ 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.*

**~~§42-34-13~~ 14. Fees.**

~~13.1.~~ 14.1. 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 §21-11-1 et seq.

14.2. The Commissioner shall charge a \$60.00 application fee and a renewal fee for an HVAC residential technician license.

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~~13.2.~~ 14.3. The Commissioner shall charge a \$50.00 application fee and a renewal fee for an HVAC technician-in-training license.

~~13.3.~~ 14.4. 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.~~ 14.5. The Commissioner shall charge a \$10.00 fee for a duplicate license.

### ~~§42-34-14~~ 15. Reciprocity.

To the extent that another state licenses HVAC technicians, HVAC residential technicians, ~~and or~~ technicians-in-training and has requirements equivalent to ~~W. Va. Code §21-16-1 et seq., the Act~~ and this rule, the Commissioner, in his or her discretion, may grant licenses without examination to an HVAC technician, an HVAC residential technician, or a technician-in-training licensed by that state, as follows:

~~14.1.~~ 15.1. The applicant has provided satisfactory proof of his or her qualifications; and

~~14.2.~~ 15.2. The applicant has paid the fee established in section ~~13~~ 14 of this rule.