

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

Form #3

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2012 AUG 31 PM 3:02

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 Section 21-3C-6(a), Section 21-3C-10, and Section 21-3C-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: _____

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 31, 2012

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
304.558.7890 x 111

LEGISLATIVE RULE TITLE: Elevator Safety Act

1. Authorizing statute(s) citation W Va Code Sections 21-3C-6(a), 21-3C-10 and
21-3C-11(a)

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

July 30, 2012

b. What other notice, including advertising, did you give of the hearing?

Notice of the proposed rule and comment period was put on the Division of Labor's website.

Copies of the proposed rule were emailed to stakeholders.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

August 30, 2012

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 31, 2012

- 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

West Virginia Division of Labor

State Capitol Complex

Building 6, Room B-749

Charleston, WV 25305

david.w.mullins@wv.gov

304.558.7890 x 111 (phone) 304.558.2273 (fax)

- 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)

John R. Junkins, Deputy Commissioner

West Virginia Division of Labor

same as above

john.r.junkins@wv.gov

304.558.7890 x 146 (phone) 304.558.2273 (fax)

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.

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

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.”

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 and revisions 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: August 31, 2012

Signature of Agency Head or Authorized Representative



TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 21
ELEVATOR SAFETY ACT

FILED
2012 AUG 31 PM 3:02
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 A17.1b - 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;

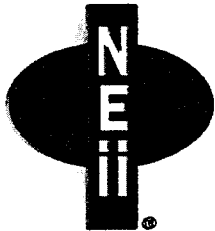
10.4.f. that the county or municipality shall comply with any written orders issued by the Division;

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.



National Elevator Industry, Inc.

GOVERNMENT AFFAIRS OFFICE

5537 SW Urish Road • Topeka, Kansas 66610 • Office: 785.286.7599 • Cell: 785.580.5070
www.neii.org • e-mail: ajblankenbiller@neii.org

Industry Comments to the West Virginia Division of Labor's Proposed Amendments to the WV Code of State Regulations, Title 42, Series 21 and WV Code of State Regulations, Title 42, Series 21A

August 30, 2012

These comments are submitted on behalf of the National Elevator Industry, Inc. (NEII®), the trade association representing firms that install, maintain and/or manufacture elevators, escalators, moving walkways, and other building transportation products. NEII® membership includes the top elevator companies in the United States, if not the world, and reports more than 85 percent of the work hours for the industry. Safety for the riding public and industry personnel is one of the association's top priorities.

NEII® strongly opposes several aspects of the proposed amendments to the West Virginia State Regulations Title 42, Series 21 and 21A. NEII® offers the following comments for your consideration.

PROPOSED AMENDMENT:

§42-21A-3 Definitions

"3.5 "Emergency" means a disaster, Act of God, or work stoppage, when so declared by the President of the United States or the Governor of the State of West Virginia."

RECOMMENDED CHANGES TO PROPOSED AMENDMENT(S):

§42-21A-3 Definitions

"3.5 "Emergency" means a disaster, Act of God, or work stoppage, or when so declared by the President of the United States or the Governor of the State of West Virginia."

INDUSTRY COMMENT:

While it is likely that the Governor would promptly declare an emergency in response to a natural disaster or act of God affecting the state, the industry is concerned about the time it might take for the Governor to investigate and make a similar declaration in the event of a work stoppage. The ensuing delay pending such declaration from the Governor in the event of a work stoppage would expose the riding public to potential serious harm and life-threatening situations resulting from equipment that may not have been inspected or properly serviced by trained and qualified personnel for an extended period of time. Elevator Contractors are in the best position to assess the extent and breadth of such an emergency and to respond as necessary so as to assure the continuing safety of the riding public.

PROPOSED AMENDMENT:

§42-21-4 Adoption of Standards (same proposed changes set forth in §42-21A-4)

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

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

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

RECOMMENDED CHANGES TO PROPOSED AMENDMENT:

§42-21-4 Adoption of Standards (same proposed changes set forth in §42-21A-4)

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

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

4.3 ASME Code A17.3 - 2008, "Safety Code for Existing Elevators and Escalators" effective July 9, 2009, and following the schedule of adoption developed by the West Virginia Division of Labor as follows:

4.3.1 ASME Code A17.3 will be phased in over a 5-year period beginning January 1, 2013 and ending December 31, 2017; and..."

INDUSTRY COMMENT:

The adoption and enforcement of the ASME A17.3 "Safety Code for Existing Elevators and Escalators" is crucial to ensuring the safety of the riding public. In the Summary of the Proposed Amendments to Title 42, Series 21 (with the same language included in the Summary of the Proposed Amendments to Title 42, Series 21A) the WV Division of Labor includes several points intended to support the recommended removal of this code reference. NEII® would like to address these points directly.

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.

RESPONSE: While A17.1b requires existing elevators to comply with and be maintained to the safety requirements of the ASME A17.1 code in effect at the time of installation, newer safety provisions from subsequent editions of the

code can and should be applied to existing installations. The whole purpose of the ASME A17.3 code is to focus on those safety provisions that can be practically applied to existing installations and that will provide the greatest level of safety to the riding public with the smaller associated costs.

Recently a woman in Chicago was killed when she rode an elevator to the building floor on which her apartment was located and was incinerated when the elevator doors opened onto a floor fully involved in a fire. Application and enforcement of the A17.3 requirements in that building would have resulted in the elevators having firefighter service that would have prevented them from operating in a fire. West Virginia citizens can be protected from similar tragedies should A17.3 be adopted in this state.

"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."

RESPONSE: This statement is a gross exaggeration. The industry understands that there may be financial challenges faced by certain entities and/or businesses as a result of compliance with A17.3, but it is unlikely that most of the building owners in West Virginia will face "undue financial hardship." For recently installed elevators, A17.3 will require little if any modifications to the elevator systems. In other cases, upgrading conveyance equipment can provide a financial offset to building owners through energy efficiency, reduced insurance premiums and improved marketability of the building. In addition, we take exception to the assertion that it would be "impossible" to bring WV elevators up to code.

"Recognizing the costs that could be involved in bringing an existing installation into compliance with A17.3, the "Foreword" 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."

RESPONSE: The language misrepresented as coming from the A17.3 "Foreword" is in fact a quote from the 1937 edition of the A17.1 code, explaining why the retroactive provisions of that 75 year old code were inappropriate for older elevators. It is included in the Foreword of A17.3 to explain why that code was created in the first place. Contrary to the implications in the state's Statement of Facts and Circumstances, the requirements of A17.3 are written to be applied in their entirety and are not considered to involve any financial outlay that is disproportionate to the level of safety providing to the riding public. The text of a decades old code is being misquoted which is very misleading to individuals who are not familiar with all the model codes for elevators and escalators.

In order to accommodate all interests, NEII® suggests the A17.3 code could be adopted en whole in the regulations but allow compliance to be phased in over a five (5) year period. Such an approach will provide building owners with the notice that their existing operational units must be brought up to the minimal safety requirements of ASME A17.3 by a date out far enough to allow them ample time to plan for the associated operational costs accordingly.

PROPOSED AMENDMENT:

"§42-21A-10 Request and Application for an Elevator Mechanic License.

10.1. Whenever ~~an~~ a declared emergency exists in the state due to disaster, act of God, or work stoppage, as declared by the President of the United States or Governor of West Virginia, and the number of persons in the state holding current elevator mechanic licenses granted by the Commissioner is insufficient to cope with the emergency, ~~the~~ a licensed elevator contractors may request that the Commissioner issue an emergency elevator mechanic 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 without direct supervision...

10.4. ~~Each~~ An emergency elevator mechanic license shall state that it is be valid for a period of not more than 30 days from the date of issuance, and shall identify those specific for particular elevators or geographical areas designated by the Commissioner, and entitles the licensee to the rights and privileges of an elevator mechanic license issued under the provisions of VI. Va. Code §21-JC-1, et seq., and this rule. where the licensee is authorized to work.

10.5. The Commissioner shall not charge a fee for the issuance of an emergency elevator mechanic license.

RECOMMENDED CHANGES TO PROPOSED AMENDMENT:

"§42-21-10 Request and Application for an Elevator Mechanic License.

10.1. Whenever ~~an~~ a declared an emergency exists in the state due to disaster, act of God, or work stoppage, as declared by the President of the United States or Governor of West Virginia, and the number of persons in the state holding current elevator mechanic licenses granted by the Commissioner is insufficient to cope with the emergency, ~~the~~ a licensed elevator contractors may request that the Commissioner issue an emergency elevator mechanic 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 without direct supervision...

10.4. ~~Each~~ An emergency elevator mechanic license shall state that it is be valid for a period of not more than ~~30~~ 45 days from the date of issuance, entitle the licensee to the rights and privileges of an elevator mechanic license issued under the provisions of VI. Va. Code §21-JC-1, et seq., and shall identify those specific for particular elevators or geographical areas designated by the Commissioner, ~~and this rule. where the licensee is authorized to work,~~ and be renewable as long as the emergency persists.

10.5. The Commissioner shall not charge a fee for the issuance or renewal of an emergency elevator mechanic license.

INDUSTRY COMMENT:

Emergency licensing provisions are vital to ensure the safety of the riding public in situations where there are not enough licensed mechanics to handle to work.

First and foremost, NEII® is concerned about the state's proposal that an emergency will only exist when there is an insufficient number of "current" elevator mechanic licensees – no matter where they may be located - rather than confining the review solely to those licensees available "in the state." The pragmatic concern during any emergency situation is the flexibility needed by the Elevator Contractor to quickly assemble an adequate number of qualified personnel on the ground who can work on the equipment. There could be elevator mechanics holding current licenses from West Virginia but have moved to another state or even another country and who may or may not be able to disengage from current projects without putting the project they are working on at risk. It would undoubtedly be a time consuming and unreasonable administrative burden to review the availability of each and every West Virginia licensee who might be working on projects outside the state or country. Yet, perfectly qualified and suitable personnel may be sitting idle and/or otherwise available to relocate to West Virginia on short notice to temporarily deal with the emergency.

Second, NEII® recommends that an emergency license be valid for a period of 45 days and renewable as long as the emergency persists.

Third, NEII® fully agrees with the state's proposed language that no fee shall be charged for emergency licenses and recommends that this approach be extended to the renewal of these licenses as well.

All three of the recommended changes to the state's proposed amendment to §42-21-10 "Request and Application for an Emergency Elevator Mechanic License" are consistent with the Model Elevator Law developed collaboratively by NEII® and the International Union of Elevator Contractors (IUEC) and are critical to ensuring that the needs of West Virginia will be met during an emergency situation.

CONCLUSION

Thank you for your consideration of these important industry comments. I look forward to hearing back from you with the specific positions of the state on our suggestions relative to the proposed amendments of the West Virginia Code of State Regulations, Title 42, Series 21 and 21A.

Please let me know if you have any questions or need any additional information. I am available, as well as representatives from the various elevator companies operating in West Virginia, to provide technical assistance as you move forward with this rulemaking.

Sincerely,



Amy J. Blankenbiller

SUMMARY OF COMMENTS RECEIVED **and** **AGENCY RESPONSES**

Comment from Amy J. Blankenbiller

Ms. Blankenbiller objects to removing American Society of Mechanical Engineers (“ASME”) standard A17.3-2008, the “Safety Code for Existing Elevators and Escalators” from the proposed rule for safety reasons, and suggests a 5-year phase-in period .

Agency Response

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.

The Division of Labor has in the past inspected existing elevators and escalators using the A17.3 standards. However, because there was significant push-back and pressure from both public sector and private sector owners and interested parties due to the high cost of coming into compliance and the structural difficulties posed, the Division opted to rely instead on the ASME A17.1b, Part 8, which has 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 major alteration or renovation.

The Division has proposed removing A17.3 because of the 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.

ASME itself has recognized that the costs involved in bringing an existing installation into compliance with A17.3 could be prohibitive. In the “Foreward” to the A17.3 Code, it 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.”

ASME also suggests that jurisdictions considering adopting A17.3 should organize a committee to study the feasibility of such adoption.

The Division agrees with ASME’s suggestion and would welcome the formation of a committee to make recommendations to the Legislature. The committee would be composed of all stakeholders, including Division of Labor staff, Mr. White, representatives from organized labor, elevator owners, elevator mechanics, etc., and would report on the following:

- A cost-benefit analysis of adopting A17.3;
- Recommendations for a reasonable phase-in period for enforcement of A17.3;

- Recommendations concerning whether the entire A17.3 standards should be adopted, or whether only specific sections should be adopted; and
- Recommendations for establishing funding sources that would be made available to elevator owners to borrow in order to comply with A17.3.

However, the Division believes that requiring immediate compliance with A17.3 poses too great a burden on elevator and escalator owners, and has therefore proposed removing it from the rule. The Division also intends to ask the Legislature to review the language in W. Va. Code §21-3C-1 (2) and clarify which ASME codes it refers to. If §21-3C-1(2) does include A17.3, the Division intends to ask the Legislature to remove it until such time as the proposed committee can report to the Legislature with its recommendations.

Comment from Amy J. Blankenbiller

Ms. Blankenbiller suggests changes to the proposed provisions for an emergency elevator mechanic license, increasing the emergency license from 30 to 45 days, and allowing the Commissioner to renew the emergency license for as long as the emergency persists.

Agency Response

Based upon its experience in administering the Elevator Safety Act, the Commissioner has not had any occasion to issue emergency elevator mechanic licenses. Consequently, Division does not believe that the suggested changes are necessary.