

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

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2012 JUL 30 PM 4: 50

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code Sections 21-3C-6 (a), -10 and-11(a)

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: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August<sup>30</sup> 27, 2012 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

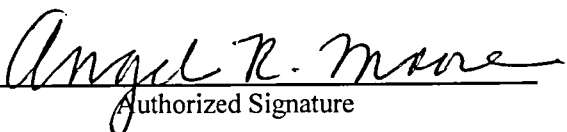
David W. Mullins, Commissioner

West Virginia Division of Labor  
State Capitol Complex

Building 6, Room B-749  
Charleston, WV 25305

david.w.mullins@wv.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Elevator Safety Act

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Division of Labor

Address: State Capitol Complex  
Building 6, Room B-749  
Charleston, WV 25305 

Phone Number: 304.558.7890 x 111 Email: david.w.mullins@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.

The proposed amendments to 42 CSR 21 will have no impact on the costs and revenues of state government.

**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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
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	0.00	0.00	0.00

Rule Title: Elevator Safety Act

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.

N/A

**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.

N/A

Date: July 26, 2012

Signature of Agency Head or Authorized Representative

Angel R. Moore

# WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

EARL RAY TOMBLIN  
Governor



DAVID W. MULLINS  
Commissioner

## Statement of Facts and Circumstances

and

## Summary of Proposed Amendments to Title 42, Series 21

### Elevator Safety Act

The West Virginia Division of Labor proposes the following amendments and revisions to Title 42, Series 21, of the West Virginia Code of State Regulations.

- Clarifying that the American Society of Mechanical Engineers (“ASME”) standard A17.1b-2009, “Safety Code for Elevators and Escalators,” effective June 30, 2010, is the standard incorporated by reference into the legislative rule.

A17.1b includes requirements for elevators, escalators, dumbwaiters, moving walks, material lifts, and dumbwaiters with automatic transfer devices. This code serves as the basis for the design construction, installation, operation, testing, inspection, maintenance, alteration, and repair. All new installations and alterations to existing installations (modernization) must meet this code.

- Removing the American Society of Mechanical Engineers (“ASME”) standard A17.3-2008, “Safety Code for Existing Elevators and Escalators,” from the proposed rule.

A17.3 includes requirements for existing electric and hydraulic elevators and escalators and is intended to serve as a basis for adopting retroactive requirements for existing installations. If the Division of Labor were to enforce A17.3, all existing installations must conform to the requirements of this code. If an existing installation does not conform to this code, it must be brought into compliance with this code.

A17.1b, Part 8, provides standards for existing installations, and requires that they conform to the ASME Code in effect at the time of installation and to the ASME Code in effect at the time of any alteration.

Enforcement of A17.3 will cause undue financial hardship to the majority of the building owners in West Virginia, and especially small business and churches. For some of the older buildings and elevators, it would be impossible to bring the elevators up to the A17.3 code.

Recognizing the costs that could be involved in bringing an existing installation into compliance with A17.3, the “Foreward” in A17.3 Code states that “[a] too extensive retroactive application [of A17.3] is not advisable in any case. . . [T]he change of an existing installation might involve a financial outlay entirely out of proportion to the benefits secured.”

TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR

SERIES 21  
ELEVATOR SAFETY ACT

FILED

2012 JUL 30 PM 4:50

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§42-21-1. General.**

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

1.2. Authority. -- W. Va. Code §§ 21-3C-6(a), 10 and 11(a).

1.3. Filing Date. -- ~~April 15, 2011.~~

1.4. Effective Date. -- ~~May 2, 2011.~~

**§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-1, *et seq.*

**§42-21-3. Definitions.**

3.1. "ASME" refers to the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.

3.2. "Imminent danger" or "unsafe condition" refers to an elevator's condition that presents a risk of immediate or excessive danger, serious injury or death to passengers or elevator maintenance personnel.

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

3.4. "To seal out of service" or "sealed out of service" means that an elevator has been made inoperable by removal of the disconnect and the placement of a seal securing the elevator's electrical

box.

#### **§ 42-21-4. Adoption of Standards.**

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

4.1. ASME Code A17.1**b** - 2009, "Safety Code for Elevators and Escalators," effective June 30, 2010; and

4.2. ASME Code 17.2 - 2007, "Guide for Inspection of Elevators and Escalators," effective October 5, 2007;

~~4.3. ASME Code 17.3 - 2008, "Safety Code for Existing Elevators and Escalators," effective July 9, 2009; and~~

~~4.4.~~ 4.3. ASME Code A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts," published on August 28, 2008.

#### **§42-21-5. Registration of Elevators.**

The owner or operator of any elevator shall register every elevator operated by him or her with the Division, providing all required information.

#### **§42-21-6. Certificate of Operation Required; Annual Renewal; Revocation.**

6.1. Certificate of operation. Unless exempt pursuant to W. Va. Code § 21-3C-1, *et seq.*, an elevator may not be operated in this state without a valid certificate of operation.

6.1.a. 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 \$50.00 application fee.

6.1.b. 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 valid certificate of competency issued by the Division.

6.1.c. A certificate of operation is valid for 12 months from the date of issuance.

6.2. Renewal. Every certificate of operation shall be renewed on or before its expiration date.

6.2.a. The owner or operator of the elevator shall apply for renewal on a form provided by the Division and shall remit the \$50.00 renewal fee.

6.2.b. The Division shall not renew a certificate of operation until the elevator has been inspected and found safe for operation by an inspector who holds a valid certificate of competency issued by the Division.

6.2.c. A renewed certificate of operation is valid for 12 months from the date of issue.

6.3. Revocation of a certificate of operation. A certificate of operation shall be revoked by the Division for the following reasons:

6.3.a. any condition which presents an imminent danger;

6.3.b. the removal of the seal that seals an elevator out of service;

6.3.c. 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;

6.3.d. 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

6.3.e. the failure to pay any fee required by law or this rule.

#### **§42-21-7. Inspection; Reports; Fees.**

7.1. Inspection required. As required by W. Va. Code § 21-3C-1, *et seq.*, and 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.

7.1.a. A private inspector shall not inspect repairs or routine maintenance work performed by the inspector, an employee of the inspector, the inspector's employer or another employee of the inspector's employer.

7.1.b. The Division and its certified inspectors or employees may enter into any establishment in which an elevator is located for the purpose of inspecting the elevator for safety.

7.1.c. An announced or unannounced inspection may occur at any time between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, or at any other reasonable time considered necessary by the Division in the exercise of its duties.

7.2. Inspection Report. Every inspector shall prepare a report of inspection on a form approved by the Division, showing the true and exact condition of each elevator inspected.



7.2.a. The inspector shall leave a copy of the report with the elevator owner or his or her representative on the day of inspection and shall forward a copy of the report of inspection to the Division

7.2.b. If the inspector determines that changes or repairs to the elevator are required in order to make it safe to operate, the inspector shall include his or her recommendations in the inspection report.

### 7.3. Inspection Fees.

7.3.a. The fee for the inspection of each elevator by the Division is \$100.00.

7.3.b. The Division's fee for the inspection of more than one elevator in a building is \$100.00 for the first elevator inspected and \$25.00 for each additional elevator inspected.

7.3.c. If changes or repairs are required prior to the issuance of a certificate of operation, an inspection fee will not be charged by the Division for the first follow-up inspection.

7.3.d. If subsequent follow-up inspections are required because of the owner's or operator's failure to make the required repairs or changes, Division inspection fees shall be charged at the same rates set forth in subdivisions 7.3.a. and 7.3.b. of this rule for each subsequent follow-up inspection.

7.3.e. The failure to pay the required inspection fee is sufficient grounds for the Division to withhold the issuance of a certificate of operation.

### **§ 42-21-8. Unsafe Condition or Imminent Danger; Notice.**

8.1. The Division or a certified inspector shall seal out of service any elevator that is found to be unsafe or poses a risk of imminent danger.

8.2. Notice of unsafe condition or imminent danger. If during the course of an inspection, the Division or a certified inspector finds that a passenger elevator or any part of the elevator cannot be operated safely or poses a risk of imminent danger, the Division or inspector shall immediately notify the owner or elevator operator in writing, stating the deficiencies and the required repairs or changes needed.

8.3. A certified inspector shall notify the Division immediately as to the location and condition of the sealed elevator.

8.4. Once sealed out of service, a passenger elevator shall not be operated except for the purpose of making the repairs required by the Division.

8.5. A seal placed on an elevator's electric box in accordance with the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule shall not be removed, obstructed or in any way altered without the written consent of the Division.

8.6. When the required repairs have been made to an elevator that has been sealed out of service, the Division or a certified inspector shall perform a complete inspection and safety test before the elevator can be placed back into service.

**§42-21-9. Inspectors; application; certificate of competency.**

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

9.2. Application required. Any person desiring to obtain a certificate of competency from the Division shall submit a written application accompanied by a \$10.00 fee, on a form 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:

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

9.2.b. Proof that the applicant is at least 21 years of age; and

9.2.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.

**§42-21-10. Work-Sharing Agreement Between the Division and Counties and Municipalities.**

10.1. 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.*

10.2. A work-sharing agreement shall be executed on a form provided by the Division and approved by the Office of the Attorney General.

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

10.4. A work-sharing agreement shall include the following provisions:

10.4.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;

10.4.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;

10.4.c. that any inspector employed by the county or municipality is certified for competency by the Division as required by the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule;

10.4.d. that all inspections for safety are conducted in accordance with the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule;

10.4.e. that reports on inspection are filed with the Division within 5 days of the date of inspection;

10.4.f. that the county or municipality shall comply with any written orders issued by the Division;

10.4.g. that the Division shall 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.*;

10.4.h. that the Division shall provide the report and inspection forms required by the Division;

10.4.i. that the Division shall 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

10.4.j. that the Division shall provide direct supervision, where considered necessary by the Division, to county or municipal inspectors.