

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control No. \_\_\_\_\_ Department or Agency: Dept. of Labor  
Rule No. 490-2-4  
Rule Title: Disciplinary Procedures  
         New          X          Amend          Repeal          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?          NO         

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?          NO         

Is there another, less restrictive method of regulation available that could adequately protect the public?          NO         

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?          NO         

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?          NO         

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?          YES         

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Does the proposed rule have an economic impact?          NO         

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer         Stephan McCork        

Date         9-19-12        

(DATE FILED)  
(STAMP)

Department of  
Labor

NOTICE OF INTENDED ACTION

AGENCY NAME: DEPARTMENT OF LABOR

RULE NO. & TITLE: 490-2-4      Disciplinary Procedures

INTENDED ACTION: To amend the above rule in the Disciplinary Procedures section under the Elevator Safety Rules to reflect a new rule number.

SUBSTANCE OF PROPOSED ACTION: The adoption is necessary to correctly reference the rule after the merger of the Department of Industrial Relations and The Department of Labor.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit data, views, or arguments in writing to Stephen McCormick, Department of Labor, 649 Monroe Street, Montgomery, Alabama 36131 by mail or in person between the hours of 8:00 am and 4:30 pm, Monday through Friday until and including November 05, 2012. Persons wishing to submit data, views or arguments orally should contact Stephen McCormick by telephone at (334) 242-8274 during this period to arrange an appointment.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: November 05, 2012

CONTACT PERSON AT AGENCY:

Stephen McCormick  
Department of Industrial Relations  
649 Monroe Street  
Montgomery, AL 36131  
Telephone: (334) 242-8274

  
\_\_\_\_\_  
Stephen McCormick  
Director, Governmental Affairs

ALABAMA DEPARTMENT OF LABOR  
ELEVATOR SAFETY RULES  
ADMINISTRATIVE CODE

CHAPTER 490-2-4 480-8-4  
DISCIPLINARY PROCEDURES

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~~490-2-4-.01~~ 480-8-4-.01 **Complaints.** A person may file a complaint with the Board by doing so in writing, setting forth a full statement of the facts concerning the alleged infraction of the elevator licensing law or rules. In the event a complaint is filed with the Board, the Board's investigation shall not be limited to the matter set forth in the request for investigation but may extend to any act coming to the attention of the Board which appears to violate the law or these rules.

**Author:** Andrew Hamilton Smith

**Statutory Authority:** Code of Ala. 1975, §§25-13-13, -20 (2003).

**History: New Rule:** Filed June 22, 2004; effective July 27, 2004.

~~490-2-4-.02~~ 480-8-4-.02 **Disciplinary Proceedings.**

(1) In accordance with Code of Ala. 1975, §25-13-13, the Elevator Safety Review Board may revoke or suspend a license. This shall not preclude the Board from taking lesser steps, including, but not limited to formal reprimand, required education, etc. The Board may act if any one or more of the following reasons exist:

(a) Any false statement as to material matter in the application.

(b) Fraud, misrepresentation, or bribery in securing a license.

(c) Failure to notify the administrator and the owner or lessee of an elevator or related mechanism of any condition not in compliance with this chapter.

(d) Violation of any provisions of this chapter.

(2) The Board may take these actions only after notice and provision to the licensee of an opportunity to appear before the Board for a hearing, in accordance with Code of Ala. 1975, §41-22-12 et seq., the Alabama Administrative Procedure Act, and these rules issued thereunder.

**Author:** Andrew Hamilton Smith

**Statutory Authority:** Code of Ala. 1975, §25-13-13, -20 (2003).

**History: New Rule:** Filed June 22, 2004; effective July 27, 2004.

**490-2-4-.03 480-8-4-.03 Initiating A Complaint Against A Licensee.**

(1) Form of complaint filing. A person may register a complaint against a mechanic or inspector licensed by the elevator Board by filing a written complaint with the Department of Labor. The written complaint must set forth, at a minimum, the nature, date and place of the alleged violations. The Board may also initiate a license review procedure on its own motion by filing a complaint with the department.

(2) Verification. Upon receipt of a complaint, the department will verify the license number of the person against whom the complaint is lodged. If the person is unlicensed and the complaint alleges criminal conduct, the department will refer the complaint to the office of the Attorney General or the Office of the District Attorney having jurisdiction over the case. If the person is a licensee of the Board, the department will docket the complaint and open an investigation file under the name and license number of the person.

(3) Investigating Panel. An investigating panel consisting of an investigator designated by the department and an Assistant Attorney General will be formed upon the docketing

of a complaint. The Assistant Attorney General assigned to the case will head the panel and supervise the investigation of the complaint.

**Author:** Andrew Hamilton Smith

**Statutory Authority:** Code of Ala. 1975, §25-13-13, -20 (2003).

**History: New Rule:** Filed June 22, 2004; effective July 27, 2004.

**~~490-2-4-.04~~ 480-8-4-.04 Initiating The Investigation.**

(1) Notice to the Licensee. The department will send written notice of the initiation of an investigation to the licensee against whom the complaint has been filed. The notice shall include a copy of the complaint and a copy of the statute and these rules. The notice will inform the licensee that inquiries or materials regarding the investigation should be addressed to the investigating panel at the address of the department.

(2) Notice to the Board. The department will send written notice to the Board and the complainant indicating that an investigation has been instituted regarding a licensing complaint.

(3) The inspector assigned to investigate the complaint shall inspect the work which is the subject of the complaint and interview the complainant. The inspector may also meet and interview the licensee at the direction of the Assistant Attorney General or District Attorney assigned to the matter.

**Author:** Andrew Hamilton Smith

**Statutory Authority:** Code of Ala. 1975, §25-13-13, -20 (2003).

**History: New Rule:** Filed June 22, 2004; effective July 27, 2004.

**~~490-2-4-.05~~ 480-8-4-.05 Recommended Action.**

(1) At the conclusion of the investigation the Assistant Attorney General or District Attorney assigned to the matter shall make a recommendation as to whether formal proceedings should commence against the licensee.

(2) If formal disciplinary proceedings are recommended, the Assistant Attorney General or District Attorney shall submit a complaint describing the alleged violations, and the rules or statutes violated, with the recommendation.

(3) If the licensee is willing to admit to the charges the Assistant Attorney General or District Attorney may explore the possibility of a stipulated settlement. A stipulated settlement must be approved by the Board.

(4) If no disciplinary action is recommended the case will be closed and the complainant and the licensee will be notified that no further action will be taken at this time. The matter may be reopened if new evidence is presented.

**Author:** Andrew Hamilton Smith

**Statutory Authority:** Code of Ala. 1975, §25-13-13, -20 (2003).

**History: New Rule:** Filed June 22, 2004; effective July 27, 2004.

~~490-2-4-.06~~ 480-8-4-.06 **Administrative Hearing Procedures.**

(1) The Board may appoint a person to act on its behalf as Hearing Officer at its administrative hearings. The Hearing Officer shall preside at administrative hearings and shall rule on all questions of evidence and procedure. The Hearing Officer shall admit all evidence that is relevant, material, and which has probative value to the issues under consideration by the Board. Offers of settlement and compromise are not admissible. The Hearing Officer shall consider the evidence presented and submit a recommendation to the Board, including: a procedural summary of the case; findings of fact; conclusions of law; and a recommended decision on the issues included in the administrative complaint including, if necessary, suggested administrative punishment pursuant to the charges in the administrative complaint. The Hearing Officer's recommendation shall be considered by the Board but is not binding on the Board. The Board shall issue an appropriate administrative order modifying, approving, or rejecting the Hearing Officer's recommendation. The Board shall issue its orders within thirty (30) days after receipt of the hearing Officer's recommendation. If the hearing was conducted by the Board itself, the Board shall issue its order within thirty (30) days after receipt of the court reporter's transcript of the administrative hearing. The Board's order in all instances shall include a procedural history of the case, findings of

fact, conclusions of law, and its decision regarding the issues contained within the administrative complaint including, if necessary, the appropriate administrative punishment.

(2) Prior to the taking of witness testimony at the administrative hearing, the Respondent or Respondents shall enter a plea of "guilty" or "not guilty" to each charge contained in the administrative complaint.

(3) All parties shall be allowed to make a concise opening statement regarding the charges in the administrative complaint, defenses to the administrative complaint, expected testimony and evidence, and any proposed administrative punishment.

(4) The parties shall be allowed to present evidence by direct and cross-examination. The executive director, or a designee acting on behalf of the Investigative Committee, shall present its evidence first followed by the other parties in the order determined by the Board or its Hearing Officer. Examination of witnesses shall not be unduly repetitious. The testimony of all parties and witnesses shall be made under oath administered by the Board or the Board's Hearing Officer.

(5) The Board or the Board's Hearing Officer may examine and question any party or witness regarding the administrative complaint and defenses thereto.

(6) All parties shall be allowed to make a brief closing statement summarizing the evidence presented and regarding the applicability or relevant state law and/or Board rules and regulations.

(7) All testimony and statements given in the administrative hearing shall be electronically or stenographically recorded. Any party wishing to obtain a transcript of the hearing shall make arrangements with the court reporter to receive a copy of the transcript at their own expense.

(8) The parties shall not be bound by the strict rules of evidence prevailing in the courts. Evidence shall be admitted in accordance with the Alabama Administrative Procedures Act, Section 13. The administrative complaint and all attachments thereto shall be made a part of the administrative record for consideration by the Board without further authentication.

(9) The Board or its Hearing Officer may admit into evidence the deposition of any witness who is not subject to the subpoena power of the Board or who is unable to be present to testify at the hearing because of death, physical or mental illness, or other good reason at the discretion of the Board or its Hearing Officer.

(10) All exhibits that are offered into evidence, whether admitted or not, shall be made a part of the administrative record in the case and be included as part of the court reporter's original transcript of the hearing. The party who offers each exhibit shall be permitted to substitute a true copy of the exhibit for the original exhibit upon request to and permission by the Board or its Hearing Officer.

(11) All objections concerning the conduct of the hearing or the admission of evidence may be stated orally or filed in writing during the hearing. The objections and responses thereto shall include a statement of the grounds for the objection and legal authority relied upon. The ruling on the objection by the Board or the Board's Hearing Officer shall be made a part of the administrative record of the hearing. Any party may make an offer of proof regarding evidence that is not admitted and may describe the general nature of the evidence offered and not admitted as part of the administrative record of the hearing.

(12) The Board or the Board's Hearing Officer may allow the parties to submit for consideration a proposed order or recommendation which includes a procedural history, proposed findings of fact, conclusions of law, and any suggested administrative punishment. The parties shall cite the appropriate pages of the hearing transcript for any proposed findings of fact.

(13) The administrative hearing shall be otherwise conducted in compliance with the provisions and in accordance with the Alabama Administrative Procedures Act, Code of Ala. 1975, §41-22-12, et. seq. and Code of Ala. 1975, §25-13-13.

**Author:** Andrew Hamilton Smith

**Statutory Authority:** Code of Ala. 1975, §25-13-13, -20 (2003).

**History:** **New Rule:** Filed June 22, 2004; effective July 27, 2004. **Amended:** Filed December 29, 2004; effective February 2, 2005.



~~490-2-4-.07~~ 480-8-4-.07 Administrative Penalties/Fines.

(1) In assessing the penalty for code violations the administrator or administrator's designee shall consider the seriousness of the hazard, the number of people exposed to the hazard whether or not the violation was corrected after notification of its existence, and whether the person has been disciplined for the same or similar violation previously. When a monetary penalty is assessed the fine shall be as follows:

(a) Operating equipment without an operating certificate.

First Offense:	\$ 250.00
Further Offenses:	\$ 500.00

(b) Operating Equipment in unsafe condition.

First Offense:	\$ 500.00
Further Offenses:	\$1000.00

(c) Owner/User not allowing free access for the purpose of inspecting or investigating the equipment.

First Offense:	\$ 500.00
Further Offenses:	\$1000.00

(d) Placing unit back in service, which has been "Red-Tagged" and placed out of service by an inspector, without first having the unit pass inspection.

Any Offense:	\$1500.00
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(e) Turning equipment over for use without a final acceptance inspection.

First Offense:	\$ 500.00
Further Offenses:	\$1000.00

(f) Any installer who installs equipment without a permit.

First Offense:	Double Permit Fee (up to \$1500.00)
Further Offenses:	Triple Permit Fee (up to \$1500.00)

(g) Any other violation of adopted Code, Standards, Rules or Regulations.

First Offense:	\$250.00
Further Offenses:	\$500.00

(2) Administrative penalties issued under the these rules shall not be construed to limit the authority of the administrator to issue orders, revoke permits, revoke licenses or take any other appropriate enforcement action in addition to the administrative fines.

**Author:** Andrew Hamilton Smith

**Statutory Authority:** Code of Ala. 1975, §25-13-13, -20 (2003).

**History: New Rule:** Filed June 22, 2004; effective July 27, 2004. **Amended:** Filed December 29, 2004; effective February 2, 2005.