



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: 42-34
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 42-34 Regulation of HVAC Work

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §21-16-5 and §21-17-12

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 gives the Division of Labor Commissioner broad authority to promulgate rules to implement and carry out provisions of the Regulation of Heating, Ventilating, and Cooling Work Act (the HVAC Act).

W. Va. Code §21-17-12 gives agencies that regulate applicable occupations authority to promulgate rules to carry out provisions of the Review and Credential Acknowledgement Procedures Act (the RECAP Act).

Consistent with these grants of authority, the proposed rule defines terms used in the HVAC Act, the RECAP Act, or the rule; adopts International Mechanical Code and International Residential Code standards; sets forth licensure requirements for HVAC technicians, residential technicians, and technicians-in-training; identifies license application and license renewal procedures and associated fees, including provisions on procedures for applicants seeking licensure pursuant to the RECAP Act; sets forth supervision ratio requirements; sets forth examination requirements for technicians and residential technicians and identifies examination procedures and associated fees; and identifies administrative hearing and appeal procedures and cease and desist order procedures.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/29/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/29/2022

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?

N/A

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 purpose of the Regulation of Heating, Ventilating, and Cooling Work Act and the proposed rule is to protect the health, safety, and welfare of the public as well as public and private property to ensure the competence of those who perform HVAC work in this state.

The proposed rule adds new definitions of Cease and desist order; Classification; ICC; and Other authorization to practice and amends definitions of Division; Employer-sponsored training program; HVAC work; and Immediate family.

The proposed rule makes revisions consistent with HB 2008, passed during the 2021 Regular Legislative Session, and HB 4634, passed during the 2022 Regular Legislative Session (see explanations below) and makes technical corrections and non-substantive changes related to formatting.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

HB 2008, passed during the 2021 Regular Legislative Session, and HB 4634, passed during the 2022 Regular Legislative Session, changed certain occupational licensing requirements.

To incorporate the changes effected by the enactment of HB 2008, language was stricken regarding the amount of technical education and training hours required to qualify for licensure as an HVAC technician or residential technician. Language was added regarding veteran qualifications for technician licensure.

To incorporate the changes effected by the enactment of HB 4634, definitions and language were added regarding recognition of occupational licensing credentials and work experience from other states.

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 no economic impact on the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed rule will have an economic impact on a special revenue account due to the reduction in licensing fees from \$50 to \$25 for HVAC technicians-in-training.

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

The proposed rule will have an economic impact due to the reduction in licensing fees from \$50 to \$25 for HVAC technicians-in-training.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 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
	0	0	0

2. Estimated Total Revenues

E. 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 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. and 21-1E-1 et seq.~~ This rule governs licensing, fees, examinations, and penalties for violations in accordance with §21-16-1 et seq., §21-1E-1 et seq., and §21-17-1 et seq.

1.2. Authority. -- W. Va. Code §§~~21-16-5, and~~ 21-1E-4, and §21-17-12.

1.3. Filing Date. -- ~~March 16, 2020.~~

1.4. Effective Date. -- ~~May 1, 2020.~~

1.5. Sunset Date Provision. -- This rule shall terminate and have no further force or effect on ~~May 1, 2030~~ August 1, 2028.

§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.~~ This legislative rule applies to all persons and matters governed or otherwise within the jurisdiction of the Regulation of Heating, Ventilating, and Cooling Act, W. Va. Code §21-16-1 et seq.

2.2. Enforcement. The enforcement of this legislative rule is vested ~~with~~ in 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.

3.2. "Cease and desist order" means an order issued by the Division of Labor pursuant to the Act and this rule to an unlicensed person who performs work for which a license is required.

3.3. "Classification" or "scope of work" means the scope of practice of an HVAC technician, HVAC residential technician, or HVAC technician-in-training as defined in W. Va. Code §21-16-4.

~~3.2.~~ 3.4. "Commissioner" means the Commissioner of the West Virginia Division of Labor and his or her authorized representatives.

~~3.3.~~ 3.5. "Direct supervision" means the direction, oversight, and control of a licensed HVAC technician-in-training's work by a licensed HVAC technician or a licensed HVAC residential technician. "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.

~~3.4.~~ 3.6. "Division" means the West Virginia Division of Labor and its authorized representatives.

~~3.5.~~ 3.7. "Employer-sponsored training program" means a planned curriculum, approved by the Commissioner, that ~~must include~~ includes training in workplace and technical competencies.

~~3.6.~~ 3.8. "HVAC work" means heating, ventilating, and air conditioning or cooling work, but does not include work on refrigeration lines, steam lines, or hydronics.

3.9. "ICC" refers to the International Code Council, 500 New Jersey Avenue NW, 6th Floor, Washington, D.C. 20001.

~~3.7.~~ 3.10. "Immediate family," as used in W. Va. Code ~~§21-16-3(c)(1), means and includes a person's~~ §21-16-3(d)(1), means a person's parents, spouse, sibling, or child.

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

~~3.9.~~ 3.11. "Non-residential heating, ventilating, and cooling system" means any system:

~~3.9.a.~~ 3.11.1. Consisting of more than 4 four separate heating, ventilating, and cooling units with a combined capacity of more than 20 tons – 520,000 BTUs; ~~or~~

~~3.9.b.~~ 3.11.2. Used in commercial structures over 5,000 square feet; ~~or~~

~~3.9.c.~~ 3.11.3. Where fire dampers are used or required; or

~~3.9.d.~~ 3.11.4. Consisting of packaged rooftop units.

3.12. "Other authorization to practice," as used in section 14 of this rule, means a nontransferable acknowledgement, other than a license, by another state government that is provided to an individual asserting that the individual has met the educational and examination requirements to engage in the performance of HVAC work.

§42-34-4. Adoption of Standards.

~~The 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, is adopted and incorporated by reference~~ The International Mechanical Code and the International Residential Code for One-and-Two-Family Dwellings, published by the ICC and as adopted by the West Virginia State Fire Commission in 87 CSR 4, are incorporated herein in their entirety by reference.

§42-34-5. ~~License Required~~ Licensure Required.

~~5.1. Unless otherwise exempt under the 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 Act and this rule, and the applicable provisions of the Contractor Licensing Act, W. Va. Code §21-11-1 et seq. Except as otherwise provided in the Act, no person may perform or offer to perform HVAC work in this state without a license.~~

~~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. Any person licensed pursuant to the provisions of the Act and this rule shall carry proof of a valid license at all times when performing HVAC work in this state.~~

~~5.3. A license issued pursuant to the Act and this rule is not transferable.~~

§42-34-6. Minimum Qualifications and Requirements for an HVAC Technician License Licensure of HVAC Technicians; Veteran Qualifications for HVAC Technician Licensure.

~~6.1. A person desiring an HVAC technician license pursuant to the Act and this rule shall submit an application to the Commissioner.~~

~~6.2. The Commissioner shall issue an HVAC technician license to an applicant who:~~

~~6.2.a. Is at least 18 years old;~~

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

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

~~6.2.d. Provides acceptable documentation or a sworn affidavit which demonstrates that he or she has at least 2,000 hours of experience and/or training working on heating, ventilating, and cooling systems and at least 6,000 hours of experience and/or training in heating, ventilating, and cooling or related work, to include other sheet metal industry tasks. Training and experience may include, but is not limited to, the successful completion of an HVAC 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. Pays the application fee set forth in section 14 of this rule.~~

6.1. Any person desiring to be licensed as an HVAC technician shall submit a completed application/affidavit requesting licensure to the Commissioner on forms supplied by the Division and pay the applicable license fee as prescribed in section 10 of this rule.

6.2. All applicants for an HVAC technician license shall pass a required written examination, except in the case of an applicant seeking licensure in accordance with section 15 of this rule.

6.3. All applicants for an HVAC technician license shall submit proof completion of at least 2,000 hours of HVAC-related work, training, and experience: *Provided*, That an applicant who has served as a member of any branch of the United States Armed Forces, the National Guard, or armed forces reserve may submit proof of the applicant's completion of a course of instruction required to qualify him or her for rating as

an HVAC technician or other equivalent rating in lieu of proof that the applicant completed at least 2,000 hours of HVAC-related work, training, and experience. Training and experience may include, but is not limited to, the successful completion of an HVAC-related training program acquired through career technical education provided by the state's public schools, an apprenticeship program, or an employer-sponsored program as defined in subsection 3.7 of this rule.

6.4. An HVAC technician license is valid for up to one year unless sooner suspended or revoked by the Commissioner.

6.5. A licensed HVAC technician may renew the license on or before its expiration date by submitting a renewal application on forms supplied by the Division and paying the applicable renewal fee as prescribed in section 10 of this rule. The Commissioner shall provide each licensee with a renewal notice at least 45 days in advance of the license's expiration date. If the renewal application is received or postmarked more than 15 days after the license's expiration date, the licensee shall pay a late fee of \$25 in addition to the annual renewal fee: *Provided:* That a license that has been expired for 90 days or more cannot be renewed.

6.6. A duplicate license may be issued upon receipt of a written request to the Commissioner from the licensee. The Commissioner may charge \$10 fee for a duplicate license.

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

~~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;~~

~~7.2.c. provides acceptable documentation or a sworn affidavit which demonstrates that he or she has at least 2,000 hours of HVAC related work, training, and experience, which may include, but is not limited to, the successful completion of an HVAC 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~~

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

~~7.3. On or after December 31, 2019, 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. provides acceptable documentation or a sworn affidavit which demonstrates that he or she has at least 2,000 hours of HVAC related work, training, and experience, which may include, but is not limited to, the successful completion of an HVAC 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~~

~~7.3.e. 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 non-residential HVAC system as defined in this rule.~~

~~7.5. A licensed HVAC residential technician may perform work on any non residential 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.~~

7.1. Any person desiring to be licensed as an HVAC residential technician shall submit a completed application/affidavit requesting licensure to the Commissioner on forms supplied by the Division and pay the applicable license fee as prescribed in section 10 of this rule.

7.2. All applicants for an HVAC residential technician license shall pass a required written examination, except in the case of an applicant seeking licensure in accordance with section 15 of this rule.

7.3. An HVAC residential technician license is valid for up to one year unless sooner suspended or revoked by the Commissioner.

7.4. A licensed HVAC residential technician may renew the license on or before its expiration date by submitting a renewal application on forms supplied by the Division and paying the applicable renewal fee as prescribed in section 10 of this rule. The Commissioner shall provide each licensee with a renewal notice at least 45 days in advance of the license's expiration date. If the renewal application is received or postmarked more than 15 days after the license's expiration date, the licensee shall pay a late fee of \$25 in addition to the annual renewal fee: *Provided*: That a license that has been expired for 90 days or more cannot be renewed.

7.5. A duplicate license may be issued upon receipt of a written request to the Commissioner from the licensee. The Commissioner may charge \$10 fee for a duplicate license.

§42-34-8. Minimum Qualifications and Requirements for an HVAC Technician-In-Training License Licensure of HVAC Technicians-In-Training.

~~8.1. A person desiring an HVAC technician in training license pursuant to the Act and this rule shall submit an application to the Commissioner.~~

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

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

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

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

8.1. Any person desiring to be licensed as an HVAC technician-in-training shall submit a completed application/affidavit requesting licensure to the Commissioner on forms supplied by the Division and pay the applicable license fee as prescribed in section 10 of this rule.

8.2. An HVAC technician-in-training's license is valid for up to one year unless sooner suspended or revoked by the Commissioner.

8.3. A licensed technician-in-training may renew the license on or before its expiration date by submitting a renewal application on forms supplied by the Division and paying the applicable renewal fee as prescribed in section 10 of this rule. The Commissioner shall provide each licensee with a renewal notice at least 45 days in advance of the license's expiration date. If the renewal application is received or postmarked more than 15 days after the license's expiration date, the licensee shall pay a late fee of \$25 in addition to the annual renewal fee: *Provided:* That a license that has been expired for 90 days or more cannot be renewed.

8.4. A duplicate license may be issued upon receipt of a written request to the Commissioner from the licensee. The Commissioner may charge \$10 fee for a duplicate license.

§42-34-9. Supervision Ratios.

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

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

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

~~10.1. 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.~~

~~10.2. The Commissioner shall provide a licensee with a renewal application at least 45 days in advance of the license's expiration date.~~

~~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.~~

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

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

10.1. An initial or renewal applicant for an HVAC technician license shall pay a \$75 annual license fee: *Provided*, That no license fee shall be charged if the applicant is licensed as an HVAC contractor pursuant to W. Va. Code §30-42-1 et seq.

10.2. An initial or renewal applicant for an HVAC residential technician license shall pay a \$50 annual license fee.

10.3. An initial or renewal applicant for an HVAC technician-in-training license shall pay a \$25 annual license fee.

10.4. Any renewal application that is received or postmarked more than 15 days after the license's expiration date shall pay a \$25 late fee in addition to the annual license fee.

10.5. The Commissioner may charge a \$10 fee for a duplicate license upon receipt of a written request from the licensee.

§42-34-11. Examination Required for HVAC Technicians and HVAC Residential Technicians.

~~11.1. Unless otherwise exempt from examination pursuant to the Act and this rule, a person desiring an HVAC technician license, or an HVAC residential technician license, shall pass a written examination.~~

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

~~11.3. The contents of the HVAC technician examination 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 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.~~

~~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.~~

~~11.6. The Commissioner may:~~

~~11.6.a. contract with a private testing agent to conduct the written examination; or~~

~~11.6.b. develop a written examination process within the Division.~~

~~11.7. The license applicant shall pay the examination fee directly to either the private testing agent or to the Division according to who administers the examination.~~

~~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.~~

11.1. Any person desiring to be licensed as an HVAC technician or HVAC residential technician under the provisions of the Act and this rule shall take the examination required for the desired classification and obtain a minimum score of at least 70%.

11.2. The HVAC technician examination shall be designed to test the applicant's knowledge of the standards adopted in section 4 of this rule that are applicable to an HVAC technician's scope of work for the installation, repair, and maintenance of HVAC systems.

11.3. The HVAC residential technician examination shall be designed to test the applicant's knowledge of the standards adopted in section 4 of this rule that are applicable to an HVAC residential technician's scope of work for the installation, repair, and maintenance of residential HVAC systems: *Provided*, That the HVAC residential technician examination shall be developed in consultation with HVAC industry representatives.

11.4. The Commissioner shall provide for written examinations for HVAC technician and HVAC residential technician license applicants and shall establish an examination fee schedule for the administration of examinations. The Commissioner may:

11.4.1. Contract with a private testing agent to conduct examinations, in which case applicants shall pay the examination fee directly to the testing agent; or

11.4.2. Develop examinations and examination procedures and conduct examinations, in which case applicants shall pay the examination fee directly to the Division in advance of the examination.

11.5. An applicant who does not receive a minimum score of 70% on an examination is eligible to retake an examination upon payment of the applicable examination fee.

§42-34-12. ~~Denial, Suspension, Revocation, or Reinstatement of a License; Investigation; and Disciplinary Action~~ Denial, Suspension, Revocation, and Reinstatement of Licenses; Investigations; Grounds for Disciplinary Action.

~~12.1. Pursuant to the grounds set forth in W. Va. Code §21-16-7, the Commissioner may deny, suspend, or revoke 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 grounds for disciplinary action against a licensee.~~

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

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

~~12.3. A violation of 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.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.~~

~~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.~~

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

~~12.3.d. After the hearing, if the Commissioner finds that a violation of the Act has occurred, he or she may impose any disciplinary action provided for in the Act or this rule.~~

12.1. The Commissioner may deny, suspend, revoke, or reinstate a license in accordance with the provisions of the Act and this rule. A violation of 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.

12.2. Upon receipt of a complaint or upon his or her own inquiry, the Commissioner shall conduct an investigation to determine whether there are grounds for disciplinary action against a licensee. All complaints shall be in writing and include the name, address, and phone number of the complainant. The Commissioner shall provide a copy of the complaint to the licensee.

12.3. Any disciplinary action against a licensee may not be imposed without notice to the licensee and opportunity for a hearing in accordance with the provisions of W. Va. Code §29A-5-1 et seq.

12.3.1. The Commissioner may conduct the hearing or appoint a hearing examiner.

12.3.2. A licensee has a right to attend the hearing in person, to be represented by an attorney at law licensed to practice in West Virginia, or to submit a written response to the Commissioner, and may offer testimony and submit relevant factual information: *Provided*, That if the licensee receives proper notice of the hearing, the licensee's failure to attend the hearing does not preclude the imposition of disciplinary action.

12.3.3. If the Commissioner appoints a hearing examiner to conduct the hearing, the hearing examiner shall submit a recommended decision to the Commissioner within 10 days of conclusion of the hearing. The hearing examiner may recommend the imposition of any appropriate disciplinary action permitted by the Act or this rule. The Commissioner shall accept, reject, or modify the hearing examiner's recommended decision and issue a final order within 10 days of receipt of the recommended decision.

12.3.4. If the Commissioner conducts the hearing and concludes that a violation of the Act or this rule occurred, the Commissioner shall issue a final order within 10 days of the hearing's conclusion and may impose any disciplinary action permitted by the Act or this rule.

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

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

~~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.~~

~~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.~~

13.1. Upon a determination that a person is engaged in HVAC work in this state without a valid license, the Division shall issue a cease and desist order requiring that person to immediately cease all operations in this state. The person can immediately engage in HVAC work upon issuance of a license.

13.2. Any person continuing to engage in plumbing work after the issuance of a cease and desist order is subject to a penalty of not less than \$200 nor more than \$1,000 as set forth in W. Va. Code §21-16-8.

§42-34-14. Fees Appeals.

~~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 W. Va. Code §21-11-1 et seq.~~

~~14.2. The Commissioner shall charge a \$50.00 application fee and a renewal fee for an HVAC residential technician license.~~

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

~~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.~~

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

Any person adversely affected by an action of the Commissioner may appeal in accordance with the provisions of W. Va. Code §29A-5-1 et seq.

§42-34-15. Reciprocity; Work Experience.

~~To the extent that another state licenses HVAC technicians, HVAC residential technicians, or technicians in training and has requirements equivalent to 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:~~

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

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

15.1. To the extent that other states license or issue other authorization to practice for HVAC technicians, HVAC residential technicians, or HVAC technicians-in-training, and have requirements equivalent to the Act and this rule, the Commissioner, in his or her discretion, may grant licenses of the same classification without examination to technicians licensed or authorized by other states, as follows:

15.1.1. The applicant has provided satisfactory proof of his or her qualifications, including the applicant's compliance with all requirements of W. Va. Code §21-17-3(a); and

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15.1.2. The applicant has paid the applicable license fee as prescribed in section 10 of this rule.

15.2. To the extent that an applicant is seeking licensure based on work experience, the Commissioner, in his or her discretion, may grant a license with the applicable classification without examination as follows:

15.2.1. The applicant's work experience is in a state that does not license or issue other authorization to practice for the performance of plumbing work;

15.2.2. The applicant has provided satisfactory proof of his or her qualifications, including the applicant's compliance with all requirements of W. Va. Code §21-17-4; and

15.2.3. The applicant has paid the applicable license fee as prescribed in section 10 of this rule.