

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

Form #3

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**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-11

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21A

TITLE OF RULE BEING AMENDED: Supervision of Elevator Mechanics and Apprentices

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

- 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

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EARL RAY TOMBLIN
Governor



DAVID W. MULLINS
Commissioner

Statement of Facts and Circumstances

and

Summary of Proposed Amendments to Title 42, Series 21A

Supervision of Elevator Mechanics and Apprentices

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

Specifically, the Division proposes to incorporate the 2010 amendments to the Elevator Safety Act, W. Va. Code § 21-3C-1, *et seq.*, which prohibit the installation of private residence elevators in non-residential settings, require the annual inspection of private residence elevators in non-residential settings for all such elevators in use on or after July 1, 2007, require new private residence elevators to undergo an acceptance test, require a private residence elevator to be inspected upon the transfer of the property, and allow employees of historic resort hotels to obtain a limited technician license.

In addition, the proposed amendments eliminate the “grandfathering” provisions which expire on July 1, 2010, and reduce or eliminate some of the fees charged to applicants and providers.

Other technical changes are also proposed to clarify current administrative practices and eliminate redundant provisions.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Supervision of Elevator Mechanics and Apprentices

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 21A 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: Supervision of Elevator Mechanics and Apprentices

Rule Title:

Supervision of Elevator Mechanics and Apprentices

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

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TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

2012 FEB 01 11 0:01

SERIES 21A
SUPERVISION OF ELEVATOR MECHANICS, TECHNICIANS AND APPRENTICES

§42-21A-1. General.

1.1. Scope. -- This ~~legislative~~ rule governs standards, qualifications, requirements and procedures for licensing elevator mechanics, accessibility technicians, limited use/limited application elevator technicians, limited technicians, and apprentices, the powers and duties of the West Virginia Commissioner of the Division of Labor, and penalties for violations, in accordance with W. Va. Code §21-3C-1, *et seq.*

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

1.3. Filing Date. -- ~~March 30, 2012.~~

1.4. Effective Date. -- ~~July 1, 2012.~~

§42-21A-2. Application and Enforcement.

2.1. Application. This ~~legislative~~ rule applies to the Commissioner and all persons working as elevator mechanics, accessibility technicians, limited use/limited application elevator technicians, limited technicians or elevator mechanic apprentices as defined in W. Va. Code §21-3C-1, *et seq.*

2.2. Enforcement. The enforcement of this ~~legislative~~ rule is vested with the Commissioner.

§42-21A-3. Definitions.

3.1. "Accessibility technician license" means a license issued to a person who meets the requirements set forth in W. Va. Code §21-3C-10a(d) and this rule.

~~3.1.~~ 3.2. "ASME" refers to the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016-5990.

3.3. The "Commissioner" means the Commissioner of the West Virginia Division of Labor or his or her authorized representatives.

~~3.2.~~ 3.4. "Elevator apprentice" or "elevator mechanic apprentice" means a person who meets the requirements set forth in W. Va. Code ~~§21-3C-1, et seq.,~~ §21-3C-10a(f) and this rule.

3.5. “Emergency” means a disaster, act of God, or work stoppage, when so declared by the President of the United States or Governor of West Virginia.

3.3. 3.6. “Limited technician license” means a license issued to a person who meets the requirements set forth in W. Va. Code §21-3C-10a(e) and this rule, and is employed by a historic resort hotel.

3.7. “Limited use/limited application elevator endorsement” or “LULA elevator endorsement” means an endorsement to an accessibility technician license issued to a person who meets the requirements set forth in W. Va. Code §21-3C-10a(d)(3) and this rule.

§42-21A-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.~~

§42-21A-5. Licensure and Registration Required.

5.1. A person ~~may~~ shall not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators, accessibility equipment, LULA elevators or related conveyances covered by W. Va. Code §21-3C-1, *et seq.*, without a license issued according to the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule.

5.2. A person ~~may~~ shall not work as an elevator apprentice unless he or she is registered with the Commissioner and meets the requirements set forth in section ~~7~~ 6 of this rule.

§42-21A-6. Minimum Qualifications for Licensure; Requirement to Work under Contractor’s License.

6.1. The Commissioner shall issue a license or registration certificate to an applicant who:

6.1.a. Is at least 18 years of age;

6.1.b. Submits an application on forms provided by the Commissioner;

6.1.c. Pays the application fee; and

6.1.d. Meets ~~one of the following requirements:~~ the qualifications for an elevator mechanic license, an accessibility technician license, a limited use/limited application elevator endorsement, a limited technician license, or an apprentice, as set forth in W. Va. Code §§21-3C-10a.

~~6.1.d.1. Completion of a four-year apprenticeship program, registered by the United States Department of Labor, to qualify for a commercial license;~~

~~6.1.d.2. Completion of a two-year apprenticeship program, registered by the United States Department of Labor, to qualify for an accessibility license; or~~

~~6.1.d.3. Completion of a certified apprenticeship program, registered by the United States Department of Labor established at a historic hotel, to qualify for a limited technician license.~~

~~6.2. A license which was issued without examination and which was applied for on or before July 1, 2010, pursuant to the provisions of W. Va. Code §21-3C-11(a)(3) may be renewed in the same manner as a license issued pursuant to the provisions of subsection 6.1.a through 6.1.c. of this section. *Provided* That if a license issued pursuant to this subsection subsequently lapses, the applicant may, at the Commissioner's discretion, be subject to all of the licensure requirements in effect at the time of the renewal application.~~

~~6.3.~~ 6.2. The Commissioner shall reject any application containing willfully submitted false or untrue information.

~~6.4.~~ 6.3. A license or registration certificate issued pursuant to the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule is not assignable or transferable, and is valid for a period not to exceed \pm 2 years from the date on which it was issued.

~~6.5.~~ 6.4. A licensee or registrant performing the work of an elevator mechanic, an accessibility technician, a LULA elevator technician, or an apprentice must be, or be employed by, a contractor licensed pursuant to the provisions of W. Va. Code §21-11-1, *et seq.*

~~6.6.~~ 6.5. Each licensed elevator mechanic, accessibility technician, LULA elevator technician, limited technician, or apprentice shall carry proof of valid licensure or registration on his

or her person during the performance of elevator mechanic work performed pursuant to W. Va. Code §21-3C-1, et seq.

§ 42-21A-8 7. Work Not Permitted Under a Limited Technician License.

~~8.1. The Commissioner shall issue a limited technician license to an applicant who:~~

~~8.1.a. meets the requirements of paragraph 6.1.d.3 of this rule:~~

~~8.1.b. Provides current documentation that he or she is regularly employed by a historic resort hotel and is paid regular wages and not a contract price:~~

~~8.2. A limited technician license issued pursuant to the provisions of W. Va. Code §21-3C-1, et seq., or this rule is not assignable or transferable, and is valid for a period not to exceed 1 year from the date on which it was issued:~~

~~8.3. A limited technician license is valid only for work performed on property owned or leased by the historic resort hotel as identified on the face of the license:~~

8.4. A person licensed as a limited technician shall not replace any of the following:

8.4.a. 7.1. Governors;

8.4.b. 7.2. Sheave wheels or bearings;

8.4.c. 7.3. Cables and shackles;

8.4.d. 7.4. Ring gears and worn gears;

8.4.e. 7.3.e. Buffers;

8.4.f. 7.3.f. Traveling cables;

8.4.g. 7.3.g. Hydro pumps;

8.4.h. 7.3.h. Hydro pump motors;

8.4.i. 7.3.i. Hydro valve chests;

8.4.j. 7.3.j. Jack packing and seals; or

8.4.k. 7.3.k. Rope grippers.

~~§42-21A-7. Qualifications and Supervision Requirements for an Elevator Apprentices:~~

~~7.1A~~ A person desiring to work as an elevator apprentice in this state shall register with the Commissioner on a form provided by the Commissioner.

~~7.2.~~ The registrant shall provide documentation of enrollment in an elevator apprentice program recognized by the United States Department of Labor, on forms provided by the Commissioner.

~~7.3.~~ An elevator apprentice may work only under the supervision of a licensed elevator mechanic, as specifically set forth in W. Va. Code § 21-3C-10a (c).

~~7.4.~~ A registration issued pursuant to the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule is not assignable or transferable, and is valid for a period not to exceed 1 year from the date on which it was issued.

§42-21A-9 8. Expiration and Renewal.

~~9.1.~~ 8.1. All licenses and registrations expire biennially on the last day of the anniversary month from the month of issuance of the license.

~~9.2.~~ 8.2. An elevator mechanic, an accessibility technician, a LULA elevator technician, a limited technician, or elevator apprentice is responsible for submitting his or her license or registration renewal to the Commissioner prior to the expiration date.

8.3. A license or registration which is not renewed on or before the renewal date shall lapse.

~~9.3.~~ An elevator mechanic, limited technician, or elevator apprentice who has not renewed his or her license or registration in accordance with the provisions of W. Va. Code § 21-3C-1, *et seq.*, or this rule shall submit a new application to the Commissioner.

8.4. A license or registration which has lapsed for a period of 90 days or more shall not be renewed.

8.5. An elevator mechanic, accessibility technician, a LULA elevator technician, a limited technician, or an elevator apprentice whose license or registration has lapsed for 90 days or more shall submit a new application to the Commissioner.

~~9.4.~~ 8.6. The Commissioner shall mail license and registration renewal notifications in a timely manner to each elevator mechanic, accessibility technician, LULA elevator technician, limited technician, and elevator apprentice.

§42-21A-9. Continuing Education Required for Elevator Mechanics to Renew Their License.

9.1. An elevator mechanic shall complete 16 hours of continuing education instruction during the 2 year period immediately preceding the renewal of his or her license.

9.2. An elevator mechanic shall submit documentation of his or her successful completion of continuing education with the his or her renewal application.

9.3. Acceptable continuing education instruction shall be taught by providers approved by the Commissioner, including but not limited to trade association seminars, labor training programs, career technology centers and the Division.

9.4. If a licensee is unable to complete the required continuing education instruction prior to the expiration of his or her license due to a temporary disability, military service or other good cause shown, the licensee may submit a written request for a waiver to the Commissioner. The Commissioner has the discretion to approve or deny the waiver request.

§42-21A-10. Request and Application for an Emergency Elevator Mechanic License or an Emergency Accessibility Technician 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 or accessibility technician 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 or an emergency accessibility technician 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 or accessibility equipment work without direct supervision.

10.2. Any person certified by a licensed elevator contractor pursuant to this section who responds to an emergency ~~as set forth in this section~~ shall apply for an emergency elevator mechanic license or an emergency accessibility technician license from the Commissioner within 5 business days after commencing work requiring a license.

10.3. Upon receipt of ~~proof~~ an applicant's certification of competency ~~of the applicant~~ from a licensed elevator contractor, the Commissioner shall issue an emergency elevator mechanic license or an emergency accessibility technician license.

10.4. Each An emergency elevator mechanic license or an emergency accessibility technician 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, accessibility equipment, 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 W. Va. Code §21-3C-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 or an emergency accessibility technician license.

§42-21A-11. Request and Application for a Temporary Elevator Mechanic License.

11.1. In the event that there are no licensed elevator mechanics available to engage in the work of an elevator mechanic, a licensed elevator contractor may request that the Commissioner issue a temporary elevator mechanic license. The licensed elevator contractor shall certify by sworn affidavit that the person for whom the temporary license is sought has an acceptable combination of documented experience and education to perform elevator work without direct supervision.

11.2. Any person certified by a licensed elevator contractor pursuant to this section shall apply for a temporary elevator mechanic license from the Commissioner before commencing work requiring a license.

11.3. Upon receipt of proof of an applicant's certification of competency of the applicant from a licensed elevator contractor, the Commissioner shall issue a temporary elevator mechanic license.

11.4. Each A temporary 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 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 W. Va. Code §21-3C-1, et seq., and this rule: where the licensee is authorized to work.

~~11.5. The Commissioner shall charge a fee for a temporary elevator mechanic license, as set forth in this rule.~~

~~§42-21A-12 . Continuing Education:~~

~~12.1. As a condition of the renewal of an elevator mechanic's license, the licensee shall complete continuing education courses as set forth in this section.~~

~~12.2. The courses shall consist of not fewer than 8 hours of instruction, which must be attended and successfully completed within the year immediately preceding the renewal. The training need not be continuous but may be an accumulation of shorter periods that total at least 8 hours.~~

~~12.3. The courses shall be taught by continuing education providers approved by the Commissioner, including but not limited to, trade association seminars, labor training programs, career technology centers and the Division.~~

~~12.4. A licensee who is unable to complete the continuing education courses required under this section prior to the expiration of his or her license due to a temporary disability, military service~~

~~or other good cause shown, may apply to the Commissioner for a waiver. The Commissioner may grant a waiver under this subsection in his or her sole discretion.~~

~~§42-21A-13. Reciprocity:~~

~~13.1. For any state that has requirements substantially equivalent to those provided for by W. Va. Code §21-3C-1, et seq., and this rule, and has entered into a reciprocity agreement with the Commissioner, the Commissioner may issue an elevator mechanic license to an applicant who documents that he or she holds a valid license issued by that state.~~

~~13.2. An out of state applicant must submit a written application as provided for in section 6 of this rule, and upon renewal, must comply with the continuing education requirements in section 11 of this rule.~~

~~13.3. The Commissioner is not required to issue a reciprocal license to an applicant who is the subject of disciplinary action or against whom there is an unresolved complaint in another state.~~

~~§42-21A-14~~ **12. Denial, Suspension, Revocation, or Reinstatement of License or Certificate of Registration; Hearings.**

~~14.1. 12.1. The Commissioner may deny, suspend, revoke or refuse to reinstate a license or certificate of registration for a violation of W. Va. Code §21-3C-1, et seq., or this rule.~~

~~14.2. 12.2. A violation of W. Va. Code §21-3C-1, et seq., or this rule is grounds for the denial, suspension, revocation or refusal to reinstate a license and permits the Commissioner to impose disciplinary action. Provided, that The Commissioner shall not impose any no disciplinary action may be imposed against a licensee or registrant without notice and an opportunity for a hearing before the Commissioner, or his or her designee. The hearing shall be conducted pursuant to the provisions of W. Va. Code §29A-5-1, et seq., the Administrative Procedures Act. At the hearing, the licensee shall be allowed to present evidence and testimony in person, by counsel or both, and may cross-examine witnesses and submit rebuttal evidence. After the hearing, if the Commissioner finds a violation of this rule has occurred, the Commissioner may impose any disciplinary action permitted by law.~~

~~12.2.a. The hearing shall be conducted pursuant to the provisions of W. Va. Code §29A-5-1, et seq., the State Administrative Procedures Act.~~

~~12.2.b. At the hearing, the licensee or registrant shall be allowed to present evidence and testimony in person, by counsel or both, and may cross-examine witnesses and submit rebuttal evidence.~~

12.2.c. After the hearing, if the Commissioner finds that the licensee or registrant has violated any provision of W. Va. Code §21-3C-1, et seq., or this rule, he or she may impose any disciplinary action permitted by law.

~~14.3.~~ 12.3. ~~The Commissioner may suspend or revoke the license of a licensee who performs elevator mechanic work in violation of W. Va. Code §21-3C-1, et seq., or this rule. If the Commissioner suspends a license or registration, the~~The suspension of a license shall be for not less than 24 hours nor more than 1 year. The Commissioner may reinstate the license upon satisfactory proof that the licensee is in full compliance with the provisions of W. Va. Code §21-3C-1, et seq., and this rule.

~~14.4.~~ 12.4. A person whose license has been revoked may apply for a new license 1 year after the date of the revocation.

~~16.6.~~ 12.5. Any party adversely affected by a decision of the Commissioner entered after a hearing may seek review by appeal to a circuit court of West Virginia, as set forth in W. Va. Code §29A-5-4.

~~16.7.~~ 12.6. Any party adversely affected by the final judgment of the circuit court may seek review by appeal to the Supreme Court of Appeals of West Virginia, as set forth in W. Va. Code §29A-6-1.

§42-21A-15 13. Effect of Noncompliance.

Each day during which a person performs elevator mechanic work without the required license or certificate of registration or while in non-compliance with any of the provisions of W. Va. Code §21-3C-1, et seq., or this rule, after written notice from the Commissioner or a Division inspector that the work is unlawful, is a separate violation of the provisions of W. Va. Code §21-3C-1, et seq., and this rule.

§42-21A-16 14. Disposition of Complaints.

~~16.1.~~ 14.1. ~~In the course of investigating complaints, the Commissioner shall determine whether or not the person against whom the complaint has been filed is properly licensed under the provisions of W. Va. Code §21-3C-1, et seq.~~

~~16.2.~~ 14.1. Any citizen, law enforcement official or other official of any state, county, or municipal government agency, upon observing or learning of a violation of the licensure requirements of W. Va. Code §21-3C-1, et seq., or this rule, may file a written complaint with the Commissioner. The Commissioner may provide a form for this purpose, but a complaint may be filed in any written form. When a complaint is filed with the Commissioner, it shall be investigated. In addition to describing the alleged violation which prompted the complaint, the complaint shall

contain as a minimum the following information:

~~16.2.a.~~ 14.1.a. The name of the person against whom the complaint is lodged;

~~16.2.b.~~ 14.1.b. The date of the alleged violation;

~~16.2.c.~~ 14.1.c. The nature of the alleged violation; and

~~16.2.d.~~ 14.1.d. The location of the violation or occurrence.

14.2. After receipt and review of a complaint, the Commissioner shall cause to be conducted any reasonable inquiry or investigation he or she considers necessary to determine the truth and validity of the allegations set forth in the complaint.

14.3. In the course of investigating a complaint, the Commissioner shall determine whether or not the person against whom the complaint has been filed is properly licensed or registered under the provisions of W. Va. Code §21-3C-1, et seq.

14.3.a. If the person is not properly licensed or registered and is performing work for which a license or certificate of registration is required pursuant to W. Va. Code §21-3C-1, et seq. or this rule, the Commissioner shall issue a cease and desist order requiring the person to immediately cease work.

~~16.3.~~ 14.3.b. If the person is properly licensed or registered, a A copy of the complaint shall be sent to the licensee or registrant, which shall be considered properly served when sent to his or her last known address. ~~It is the responsibility of the licensee to keep the Commissioner informed of his or her current address. The licensee or registrant shall have~~ has 30 days to file a response or appeal petition to the complaint with the Commissioner.

~~16.4. After receipt and review of a complaint, the Commissioner shall cause to be conducted any reasonable inquiry or investigation he or she considers necessary to determine the truth and validity of the allegations set forth in the complaint.~~

~~16.5.~~ 14.4. Upon a finding of probable cause that a violation of W. Va. Code §21-3C-1, *et seq.*, or this rule has occurred, the Commissioner shall proceed in the manner described in section ~~14~~ 13 of this rule.

~~16.6. Any party adversely affected by a decision of the Commissioner entered after a hearing may seek review by appeal to a circuit court of West Virginia, as set forth in W. Va. Code §29A-5-4.~~

~~16.7. Any party adversely affected by the final judgment of the circuit court may seek review by appeal to the Supreme Court of Appeals of West Virginia, as set forth in W. Va. Code §29A-6-1.~~

§42-21A-~~17~~ 15. Fees.

~~17.1.~~ 15.1. The Commissioner shall deposit all fees paid pursuant to this rule in a special revenue account with the State Treasurer for the use of the Commissioner as provided under W. Va. Code §21-3C-11(c).

~~17.2.~~ 15.2. The Commissioner shall charge the following fees:

~~17.2.a.~~ 15.2.a. Initial license .. ~~\$90~~ 180.00

~~17.2.b.~~ 15.2.b. ~~Annual~~ Biannual renewal of license .. ~~\$90~~ 180.00

~~17.2.c.~~ 15.2.c. Temporary license .. \$90

~~17.2.d.~~ 15.2.d. Duplicate license (original lost or destroyed) .. \$10

~~17.2.e.~~ 15.2.e. Reinstatement of lapsed license .. ~~\$15~~ 230.00.

~~17.3.~~ 15.3. The Commissioner shall waive the license fee for a licensee who is a contractor and who has paid a contractor license fee under the provisions of W. Va. Code 21-11-1, *et seq.*

SUMMARY OF COMMENTS RECEIVED
and
AGENCY RESPONSES

Comment from Ryan White

Mr. White suggests removing the definition of NAESA or NAESAI from the proposed rule because the terms are not used in the body of the rule.

Agency Response

The Division of Labor agrees with Mr. White's suggestion and has removed the definition from the proposed rule.

Comment from Ryan White

Mr. White suggests removing the reciprocity provisions in the proposed rule because the Legislature removed the reciprocity provisions from the statute.

Agency Response

The Division of Labor agrees with Mr. White's suggestion and has struck through the reciprocity section (42-21A-13) in the proposed rule.

Comment from Ryan White

Mr. White 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.

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 changing the definition of “emergency” in the proposed rule, as follows: “‘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.” She suggests this change in anticipation of a possible delay by the Governor in declaring a state of emergency.

Agency Response

Based upon its experience in administering the Elevator Safety Act, there has not been an issue concerning a delay in the Governor declaring a state of emergency. Consequently, Division does not believe that the suggested change is necessary.

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.

Comment from Ron Rucker

Mr. Rucker suggests including accessibility technician licenses in section 42-21A-10, which authorizes the Commissioner to issue emergency elevator licenses when a declared emergency exists.

Agency Response

The proposed rule has been amended to include accessibility technician licenses.

Farber, Elizabeth G

From: Ryan White <rwhite@whitepllc.com>
Sent: Wednesday, August 29, 2012 4:47 PM
To: Farber, Elizabeth G; Mullins, David W
Cc: Eiwpfmsm@aol.com; swhite@whitepllc.com
Subject: Comments to Proposed amendments to Title 42, Series 21A

Commissioner Mullins and Liz,

The following are comments on the proposed amendments to 42 CSR 21A:

- 42-21A-3.8 The definition of NAESA or NAESAI is unnecessary as it is not used in the Rule body. We ask that it be removed.
- 42-21A-12 The Reciprocity provisions in the rule are no longer appropriate as the legislature specifically amended the statute to remove reciprocity provisions. As specifically mentioned in the title of the Bill, the legislature specifically desired to remove the availability of reciprocity. We ask that the proposed 42-21A-12 section relating to reciprocity be removed in its entirety.
- 42-21A-4 was amended to remove ASME Code 17.3 – 2008 from the standards required to be adhered to. Pursuant to §21-3C-1(2) of the Code of West Virginia, 1931, as amended, the legislature specifically requires that inspections be done to ensure compliance with the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1 – 3. “Safety Code for Elevators.” Accordingly, it was the specific intent of the West Virginia Legislature to require inspections to be performed in a manner that would ensure compliance with ASME Code 17.3. The Division of Labor’s removal of the specific standard is inappropriate because it is inconsistent with the intent of the West Virginia Legislature. Administrative Agencies must promulgate rules that are consistent with the legislation authorizing promulgation of such rules. Removal of the provision specifically mentioned by the West Virginia Legislature would make the rule inconsistent with §21-3C-1(2).

ASME Code A17.3 is a safety code that was published by the American Society of Mechanical Engineers specifically for existing elevators. ASME recognized the need for standardization for existing elevators and escalators to correct earlier code oversights, encompass better technology, or address design issues that later proved potentially unsafe; for not only the riding of public but for the elevator mechanic that works on them. The code would improve the safety and reliability of older elevators that are not required to comply with the same safety codes as new elevators. While as a general rule A17.3 would not bring the older elevators up to the same level of safety as the newest elevators, it would raise the safety standards for older elevators.

ASME published the first edition of Code A17.3 in 1986 and it still exists today and is in its eighth edition that became effective on February 26, 2012. Of course A17.3 was not written just to allow Authorities Having Jurisdiction (AHJ’s) to correct overlooked code items. Its main focus was to bring a consensus code to the foreground such that AHJ’s could utilize a nationally recognized standard as opposed to writing a local code. Local codes are well intended, but often overlook the issues that are broad-brushed within the industry. Generally, AHJ’s do not have the resources to provide the depth of input that comes from a consensus-based standard.

Some owners may argue against utilizing ASME Code A17.3 for cost reasons. Such owners might not see the justification for the safety upgrades since they would not directly benefit from them and would not derive any additional revenue as a result of the upgrades. However, reluctant as some are, by giving a time period and allowing building owners to establish a plan and budget for the ASME Code A17.3 requirements, should ease some of the financial pain. As a result many elevators will be updated with firemen service, door restrictors,

hydraulic cylinders with safety bulkheads, car top inspection, pit ladders, pit lighting, machine room lighting, properly fused disconnects or circuit breakers, lockable machine room doors, safer roof access to machine rooms, and many other features; all designed to make the work place safer for elevator technicians and the riding public.

Without ASME Code A17.3 regulation, equipment would tend to degrade as owners try to reduce expenses. Regulations must stay in place and be enforced to keep the industry and owners responsible for the well-being of all who come in contact with a building and the elevator equipment located therein. If a serious injury were to occur to a worker or member of the public that could have been prevented if ASME Code A17.3 were enforced, the public would most likely call for regulations that provide safe elevators. The law providing for safe elevators exists now and is not being enforced.

The reason ASME Code A17.3 is not being enforced is because the AHJ was not adhering to the code requirements of the time. Because the AHJ failed to enforce ASME Code 17.3, building owners have been accustomed to standards that do not adequately provide adequate protections for elevator mechanics and elevator riders. Building owners may argue that no one goes into that pit except the "elevator mechanic", and no one rides the car top except the "elevator mechanic" and may point to a lack of accidents at their particular building as a reason not to comply with ASME Code A17.3. However, these standards were developed by a national organization because they were the standards that were agreed to be the best for elevator safety. A lack of an accident in a particular building in the past does not justify relaxing these standards in the hopes that the good fortune of not having an accident will continue.

Most in the industry understand the hazards of working in elevator pits and on car tops, yet accidents and deaths have occurred nonetheless. Thus, it is important to provide safe working conditions to the extent possible for elevator technicians engaged in maintenance and repair of existing elevator equipment and the riding public. So often, building owners seem to exclude elevator technicians from the realm of safety. While owners are not mean-spirited, they often forget that vendors on their property are afforded the right to a safe work place by OSHA. That means that owners certainly should have a vested interest in seeing that not only their employees have a safe work environment, but vendor's employees also.

There have been too many accidents that could have been avoided by following or enacting ASME Code A17.3. Firemen's service function is helpful when they can use the elevators to rescue people from a building that is on fire and also when people have a heart attack they can get them out of a building a lot faster and take them to the hospital. When firemen can use the elevator it cuts the response time in half or maybe more.

ASME Code A17.3 is an essential tool to deal with existing dangerous conditions that can be safer. Owners should be required to put in the pit ladders, install adequate pit lighting and add car-top inspection stations. For the owner this is normally a one-time cost per elevator. Otherwise, the ultimate cost for not having these safety items could be paid by the "elevator mechanic" or the "riding public" losing a life or getting seriously injured.

Some of the advantages to complying with A17.3 are!

- Fewer trips and falls thanks to better leveling
- Enhanced safety for elevator inspectors and elevator mechanics
- Protection for emergency responders
- Protections for the general public during a fire
- Reduced risk of property damage from vandalism and flood
- Quicker and safer medical evacuation from upper floors
- Reduced risk of injury caused by unintended motion of the elevator car
- Easier operation by people with disabilities
- Emergency communication for people in the elevator
- Reduced risk of people falling down the hoistway

- Greater reliability
- Quicker and safer extraction of people trapped in the car
- Reduced risk of overloading the elevator car
- Reduced risk of a crime against a passenger in the car
- Reduced risk of injury due to crushing
- Reduced risk of catastrophic failure of special purpose elevators
- Prevent the accumulation of sewer gas in a building

Here is a list of some of the updates required by A17.3:

- If an elevator serves a rise of 25 feet or more either above or below grade, the elevator's controller must be equipped with Phase II fire service to help get people out of the building in an emergency. (Usually this does not apply unless the building has at least 3 stories.) However, if an elevator will only run with continuous pressure on the button, which is sometimes the case with freight elevators, this requirement does not apply regardless of the number of stories.
- Car door restrictors will be required for the safety of a passenger trapped in the elevator car.
- Operating devices on the top of the car, safe access to the elevator pit, permanent lighting in machinery areas, and an emergency stop switch in the elevator pit will be required for the safety of elevator inspectors and mechanics.
- Key-operated stop switches must be installed in the car to prevent crime and vandalism.
- Hoistway door unlocking devices for use only by elevator inspectors, elevator mechanics, and emergency personnel must be installed.
- Platform guards or aprons must be installed to prevent passengers from falling into the hoistway.
- Emergency lighting must be installed in the car.
- An alarm bell or other emergency signaling device must be installed in the car.
- The top of the elevator car must have an emergency exit.
- The rated load or capacity of the elevator must be posted in the elevator car.
- The walls of passenger elevator cars must be enclosed with solid material rather than grating.
- Pit drains may not connect to sewer lines.
- For a freight elevator with doors that open up and down instead of sideways, safer door edges may be needed.
- For a very old freight elevator operated by a tiller rope rather than push buttons, a new controller will be required.
- A special purpose elevator that is suspended by only 1 wire rope or 1 chain must be replaced. As a general rule, these elevators do not have a motor and the rider lifts the elevator. If installed in a location with the potential for combustible dust, explosion-proof wiring may be required.
- Single bottom jacks have to be replaced. (While there may be a significant cost involved in bringing single bottom jacks into compliance, by allowing a sufficient amount of time to budget the upgrade or replacement, and requiring an increased frequency of inspection and testing in the interim, the riding public can be assured that their safety has been given proper consideration.)

As a general rule, an elevator that is less than 20 years old will not be affected by the adoption of ASME Code A17.3. If your elevator has recently been modernized, then many of the items required by ASME Code A17.3 are included. Elevators are almost as unique as people. What needs to be done depends on factors specific to each elevator such as the original model, installation details, upgrades, and maintenance. An experienced elevator professional needs to evaluate each elevator to see what is needed.

How much will it cost?

There is a wide range of possible answers to this question depending on factors such as the type, age, number, and status of your equipment. Generally speaking, traction elevators will cost more than hydraulic elevators; the more elevators you have, the more you will have to spend; older elevators will cost more than newer elevators,

unless they have been significantly renovated or upgraded; and, an elevator servicing a taller building will cost more than an elevator servicing a shorter one' Obtaining estimates from 2 or more elevator companies is the best way to determine your cost.

We ask that 42-21A-4 not be amended to remove ASME Code 17.3 -2008 from the standards to be followed and that the Division of Labor enforce ASME Code 17.3.

Thank you for taking the time to review our comments.

White Law Offices
on behalf of
Mark Mullins
National Coordinator
Elevator Work Preservation Fund



Ryan White

Member

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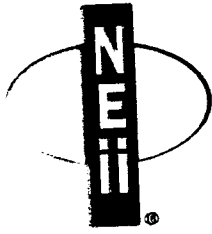
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The standards for Federal tax practice require that certain steps be taken before written advice may be relied upon by any taxpayer to avoid Federal tax penalties. This communication is not intended to comply with those standards. In

order for a taxpayer to rely upon written advice to avoid penalties, it must be a “formal opinion.” We would be happy to discuss with you whether you might desire a “formal opinion” and the additional cost associated with such an opinion.



National Elevator Industry, Inc.

GOVERNMENT AFFAIRS OFFICE

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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 Emergency 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 Emergency 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.

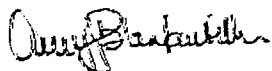
All three of the recommended changes to the state's proposed amendment to §42-21-10 "Request and Application for an Emergency Elevator Mechanic License" are consistent with the Model Elevator Law developed collaboratively by NEII® and the International Union of Elevator Contractors (IUEC) and are critical 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



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August 30, 2012

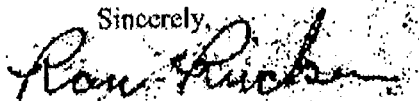
Mr. David A. Mullins, Commissioner of Labor
WV Division of Labor
Building 6, Room B-749
Capitol Complex
Charleston, WV 25305

Re: Title 42, Series 21A, of the WV Code of State Regulations

Dear Commissioner Mullins:

In regards to Section 42-21A-10, Request and Application for an Emergency Elevator Mechanic License, there is no mention of Accessibility Technicians. I feel Accessibility Technicians should be included, as they do service equipment in commercial settings.

Sincerely,



Ron Rucker, CAT S
Progressive Elevators, Inc.