

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2008 AUG 26 AM 11:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code 21-3C-11

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: Elevator Safety Act

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 26, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No)* West Virginia Division of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

LEGISLATIVE RULE TITLE: Elevator Safety Act

1. Authorizing statute(s) citation W Va Code 21-3C-11

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 17, 2008

b. What other notice, including advertising, did you give of the hearing?
Public comment period only.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 18, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached x No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 26, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David W. Mullins, Commissioner phone: 304.558.7890 x 111
West Virginia Division of Labor fax: 304.558.2273
State Capitol Complex email: david.w.mullins@wv.gov
Building 6, Room B-749
Charleston, WV 25305

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Jennifer Burgess, Director phone: 304.558.7890 x 120
Safety Section fax: 304.558.2415
same as above email: jennifer.w.burgess@wv.gov

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

42CSR21

ELEVATOR SAFETY ACT
SUMMARY OF PROPOSAL

The Elevator Safety Act was amended during the 2008 legislative session to remove the exemption from annual inspection of elevators and other lifting devices less than five years of age. That exemption was a conflict with the requirements of the American Society of Mechanical Engineers (ASME) A17.1 Safety Code for Elevators and Escalators which serves as the inspection code in West Virginia.

This proposal also conforms the certificate of operation fee to the code which was amended in 2004 and details the procedures for denying, revoking and reinstating certificates of competency.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: ELEVATOR SAFETY ACT

Type of Rule: Legislative Interpretive Procedural

Agency: DIVISION OF LABOR

Address: BUILDING 6, ROOM B-749
CAPITOL COMPLEX
CHARLESTON, WV 25305

Phone Number: 304.558.7890 Email: jennifer.w.burgess@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This increase in certificate of operation fees offsets the loss of revenue to the division which resulted when inspection of elevators was privatized. The impact is revenue/cost neutral.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	168,840.00	119,757.00	49,083.00
Personal Services	120,205.00	79,642.00	40,563.00
Current Expenses	48,635.00	40,115.00	8,520.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	326,200.00	139,950.00	186,250.00

Rule Title: _____

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Rule Title: _____

Rule Title: ELEVATOR SAFETY ACT

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Prior to privatizing the elevator inspections, the division employed five inspectors who also inspected amusement rides and attractions. When the inspections in both programs were privatized, the inspection staff in elevator safety was decreased to two half-time inspectors with oversight responsibilities. The division no longer collects inspection fees; the certificate of operation fee was increased to \$100 to offset the loss of revenue. Expenses for the program were reduced with the elimination of three half-time inspectors and their associated current expenses.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: July 18, 2008

Signature of Agency Head or Authorized Representative

David W. Mullin

**TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR**

**SERIES 21
ELEVATOR SAFETY ACT**

FILED

2008 AUG 26 AM 11:21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-21-1. General.

1.1. Scope. -- This legislative rule governs competency of inspectors, certification of inspectors, registration of elevators, inspection of elevators, issuance of Certificate of operation, fees, permits for repair, enforcement and penalties.

1.2. Authority. -- W. Va. Code 21-3C-11.

1.3. Filing Date. -- 5/13/05

1.4. Effective Date. -- 7/1/05

§42-21-2. Application and Enforcement.

2.1. Application. This legislative rule governs all persons, firms, corporations, government entities, materials and transactions covered by the provisions of W. Va. Code §21-3C-1, et seq.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor or its designated representatives as authorized by W. Va. Code §21-3C-11(d).

§42-21-3. Definitions.

3.1. "Certificate of acceptance" means a certificate issued by the division of labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers (ASME) Code A17.1, "Safety Code for Elevators" and ASME Code A18.1, "Safety Code for Platform Lifts and Stairway Chair-lifts".

3.2. "Certificate of competency" means a certificate issued by the division of labor certifying that an individual is qualified to inspect elevators.

3.3. "Certificate of operation" means a certificate issued by the Division of labor certifying than an elevator has been inspected and determined safe for operation, thus authorizing its operation. The "certificate of operation" shall be conspicuously posted on the elevator at all times.

3.4. "Division" means the Division of Labor.

3.5. "Elevator" means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides and includes all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, man-lifts or the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

3.6. "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

3.7. "Inspector" means both a division inspector and a private inspector who holds a certificate of competency issued by the Division and is thereby qualified to conduct safety inspections on elevators.

3.8. "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.

§42-21-4. Registration of Elevators.

4.1. Registration. The owner or operator of any elevator shall register with the Division every elevator operated by him or her, providing all information required by the Division. The registration shall be made on a form designed and furnished by the Division. The division may forward a list of registered elevators to the county or municipality in which the elevators are located.

4.2. Exemptions. The registration requirement is not applicable to elevators located within any single-family residential dwelling. Also, the requirement is not applicable to elevators or similar devices used by mining or industrial operations where the elevators are not available to the general public and are covered by employee safety and health enforcement activities of the Occupational Safety and Health Administration and the Mining Safety and Health Administration, both agencies of the U.S. Department of Labor.

§42-21-5. Certificate of Operation Required.

5.1. Certificate of operation. No elevator may be operated in this state, except those exempted by sub-section 4.2 of this rule, without a valid certificate of operation. The Division shall not issue a certificate of operation until the elevator has been inspected and certified safe for operation by an inspector who holds a certificate of competency issued by the Division. The fee for a certificate of operation is ~~twenty-five dollars (\$25)~~ fifty dollars (\$50) for an initial certificate and ~~twenty-five dollars (\$25)~~ fifty dollars (\$50) for each subsequent renewal. The fee shall be paid directly to the Division. A certificate of operation is valid for twelve (12) months from the date of issue. The owner or operator of an elevator shall apply for a certificate of operation on a form provided by the Division and shall remit the appropriate fee. ~~Provided that newly installed elevators which have successfully passed an acceptance inspection, require a certificate of operation but are not required to have the routine annual inspection for the first five years of use.~~

5.2. Renewal. Every certificate to operate shall be renewed on or before its expiration date. The renewal fee is ~~twenty-five dollars (\$25)~~ fifty dollars (\$50). The owner or operator of the elevator shall apply for renewal on a form furnished by the Division and shall remit the appropriate renewal fee. The Division shall not issue a certificate of operation until the elevator has been inspected and found safe for operation by an inspector who holds a certificate of competency issued by the division. ~~Provided; that elevators which have been in service for less than five years from the date of initial installation and have successfully completed an acceptance inspection are not subject to inspection.~~

5.3. Revocation of a certificate to operate. A certificate to operate may be revoked by the Division for any of the following reasons:

- a. any condition which presents an immediate and serious safety hazard to passengers;
- b. the failure of an owner or operator to comply with any safety hazard abatement order issued by the Division;
- c. the violation of a barricade order issued by the Division or by an inspector certified for competency by the Division;
- d. the submission of any information or statements to the Division which are known by the person submitting the information to be false or misleading in a material respect;
- e. the failure or refusal by the owner or operator of an elevator to permit the Division or its inspectors access to or to copy records, or the failure to make required reports or to provide information, or the failure or refusal to permit entry or inspection as required by this rule; or
- f. the failure to pay any fee required by law or this rule.

§42-21-6. Inspection.

6.1. Inspection required. As required by sub-section 5.1 of this rule, elevators must be inspected for safety and certified safe for operation by an inspector who has been certified for competency by the Division. Provided however, a private inspector may not provide inspection services to an elevator on which the inspector, his or her employer or employee of his or her employer has made repairs or provided routine maintenance. The Division and its certified inspectors or employees may enter into any establishment in which there is located an elevator covered by this rule for the purpose of inspecting the elevator for safety. The inspection may occur, announced or unannounced, at any time between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, or at any other reasonable times considered necessary by the Division in the exercise of its duties.

6.2. Safety Standards. The American Society of Mechanical Engineers (ASME) Code A17.1-3, "Safety Code for Elevators and Escalators" and ASME Code A18.1, "Safety Code for Platform Lifts and Stairway Chair-lifts", are hereby incorporated by reference. This rule shall serve to regulate the safety of elevators and escalators in this state. Every passenger elevator shall be equipped,

maintained and operated in accordance with the ASME Code A17.1-3 and ASME Code A18.1, ~~even though the elevator may be exempted from the inspection process, as authorized by sub-section 5.1 of this rule.~~

6.3. Inspection Report. Every inspector shall prepare a report of inspection on a form approved by the division showing the exact condition of each elevator. The inspector shall leave a copy of the report at the elevator on the day of inspection. The inspector shall forward a copy of the report of inspection to the Division and make a copy of the report available to the county or municipality in which the elevator is located. The inspector's recommendations shall be included in the inspection report if the elevator requires changes or repairs to make it safe to operate. A copy of the report as approved by the Division shall be submitted to the owner or operator of the elevator. Unless the findings in the report are appealed, the owner or operator of the elevator shall make the required changes or repairs before a certificate of operation is issued. The owner or operator of an elevator may appeal the findings of a report of inspection by making application to the Division for a hearing. An application for a hearing must be filed within twenty (20) days of the receipt of the report of inspection. The Division shall conduct hearings in accordance with the requirements of W. Va. Code §29A-5-1, et seq, State Administrative Procedures Act-Contested Cases.

6.4. Inspection Fees. The fee for the inspection of an elevator by the division is one hundred dollars (\$100) for any one inspection. Provided, That in buildings with more than one elevator, the fee is one hundred dollars (\$100) for the first elevator inspected and twenty-five dollars (\$25) for each additional elevator. In situations where changes or repairs are required prior to the issuance of a certificate of operation, no inspection fee will be charged for the first follow-up inspection. However, if subsequent follow-up inspections are required because of the failure to make proper repairs or changes, inspection fees shall be charged at the same level as for an original inspection for each subsequent follow-up inspection. The failure to pay the required inspection fee is sufficient grounds for the Division to withhold the issuance of a certificate of operation.

6.5. Enforcement; defective machinery. The Division or certified inspectors may remove from service, any elevator which is found to be unsafe for passenger use.

a. Notice of unsafe condition. If, during the course of an inspection, the Division or inspector finds that a passenger elevator or any part of the elevator cannot be operated safely, the Division or inspector shall contact the owner or operator in writing stating the deficiencies and recommended repairs or changes. The Division or inspector shall post a notice upon the elevator prohibiting further use. The notice shall contain a statement that operators or passengers are subject to injury by the use of the elevator. Further, the notice shall describe the repairs or changes necessary to be made in order to secure safe operation, the date of the notice, and the name and signature of the inspector issuing the notice.

b. Condemnation. If an inspector finds a passenger elevator to be so unsafe that it presents imminent danger of death or physical injury, the inspector shall seal the elevator out of service and post a hazard notice on the elevator, as described in sub-section 6.5.a of this rule. The Division shall be notified immediately as to the location and condition of the elevator. Any passenger elevator, once sealed, may not be operated except for the purpose of making repairs as prescribed by the

Division. To seal an elevator is to render it mechanically inoperable and to erect a barricade sufficient to deter physical access to the elevator. No seal, notice or barricade placed on or around an elevator in accordance with the provisions of this rule may be removed, obstructed or in any way altered without the written consent of the Division.

6.6. Permits for removal or repair. Before any existing elevator is removed to a different location, the owner or operator shall submit an application of specifications to the Division on forms provided by the Division. A copy of the complete installation plan shall be submitted with the application. Also, any proposed repairs or changes by the owner or operator of an elevator which alter the construction or classification, grade or rated lifting capacity of an elevator shall require a permit, except where the alterations are recommended in an inspection report prepared by an inspector. Upon approval of the application and installation plans, the Division shall issue a permit for the installation or repair of the elevator. No elevator being removed and re-installed or repaired may be operated until its completion, in accordance with the approved plans and specifications.

§42-21-7. Competency of Inspectors. Denial, Suspension, Revocation, or Reinstatement of Certificate of Competency.

7.1. Certificate of Competency. No person may serve as an elevator inspector unless he or she holds a certificate of competency issued by the Division.

7.2. Application required. Any person desiring to obtain a certificate of competency from the Division shall submit a written application accompanied by a ten dollar (\$10) processing fee, upon a form designed and furnished by the Division. The applicant shall provide all information requested on the form and any failure to provide the information shall cause the application to be rejected. The applicant shall also submit the following:

a. A letter from one or more previous employers concerning his or her character and experience;

b Proof that the applicant is at least twenty-one years of age; and

c.. A copy of the applicant's successful test scores on the examination required by the division or a copy of the applicant's Qualified Elevator Inspector (QEI) certificate issued by an organization accredited by the American Society of Mechanical Engineers to certify Qualified Elevator Inspectors.

7.3. Suspension or revocation of certificates. A certificate of competency may be suspended or revoked by the Division if the inspector is found to be incompetent or untrustworthy. Any willfully submitted false statement contained in an inspection report is grounds for suspension of the certificate of competency. *Provided*, that no disciplinary action may be imposed against an inspector without a proper notice served under W.Va. Code §56-2, and an opportunity for a hearing held before the Commissioner or his or her designee under the provisions of W. Va. Code §29A-5, the Administrative Procedures Act. At the hearing, the inspector shall be provided the opportunity to present evidence in person, by counsel or both. After the hearing, if the Commissioner finds a

violation of this rule has occurred, the Commissioner may impose any disciplinary action permitted by law.

7.4 The Commissioner may suspend or revoke the certificate of competency of an inspector who performs elevator inspection work in violation of W. Va. Code §31-3C of this rule. The suspension of a certificate of competency shall be for not less than twenty-four hours nor more than one year. The Commissioner may reinstate the certificate of competency upon satisfactory proof that the inspector is in full compliance with W. Va. Code § 21-3C and this rule.

§42-21-8. Powers and Duties of Counties and Municipalities.

8.1. Work-sharing agreements with the Division. The Division may enter into a work-sharing agreement with any county or municipality whereby the county or municipality would, under the supervision of the Division, assume the inspection and enforcement provisions of W. Va. Code §21-3C-1 et seq.. Under an agreement, the county or municipality will insure:

- a. that all elevators covered under the provisions of W. Va. Code §21-3C-1 et seq. within the county or municipality are inspected annually for safety;
- b. that no elevator covered by W. Va. Code §21-3C-1 et seq. shall be permitted to operate without having first obtained a certificate of operation from the Division;
- c. that any inspector employed by the county or municipality is certified for competency by the Division as required by Section 7 of this rule;
- d. that all inspections for safety are conducted in accordance with the provisions of this rule;
- e. that reports on inspection are filed with the Division within five (5) days of the date of inspection; and
- f. that the county or municipality will comply with any written orders issued by the Division relative to revised inspection procedures or enforcement of W. Va. Code §21-3C-1 et seq.

The Division shall:

- a. provide technical assistance to the county or municipal inspectors where necessary to insure adequate enforcement of the W. Va. Code §21-3C-1 et seq.;
- b. provide supplies of all reporting and inspection forms as may be required by the Division;
- c. permit the county or municipality to collect and retain fees for inspections as a means to support the enforcement effort at the local level; and
- d. provide direct supervision, where considered necessary by the Division, to county or municipal inspectors.

8.2. With the approval of the Division, counties and municipalities may combine their jurisdictions into a single work-sharing agreement.

8.3. Form of agreement. Work-sharing agreements executed under the provisions of this section shall be executed on a form provided by the Division and approved by the Office of the Attorney General.

§42-21-9. Penalties.

9.1. Any person who violates any provision of the W. Va. Code §21-3C-1, et seq, or any directive or order issued pursuant thereto is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) per day. Each day the violation continues constitutes a separate offense.

International Union of Elevator Constructors

Affiliated with the AFL-CIO



Room 201 Old Fellows Building
Phone: 304/343-8045 FAX: 304/343-1639
Charleston, WV 25301



RECEIVED
AUG 06 2008
WV DIV. OF LABOR

David M. Mullins, Commissioner
West Virginia Division of Labor
Building 6, Room 749-B
Capitol Complex
Charleston, WV 25305

Elevator Safety Act

Dear Mr. Mullins

I am writing this letter to comment on the proposed rule for the Elevator Safety Act. After review there are a few things that I feel needed to be addressed. They are listed as follows;

1. In section 42-21-6 under sub section 6.2 it refers to A18.1-3. I fail to locate the reference to the "-3" in the ASME A18.1 code book. Could you explain what is meant by that reference?
2. In section 42-21-6 under sub section 6.4 in buildings with more than one elevator unit, each additional elevator is to be inspected for a fee of \$25 dollars. While the cost to inspect the first elevator is \$100 dollars, to only charge a fee of \$25 dollars for each additional units will only lead to hurried and incomplete inspection. The fee should be the same for all elevators.

3. In section 42-21-7 under sub section 7.2 (c) it states "A copy of the applicant's successful test scores on the examination required by the division or a copy of the applicant's Qualified Elevator Inspector (QEI) certificate issued by the National Association of Elevator Safety Authorities International." This needs to be changed to allow the recognition of other certifying organizations recognized by the American Society of Mechanical Engineers. Currently there are only two organizations authorized to certify inspectors, but in the future there could be others. I would recommend using language that would read as follows: "A copy of the applicant's successful test scores on the examination required by the division or a copy of the applicant's Qualified Elevator Inspector (QEI) certificate issued by an organization accredited by the ASME to certify QEI inspectors." By making this small change the current holders of QEI certificates that were issued by the other certifying organizations would be recognized. Plus any future organization that might receive accreditation by ASME to certify inspectors could also be recognized without having to change the rules.

Thank you for considering these recommendations and I look forward to working with you in the future.

Respectfully,



Mark S. Mullins
717 Lee St., East
Odd Fellows Bldg., Room 201
Charleston, WV 25301

WEST VIRGINIA DIVISION OF LABOR

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Agency Response to Public Comment

The Division of Labor received written comments from only one interested party during the public comment period.

Mark S. Mullins with the International Union of Elevator Constructors made the following recommendations:

1. The Union questioned the "-3" reference to the ASME A18 code in section 6.

Response: This is a typographical error. The "-3" should follow the reference to ASME 17.1.

2. The Union believes that the inspection cost should be \$100 per elevator regardless of the number of devices at one site. The current rule prices the inspections at \$100 for the first device and each additional device at the same location at \$25.

Response: This pricing schedule relates to the period before 2004 when the Division inspected elevators. Since 2004, inspections for the purposes of issuing Certificates of Operation are performed by approved private inspectors, and there was some discussion as to whether this section should be completely eliminated. The Division chose to leave the pricing schedule in the Rule in the unforeseen event the Division is forced at some point to perform inspections.

3. The Union recommends changing the language in section 7.2 to encompass the two organizations currently authorized by the American Society of Mechanical Engineers (ASME) to certify inspectors as well as others that may be certified in the future.

The Division agrees with this and will change section 7.2(c) to read, "A copy of the applicant's test scores on the examination required by the division or a copy of the applicant's Qualified Elevator Inspector (QEI) certificate issued by an organization accredited by the American Society of Mechanical Engineers to certify Qualified Elevator Inspectors."