



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Labor TITLE-SERIES: 42-21A
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Licensing of Elevator Mechanics, Accessibility Technicians, and Limited Technicians and Registration of Elevator Mechanic Apprentices
CITE STATUTORY AUTHORITY: W. Va. Code §21-3C-11 and §21-17-12

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/26/2023 11 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Brooke M. Farber
ADDRESS: 1900 Kanawha Boulevard East, Capitol Complex
Building 3, Room 200
EMAIL: brooke.m.farber@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The proposed rule includes a definition section; a section on the adoption of American Society of Mechanical Engineers Code standards; a section on the required licensure or registration of elevator mechanics, accessibility technicians, limited technicians, and elevator mechanic apprentices and the requirement to work under a contractor's license; sections on license or registration applications and renewals; a section on continuing education requirements for elevator mechanics; a section on elevator work not permitted under a limited technician license; a section on emergency requests for elevator mechanic or accessibility technician licenses; a section on requests for temporary elevator mechanic licenses; a section on licensure fees; a section on denials, suspension, revocation, and reinstatement of licenses or registrations and investigations and grounds for disciplinary actions against licensees or registrants; a section on cease and desist orders and penalties; a section on appeals; and a section on licensing reciprocity and work experience.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The proposed changes to the rule are necessary to comply with state law provisions.

The proposed rule updates the section on appeals to provide that any person adversely affected by an order of the Commissioner of the West Virginia Division of Labor may file an appeal with the Intermediate Court of Appeals in accordance with W. Va. Code §§29A-5-4 and 51-11-1 et seq.

The proposed rule adds a new section relating to recognition of occupational licensing credentials from other states in accordance with W. Va. Code §21-17-1 et seq.

Additionally, the proposed rule includes technical corrections and other non-substantive amendments related to formatting.

There are no fee changes in the proposed rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed rule has no economic impact on revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed rule has no economic impact on special revenue accounts.

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

The proposed rule has no economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 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
2. Estimated Total Revenues	0	0	0

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.

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TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 21A
**LICENSING OF ELEVATOR MECHANICS, ~~AND TECHNICIANS AND REGISTRATION OF APPRENTICES~~
ACCESSIBILITY TECHNICIANS, AND LIMITED TECHNICIANS AND REGISTRATION OF ELEVATOR
MECHANIC APPRENTICES**

§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 Commissioner of the West Virginia Division of Labor, and penalties for violations, in accordance with W. Va. Code §21-3C-1 et seq~~ This legislative rule governs the requirements and procedures for licensing elevator mechanics, accessibility technicians, limited technicians, and registration of elevator mechanic apprentices; fees; and penalties for violations in accordance with the Elevator Safety Act, W. Va. Code §21-3C-1 et seq.

1.2. Authority. -- W. Va. Code §21-3C-11 and §21-17-12.

1.3. ~~Technical Amendment Filed~~ Filing Date. -- July 9, 2021.

1.4. Effective Date. -- ~~May 1, 2016.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2029.

§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~~ This legislative rule applies to all persons working as elevator mechanics, accessibility technicians, limited technicians, or elevator mechanic apprentices governed or otherwise within the jurisdiction of the Elevator Safety Act, W. Va. Code §21-3C-1 et seq.

2.2. Enforcement. The enforcement of this ~~rule is vested with the Commissioner~~ legislative rule is vested with the Division of Labor.

§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~~ a person who meets the requirements set forth in W. Va. Code §21-3C-10a(d) and this rule.

3.2. "Act" means the Elevator Safety Act, W. Va. Code §21-3C-1 et seq.

~~3.2.~~ 3.3. "ASME" refers to the American Society of Mechanical Engineers, Two Park Avenue, New York, New York 10016-5990.

3.4. "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 or to a licensee who performs work outside of the licensee's classification.

~~3.3.~~ 3.5. "Commissioner" means the Commissioner of the West Virginia Division of Labor and his or her authorized representatives.

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

~~3.5.~~ 3.7. "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.

~~3.6.~~ 3.8. "Emergency," as used in W. Va. Code §21-3C-11(a)(5) and section 10 of this rule, means a disaster, act of God, or work stoppage, when so declared by the President of the United States or Governor of West Virginia.

3.9. "License classification" or "classification" means the scope of work of an elevator mechanic, accessibility technician, or limited technician as set forth in the Act and this rule.

~~3.7.~~ 3.10. "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 a person who meets the requirements set forth in W. Va. Code §21-3C-10a(e) and this rule.

~~3.8.~~ 3.11. "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.

3.12. "Other authorization to practice," as used in section 16 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 erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators, related conveyances, or accessibility equipment.

§42-21A-4. Adoption of Standards.

The following ~~American Society of Mechanical Engineers (ASME)~~ standards are incorporated by reference:

- 4.1. ASME Code A17.1- 2013/CSA B44-13, "Safety Code for Elevators and Escalators;"
- 4.2. ASME Code 17.2-2014, "Guide for Inspection of Elevators, Escalators, and Moving Walks;" and
- 4.3. ASME Code A18.1 - 2014, "Safety Standard for Platform Lifts and Stairway Chairlifts."

§42-21A-5. ~~Licensure and Registration Required~~ Licensure or Registration Required; Requirement to Work Under a Contractor's License.

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~~5.1. A person may not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators, 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. and 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.~~

5.1. Except as otherwise provided in the Act, no person may engage or offer to engage in the performance of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators, related conveyances, or accessibility equipment without a license.

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

5.3. Except as otherwise provided in the Act, no person may work as an elevator mechanic apprentice unless he or she meets the requirements set forth in W. Va. Code §21-3C-10a(f) and is registered with the Commissioner in accordance with section 9 of this rule.

5.4. Any person licensed or registered pursuant to the Act and this rule shall carry proof of a valid license at all times when performing elevator work.

5.5. Except as otherwise provided in the Act, a person licensed or registered pursuant to the Act and this rule must be, or be employed by, a contractor licensed pursuant to the West Virginia Contractor Licensing Act, W. Va. Code §30-42-1 et seq.

§42-21A-6. Minimum Qualifications for Licensure; Requirement to Work under Contractor's License Licensure of Elevator Mechanics.

~~6.1. The Commissioner shall issue a license or registration certificate to an applicant who:~~

~~6.1.1. Is at least 18 years of age;~~

~~6.1.2. Submits an application on forms provided by the Commissioner;~~

~~6.1.3. Pays the application fee; and~~

~~6.1.4. 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. and this rule is not assignable or transferable and is valid for a period not to exceed two years from the date on which it was issued.~~

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~~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 §30-42-1 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.~~

6.1. Any person desiring to be licensed as an elevator mechanic 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 12 of this rule.

6.2. All applicants for an elevator mechanic license shall meet the requirements as set forth in W. Va. Code §21-3C-10a(c).

6.3. An elevator mechanic's license is valid for up to two years from the date on which it was issued unless sooner suspended or revoked by the Commissioner.

6.4. An elevator mechanic's license expires on the last day of the anniversary month from the month of initial licensure.

6.5. An elevator mechanic licensee 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 12 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 \$50 reinstatement fee in addition to the biennial renewal fee: *Provided*, That a license that has been expired for 90 days or more cannot be renewed/reinstated.

§42-21A-6A. Continuing Education Requirements for Elevator Mechanics; Proof of Completion.

6A.1. 16 hours of continuing education shall be required for elevator mechanic licensure renewal.

6A.2. Each elevator mechanic licensee shall submit proof of completion to the Commissioner prior to a license being renewed. The proof of completion shall have been acquired within the two-year period immediately preceding renewal.

6A.3. Each elevator mechanic licensee shall pay a fee directly to the entity providing the continuing education instruction.

6A.4. If an elevator mechanic licensee is unable to complete the required continuing education instruction prior to the license's expiration 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-7. ~~Work Not Permitted Under a Limited Technician License~~ Licensure of Accessibility Technicians; LULA Elevator Endorsement.

~~A person licensed as a limited technician may 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.~~

7.1. Any person desiring to be licensed as an accessibility 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 12 of this rule.

7.2. All applicants for an accessibility technician license shall meet the requirements as set forth in W. Va. Code §21-3C-10a(d).

7.3. Any accessibility technician licensee desiring a LULA elevator endorsement shall meet the requirements as set forth in W. Va. Code §21-3C-10a(d)(3).

7.4. An accessibility technician's license or an accessibility technician license with a LULA elevator endorsement is valid for up to two years from the date on which it was issued unless sooner suspended or revoked by the Commissioner.

7.5. An accessibility technician's license or an accessibility technician license with a LULA elevator endorsement expires on the last day of the anniversary month from the month of initial licensure.

7.6. An accessibility technician licensee or an accessibility technician licensee with a LULA elevator endorsement 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 12 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 \$50 reinstatement fee in addition to the biennial renewal fee: *Provided*, That a license that has been expired for 90 days or more cannot be renewed/reinstated.

§42-21A-8. Expiration and Renewal Licensure of Limited Technicians.

~~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 an 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 may not renew a license or registration which has lapsed for a period of 90 days or more.~~

~~8.5. An elevator mechanic, an 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.~~

8.1. Any person desiring to be licensed as a limited 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 12 of this rule.

8.2. All applicants for a limited technician license shall meet the requirements as set forth in W. Va. Code §21-3C-10a(e).

8.3. A limited technician's license is valid for up to two years from the date on which it was issued unless sooner suspended or revoked by the Commissioner.

8.4. A limited technician's license expires on the last day of the anniversary month from the month of initial licensure.

8.5. A limited technician licensee 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 12 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 \$50 reinstatement fee in addition to the biennial renewal fee: *Provided*, That a license that has been expired for 90 days or more cannot be renewed/reinstated.

§42-21A-8A. Work Not Permitted Under a Limited Technician License.

A limited technician may not replace any of the following:

8A.1. Governors;

8A.2. Sheave wheels or bearings;

8A.3. Cables and shackles;

8A.4. Ring gears and worn gears;

8A.5. Buffers;

8A.6. Traveling cables;

8A.7. Hydro pumps;

8A.8. Hydro pump motors;

8A.9. Hydro valve chests;

8A.10. Jack packing and seals; and

8A.11. Rope grippers.

§42-21A-9. Continuing Education Required for Elevator Mechanics to Renew Their License Registration of Elevator Apprentices.

~~9.1. An elevator mechanic shall complete 16 hours of continuing education instruction during the two 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 an elevator mechanic 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.~~

9.1. Any person desiring to be registered as an elevator apprentice shall submit a completed application/affidavit requesting registration to the Commissioner on forms supplied by the Division.

9.2. Pursuant to W. Va. Code §21-3C-10a(f), all elevator apprentices are required to be currently enrolled in an elevator apprentice program and in good standing.

9.3. An elevator apprentice's certificate of registration is valid for up to two years unless sooner suspended or revoked by the Commissioner.

§42-21A-10. Request and Application for an Emergency Elevator Mechanic License or an Emergency Accessibility Technician License Emergency Requests for Elevator Mechanic or 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 five 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 may not charge a fee for the issuance of an emergency elevator mechanic license or an emergency accessibility technician license.~~

10.1. If the number of persons holding current elevator mechanic or accessibility technician licenses is insufficient to respond to a declared state of emergency, a licensed elevator contractor may request that the Commissioner issue an emergency elevator mechanic or accessibility technician license to a person certified by the contractor to have an acceptable combination of documented experience and education to perform elevator work without direct supervision.

10.1.1. A licensed elevator contractor shall submit a notarized affidavit to the Commissioner certifying that the emergency license applicant has an acceptable combination of documented experience and education for the applicable license classification.

10.1.2. An applicant shall apply for the applicable emergency license classification within five business days after commencing work requiring a license.

10.1.3. An emergency license issued in accordance with the provisions of this section shall identify the specific elevators, accessibility equipment, or geographical areas where the emergency licensee is authorized to work.

10.2. An emergency license issued in accordance with the provisions of this section is valid for a period of no more than 30 days from the date of issuance.

§42-21A-11. Request and Application for a Temporary Elevator Mechanic License Requests for 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.~~

11.1. If there are no licensed elevator mechanics available, a licensed elevator contractor may request that the Commissioner issue a temporary elevator mechanic license to a person certified by the contractor to have an acceptable combination of documented experience and education to perform elevator work without direct supervision.

11.1.1. A licensed elevator contractor shall submit a notarized affidavit to the Commissioner certifying that the temporary elevator mechanic license applicant has an acceptable combination of documented experience and education.

11.1.2. The applicant shall apply for a temporary elevator mechanic license prior to commencing elevator work.

11.1.3. A temporary license issued in accordance with the provisions of this section shall identify the specific elevators or geographical areas where the licensee is authorized to work.

11.2. A temporary license issued in accordance with the provisions of this section is valid for a period of no more than 30 days from the date of issuance.

§42-21A-12. Licensure Fees.

12.1. An initial or renewal applicant for an elevator mechanic license, accessibility technician license, or limited technician license shall pay a \$180 biennial license fee: *Provided*, That no license fee shall be charged if the applicant is a licensed contractor pursuant to W. Va. Code §30-42-1 *et seq.* and has paid a contractor license fee.

12.1.1. If a renewal application is received or postmarked more than 15 days after the license's expiration date, the licensee shall pay a \$50 reinstatement fee in addition to the \$180 biennial renewal fee.

12.1.2. A license that has been expired for 90 days or more cannot be renewed/reinstated.

12.2. An applicant for a temporary elevator mechanic license shall pay a \$90 license fee.

12.3. There is no license fee charged for the issuance of an emergency elevator mechanic or emergency accessibility technician license.

12.4. There is no fee charged for an elevator mechanic apprentice registration.

§42-21A-12. Denial, Suspension, Revocation, or Reinstatement of License or Certificate of Registration; Hearings **§42-21A-13. Denial, Suspension, Revocation, or Reinstatement of Licenses or Certificates of Registration; Investigations; Grounds for Disciplinary Action.**

~~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 may 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.~~

~~12.2.1. The hearing shall be conducted pursuant to the provisions of W. Va. Code §29A-5-1 et seq.~~

~~12.2.2. 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.~~

~~12.2.3. 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 one 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 one 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.~~

13.1. The Commissioner may deny, suspend, revoke, or reinstate a license or certificate of registration 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 or certificate of registration and permits the imposition of disciplinary action.

13.2. 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 or

registrant. 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 or registrant.

13.3. Disciplinary action may not be imposed without providing the licensee or registrant with notice and opportunity for a hearing in accordance with the provisions of W. Va. Code §29A-5-1 et seq.

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

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

13.3.3. If a hearing examiner is appointed, the hearing examiner shall submit a recommended decision to the Commissioner within 10 days of the hearing's conclusion. 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.

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

§42-21A-13. Effect of Noncompliance §42-21A-14. Cease and Desist Orders; Penalties.

~~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.~~

14.1. Upon a determination that a person is engaged in elevator 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 elevator work upon issuance of a license.

14.2. Any person continuing to engage in elevator 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 §21-3C-12(b).

§42-21A-14. Disposition of Complaints §42-21A-15. Appeals.

~~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:~~

~~14.1.1. The name of the person against whom the complaint is lodged;~~

~~14.1.2. The date of the alleged violation;~~

~~14.1.3. The nature of the alleged violation; and~~

~~14.1.4. 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.~~

~~14.3.1. 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.~~

~~14.3.2. 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.~~

Any person adversely affected by a final order of the Commissioner may appeal the order to the Intermediate Court of Appeals as provided in W. Va. Code §51-11-1 et seq. and §29A-5-4.

~~§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:~~

~~15.2.1. Initial license .. \$180~~

~~15.2.2. Biennial renewal of license .. \$180~~

~~15.2.3. Temporary license .. \$90~~

~~15.2.4. Duplicate license (original lost or destroyed) .. \$10~~

~~15.2.5. Reinstatement of lapsed license .. \$230~~

~~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 §30-42-1 et seq.~~

§42-21A-16. Reciprocity; Work Experience.

16.1. To the extent that other states license or issue other authorization to practice for elevator mechanics, accessibility technicians, limited technicians, or elevator mechanic apprentices, 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 elevator mechanics, accessibility technicians, limited technicians, or elevator mechanic apprentices licensed or authorized by other states, as follows:

16.1.1. 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

16.1.2. The applicant has paid the applicable license fee as prescribed in section 12 of this rule.

16.2. 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:

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

16.2.2. 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

16.2.3. The applicant has paid the applicable license fee as prescribed in section 12 of this rule.