



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

3/31/2023 8:27:36 AM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

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

CITE STATUTORY AUTHORITY: W. Va. Code §21-16-5, §21-1E-4, and §21-17-12

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 409

Section §64-10-2(c) Passed On 3/10/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2023

This rule shall terminate and have no further force or effect from the following date:

August 01, 2028

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.

42CSR34

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 34
REGULATION OF HEATING, VENTILATING, AND COOLING WORK

§42-34-1. General.

1.1. Scope. -- 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, §21-1E-4, and §21-17-12.

1.3. Filing Date. -- March 31, 2023.

1.4. Effective Date. -- May 1, 2023.

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

§42-34-2. Application and Enforcement.

2.1. Application. 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 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.

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

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.

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

42CSR34

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

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.

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

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

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

3.11.2. Used in commercial structures over 5,000 square feet;

3.11.3. Where fire dampers are used or required; or

3.11.4. Consisting of packaged rooftop units.

3.12. "Other authorization to practice," as used in section 15 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 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. Licensure Required.

5.1. 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. 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. Licensure of HVAC Technicians; Veteran Qualifications for HVAC Technician Licensure.

42CSR34

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. Licensure of HVAC Residential Technicians.

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. Licensure of HVAC Technicians-In-Training.

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 licensed HVAC residential technician may directly supervise no more than four licensed HVAC technicians-in-training.

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

§42-34-10. Licensure Fees.

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. 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, and Reinstatement of Licenses; Investigations; Grounds for Disciplinary Action.

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.

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 HVAC 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. Appeals.

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.

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

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 HVAC work;

42CSR34

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.