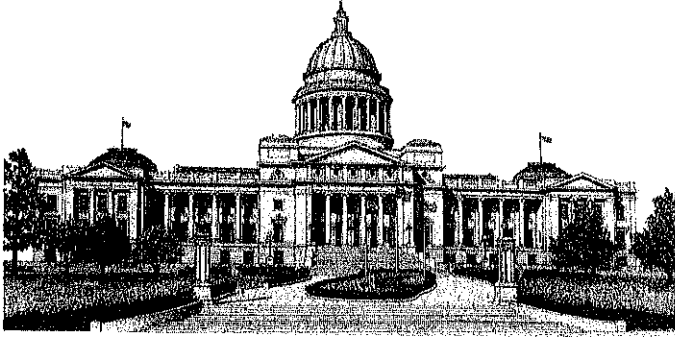


ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

Mark Martin

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Labor

Department Elevator Safety Board

Contact Denise P. Oxley E-mail denise.oxley@arkansas.gov Phone (501) 682-4502

Statutory Authority for Promulgating Rules Ark. Code Ann. 17-1-106(g)(Supp. 2015); 17-1-107(b)(Supp. 2015); and 20-24-106(b)

Rule Title: Rule 010.05. Rules of the Elevator Safety Board, Arkansas Department of Labor

Intended Effective Date
(Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 10 Days After Filing (ACA 25-15-204)
- ☒ Other 03/01/2017
(Must be more than 10 days after filing date.)

	Date
Legal Notice Published	<u>7/30/16-8/1/16</u>
Final Date for Public Comment	<u>09/15/2016</u>
Reviewed by Legislative Council	<u>10/17/2016</u>
Adopted by State Agency	<u>09/15/2016</u>

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Denise P. Oxley denise.oxley@arkansas.gov 01/31/2017

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

(501) 682-4541

leon.jones@arkansas.gov

Phone Number

E-mail Address

Director of Labor

Title

January 31, 2017

Date

**ADMINISTRATIVE RULES OF
THE ELEVATOR SAFETY BOARD,
STATE OF ARKANSAS**

**010.05 Administrative Regulations of the Elevator Safety Board for the Elevator Safety
Division of the Arkansas Department of Labor**

Amendment 1. Rule 010.05-002 is amended to read as follows:

010.05-002 Information for Public Guidance

The mailing address and telephone number for the Elevator Safety Division is:

Elevator Safety Division
Arkansas Department of Labor
10421 West Markham Street
Little Rock, AR 72205
(501) 682-4538

FILED
AR REGISTER DIV.
2017 JAN 31 PM 2:18
MARK MARTIN
SECRETARY OF STATE
STATE OF ARKANSAS

The Department of Labor makes available a list of persons holding certain responsibilities for handling FOIA requests, licensing questions, and complaints against licensees so that the public may obtain information about the agency or make submissions or requests. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained from the agency's office or website.

The agency has a list of official forms used by the agency and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications, which may be obtained from the agency's office or website. The Department of Labor's website is <http://www.labor.ar.gov/>. The Elevator Safety Division's website is: <http://www.labor.ar.gov/divisions/Pages/elevatorInspectionPermits.aspx>. Copies of all forms used by the agency, written statements of policy and written interpretive memoranda, and all orders issued by the agency may be obtained from the agency's office.

Amendment 2. Rule 010.05-006(D), dealing with rule-making, is amended to read as follows:

D. Filing with Legislative Council

Thirty (30) days before the public-comment period ends, the agency will file with the Legislative Council the text of the proposed rule or amendment as well as a financial impact statement and any additional information as may be required by the Legislative Council as provided by Ark. Code Ann. § 10-3-309.

Amendment 3. Rule 010.05-006(G)(1), dealing with rule-making, is amended to read as follows:

G. The Decision to Adopt a Rule

1. The board will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired and the proposed rule has been reviewed and approved by the Legislative Council or other legislative committee pursuant to Ark. Code Ann. § 10-3-309.

Amendment 4. Rule 010.05-006(M), dealing with rule-making, is amended to read as follows:

M. Filing

1. After the board formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed and approved by the Legislative Council, the agency staff will file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Legislative Council or as otherwise provided by Ark. Code Ann. § 25-14-204.

2. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Legislative Council will be kept in a file maintained by the Legal Division of the Arkansas Department of Labor.

3. Notice of the rule change will be posted on the agency website.

Amendment 5. Rule 010.05-007(C), dealing with emergency rule-making, is amended to read as follows:

C. Effective Date of Emergency Rule

1. The board shall not finalize an emergency rule or file an emergency rule with the Secretary of State for adoption until the emergency rule has been approved under Ark. Code Ann. § 10-3-309.

2. The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The agency will file with the rule the

board's written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten (10) days after the filing of the rule pursuant to Ark. Code Ann. § 25-15-204(e). The agency will take appropriate measures to make emergency rules known to persons who may be affected by them.

Amendment 6. Rule 010.05-010(N), dealing with license renewal, is amended to read as follows:

N. License Renewal and Reinstatement, Generally

1. A license may be renewed within six (6) months after the date of expiration by paying the renewal fee and a late fee of twenty dollars (\$20), provided the licensee is otherwise qualified for renewal. If a license is not renewed within six (6) months after the date of expiration, the licensee shall be required to take a new examination. An applicant for renewal or reinstatement shall not be required to take an examination if the applicant meets the requirements for reciprocity pursuant to Rule 010.05-010(O).

2. A license will not be issued or renewed if there is an unpaid fine or fee due the agency. Further, failure to pay any fine or fee may result in license suspension or revocation.

3. Reinstatement

a. Notwithstanding any rule to the contrary, an individual may seek reinstatement under this subsection, Rule 010.05-010(N)(3), provided the applicant for reinstatement demonstrates that he or she:

- i was previously licensed by the board at any time;
 - ii. was licensed in good standing at the time of licensing;
 - iii did not have his or her license revoked for: an act of bad faith or a violation of law, rule or ethics;
 - iv. is not holding a suspended or probationary license in a sister state;
- and
- v. passes a licensing examination if the applicant's license has been expired for more than six (6) months.

b. Continuing education requirements apply to a reinstated licensee in the same manner as other licensees.

c. An applicant for reinstatement shall not be required to comply with the requirements of Rule 010.05-010(N)(3) if the applicant meets the requirements for reciprocity pursuant to Rule 010.05-010(O).

d. The Department of Labor's Code Enforcement Manager shall review and decide on any application for reinstatement in order to expedite the process. The decision of the Code Enforcement Manager is subject to review by the board upon written request by the applicant.

Amendment 7. Rule 010.05-010(R), dealing with a grandfather provision, is amended to read as follows:

R. Active duty service members, returning military veterans, and spouses

1. As used in this rule, "returning military veteran" means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

2. Temporary license

a. An individual who is the holder in good standing of a substantially equivalent license in another state, shall be issued a temporary license of the same class while completing the application process for full licensure, provided the individual is one of the following:

- i. an active duty military service member stationed in the State of Arkansas;
- ii. a returning military veteran applying within one (1) year of his or her discharge from active duty; or
- iii. the spouse of a person under Rule 010.05-010(R)(2)(i) or (ii) above.

b. A temporary license under this rule shall expire on its face in thirty (30) days, although it is subject to renewal until a final administrative decision on full licensure is made.

c. If a full license is granted and the license fee paid, the license shall expire on January 31, regardless of the date of issue or renewal.

3. The Department of Labor's Code Enforcement Manager shall review and decide on the application of any individual under Rule 010.05-010(R) in order to expedite the process. The decision of the Code Enforcement Manager is subject to review by the board upon written request by the applicant.

4. When considering an application for full licensure of an active duty military service member stationed in the State of Arkansas or a returning military veteran applying within one (1) year of his or her discharge from active duty, the Code Enforcement Manager or board shall:

a. consider whether or not the applicant's military training and experience is substantially similar to the experience required by Rule 010.05-010(K) through (M) for the class of license being sought; and

b. accept the applicant's military training and experience in lieu of the experience required by Rule 010.05-010(K) through (M) if the Code Enforcement Manager or board, as applicable, determines the military training and experience is a satisfactory substitute.

5. A license held by an active duty military service member deployed outside the State of Arkansas or his or her spouse shall not expire until one hundred eighty (180) days following the active duty military service member's or spouse's return from active deployment. The licensee must submit proof of deployment and deployment dates.

6. Continuing education

a. An active duty military service member deployed outside the State of Arkansas or his or her spouse shall have an additional one hundred eighty (180) days to obtain the eight (8) hours of continuing education required by Rule 010.05-010(Q), dating from:

i. the two (2) years provided by 010.05-010(Q); or

ii. the date of return to active duty, whichever is longer. For this option, the licensee must submit proof of deployment and deployment dates.

b. A returning military veteran discharged from active duty or his or her spouse shall have an additional one hundred eighty (180) days to obtain the eight (8) hours of continuing education required by 010.05-010(Q), dating from:

i. the two (2) years provided by Rule 010.05-010(Q); or

ii. the expiration of one (1) year from the date of discharge, whichever is longer. For this option, the licensee must submit proof of the discharge date.

Amendment 8. Rule 010.05-020(C), dealing with history of the board's rule-making, is amended to read as follows:

C. History

1. The Elevator Safety Board first promulgated regulations effective August 27, 1963. These regulations were amended effective May 8, 1964; May 4, 1965; July 1, 1968; April 1, 1969; May 19, 1969; September 19, 1969; and July 1, 1975.
2. All previous rules and regulations of the Elevator Safety Board were repealed and new rules and regulations were adopted effective February 1, 1994.
3. All previous rules and regulations of the Elevator Safety Board were repealed and new rules and regulations were adopted effective September 1, 2006.
4. Effective June 1, 2008, Regulation 010.05-011 was amended to adopt ASME A17.1-2007 and ANSI/ASSE A10.4-2007.
5. Effective March 1, 2017, the following rules and regulations of the board were amended: Rule 010.05-002 (Information for public guidance); Rule 010.05-006 (Rule-making); Rule 010.05-007 (Emergency rule-making); Rule 010.05-010 (Licensing); and Rule 010.05-020 (Repealer, Effective Date and History).

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Elevator Safety Board/Arkansas Department of Labor
DIVISION Elevator Safety Division
PERSON COMPLETING THIS STATEMENT Denise P. Oxley, General Counsel
TELEPHONE NO. 501-682-4502 **FAX NO.** 501-682-4535 **EMAIL:** denise.oxley@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule 010.05 Rules of the Elevator Safety Board

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue -0-
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total -0-

Next Fiscal Year

General Revenue -0-
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total -0-

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ 1.00

Next Fiscal Year

\$ 1.00

Any active duty service member, veteran or spouse wishing an extension of licensure or time to obtain CEUs will have to provide a copy of paperwork showing deployment dates or discharge date. This cost should be minimal and is the basis for the cost estimate above.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(c)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.