

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

Form #3

Do Not Mark In This Box

FILED
15 JUL 31 P 3:07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

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

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: Elevator Safety Act

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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



Authorized Signature

QUESTIONNAIRE

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

DATE: July 31, 2015

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 58018

LEGISLATIVE RULE TITLE: _____
Elevator Safety Act

1. Authorizing statute(s) citation _____

W. Va. Code 21-3C-11

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

June 26, 2015

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

None.

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

July 27, 2015

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)

July 31, 2015

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

John R. Junkins, Acting Commissioner, West Virginia Division of Labor
State Capitol Complex, Building 6, Room B-749
Charleston, WV 25305

Telephone: 304.558.7890 x 58018

Fax: 304.558.2273

Email: john.r.junkins@wv.gov

- 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)

Elizabeth G. Farber, Assistant Attorney General
State Capitol Complex, Building 6, Room B-749
Charleston, WV 25305

Telephone: 304.558.7890 x 58012

Fax: 304.558.2273

Email: elizabeth.g.farber@wv.gov

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

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

N/A

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

WEST VIRGINIA DIVISION OF LABOR

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

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

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EARL RAY TOMBLIN
Governor



JOHN R. JUNKINS
Acting Commissioner

Statement of Facts and Circumstances

and

Summary of Proposed Amendments to Title 42, Series 21

Elevator Safety Act

The Elevator Safety Act, W. Va. Code 21-3C-1, *et seq.*, requires the annual inspection of existing elevators and similar devices and requires that new elevators are inspected prior to operation to ensure that they are installed in compliance with the American Society of Mechanical Engineers ("ASME") Codes A17.1 and A18.1. The actual edition date of the ASME codes are adopted and incorporated by reference in the current rule.

The Division of Labor proposes to amend the current rule in order to adopt newer editions of the ASME codes. New elevators are being manufactured with new technologies that are not covered in the editions of the ASME codes that are in the current rule. New elevators are also designed to meet the most current ASME code editions. Because the ASME codes in the current rule are inadequate for inspecting a new elevator, the elevator owner must request a variance from the Division before the elevator can be inspected and placed into use. This can be a cumbersome process.

The Division of Labor also proposes to amend the current rule to delete ASME Code A17.3-2008, "Safety Code for Existing Elevators and Escalators," from the proposed rule. As the title of the ASME code states, this is used to inspect existing elevators and escalators. Depending on the age of the existing elevator or escalator, compliance with A17.3 requires significant and expensive upgrades to older elevators. The cost involved in complying with A17.3 will likely cause undue financial hardship to the majority of the building owners in West Virginia, and place an especially harsh financial burden on small business and churches. For some older buildings and elevators, it would be impossible to bring the elevators up to the A17.3 code.

In lieu of using ASME A17.3 to inspect existing elevators and escalators, the Division uses a provision in ASME A17.1b, Part 8, that provides standards for existing installations, and requires that they conform to the ASME Code in effect at the time of installation.

In addition, the Division is proposing to raise the certificate of competency annual fee charged to inspectors from \$10.00 to \$90.00. This would be the first time the fee has been raised

since 2004, when the Elevator Safety Act was amended to allow private inspectors to conduct inspections.

The proposed amendments and revisions to Title 42, Series 21, of the West Virginia Code of State Regulations are as follows:

- 4.1. ASME Code ~~A17.1-2009~~ A17.1-2013/CSA B44-13, "Safety Code for Elevators and Escalators," ~~effective June 30, 2010;~~

- 4.2. ASME Code ~~17.2-2007~~, "~~Guide for Inspection of Elevators and Escalators,~~" ~~effective October 5, 2007;~~ A17.2-2014, "Guide for Inspection of Elevators, Escalators, and Moving Walks".

- ~~4.3. ASME Code A17.3-2008 "Safety Code for Existing Elevators and Escalators," effective July 9, 2009; and~~

- ~~4.4~~ 4.3 ASME Code ~~A18.1~~ A18.1-2014, "Safety Code Standard for Platform Lifts and Stairway Chairlifts," ~~published on August 28, 2008.~~

- 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~~ \$90.00 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.

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 58018 Email: john.r.junkins@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 fee increase from \$10.00 to \$90.00 annually for the certificate of competency issued to inspectors would affect 33 individuals and would yield an additional \$2,640.00 per year.

The proposed rule will not have any impact on the costs 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 | 2,640.00 | 2,640.00 |

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.

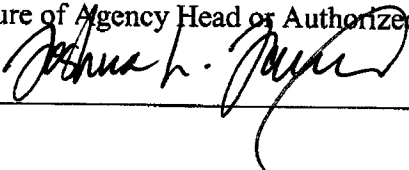
MEMORANDUM

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: 7-31-15

Signature of Agency Head or Authorized Representative



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

**SERIES 21
ELEVATOR SAFETY ACT**

FILED
2016 JUL 31 P 3:07
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-21-1. General.

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

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

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

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

§42-21-2. Application and Enforcement.

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

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor or its designated representatives as authorized by W. Va. Code § 21-3C-1, *et seq.*

§42-21-3. Definitions.

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

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

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

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

§ 42-21-4. Adoption of Standards.

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

4.1. ASME Code A17.1-~~2009~~ 2013/CSA B44-13, "Safety Code for Elevators and Escalators;" ~~effective June 30, 2010;~~

4.2. ASME Code ~~17.2-2007~~ 2014, "Guide for Inspection of Elevators, ~~and Escalators, and Moving Walks;~~" ~~effective October 5, 2007; and~~

~~4.3. ASME Code A17.3-2008 "Safety Code for Existing Elevators and Escalators," effective July 9, 2009; and~~

~~4.4~~ 4.3 ASME Code A18.1 - 2014, "Safety Code Standard 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~~ \$90.00 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.

SUMMARY OF COMMENTS RECEIVED
and
THE DIVISION OF LABOR'S (the "Division") RESPONSES

1. Comment by the National Elevator Industry, Inc. ("NEII")

NEII expressed their unequivocal support regarding the proposed adoption of ASME A17.1-2013/CSA B44-13.

Response by the Division

The Division agrees with and appreciates NEII's support of the proposed adoption of ASME A17.1-2013/CSA B44-13.

2. Comment by NEII

NEII opposes "the elimination of ASME A17.3 Safety Code for Existing Elevators and Escalators. This standard was developed to ensure that critical safety features are added to existing elevators to protect the safety of passengers and elevator personnel. While it is true that updating elevators based on ASME A17.3 will add costs, safety is the number one priority and NEII strongly encourages West Virginia to keep this important safety standard in place and update to the latest edition which is ASME A17.3-2011."

Response by the Division

The Division's concern with the adoption of ASME A17.3 in the current legislative rule arises from the ASME Code references in the Elevator Safety Act itself. There are two problematic references to the ASME A17 Codes in the Act, as follows:

- "“Certificate of acceptance”” means a certificate issued by the Division of Labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, ‘Safety Code for Elevators’ and ASME A18.1, ‘Safety Code for Platform Lifts and Stairway Chairlifts.’” W. Va. Code §21-3C-1(2); and

- “A certificate of acceptance shall only be issued if the elevator was installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, ‘Safety Code for Elevators’ and ASME A18.1, ‘Safety Code for Platform Lifts and Stairway Chairlifts’”. W. Va. Code §21-3C-5(c)(2).

The first problem is that the code reference to A17 itself is ambiguous. If the Legislature's intent was to require compliance with A17.1 through A17.3, then the statutory reference to title - "Safety Code for Elevators" - only pertains to A17.1. Both A17.2 and A17.3 have different

titles: A17.2 is titled "Guide for Inspections of Elevators, Escalators, and Moving Walks;" A17.3 is titled "Safety Code for Existing Elevators and Escalators."

The second problem is that if the intent was to require compliance with A17.1 through A17.3, the reference to A17.3 does not belong in the definition of a certificate of acceptance.

A certificate of acceptance is only issued when a newly installed elevator is in compliance with A17.1.

As the title itself states, A17.3 is only used with existing elevators. If the intent was to require compliance A17.3, it belongs in the definition of "certificate of operation," W. Va. Code §21-3C-1(4).

Because of these concerns, the Division does not believe it has the authority to require compliance with A17.3 and asks that it be deleted from the proposed rule.

The Division is not opposed to A17.3, but asks that the statutory references to the ASME Codes be clarified to eliminate confusion about the extent of its authority.

While recognizing that A17.3 is important for safety reasons, the financial impact on owners and operators of existing elevators and escalators must also be considered. Depending on the age of an existing elevator, compliance with A17.3 can require significant and expensive upgrades to older elevators. The cost involved in complying with A17.3 will likely cause undue financial hardship to the majority of the building owners in West Virginia, and place an especially harsh financial burden on small business and churches. For some older buildings and elevators, it would be impossible to comply with A17.3.

3. Comment by Pflow Industries, Inc. ("Pflow")

Pflow requested that the Division "issue a clarification letter to confirm that vertical reciprocating conveyors are not subject to the Elevator Safety Act and the Licensing of Elevator Mechanics.

Vertical Reciprocating Conveyors (VRCs) are regulated by ASME B20.1 National Safety Standard for Conveyors and Related Equipment.

VRCs are used in industrial/commercial applications and are not accessible to the general public. VRCs are within the jurisdiction of OSHA, and exempt from the Elevator Safety Act under §21-3C-13.

Moreover, VRCs are specifically excluded from elevator requirements per ASME A17.1 Rules 1.1.1(c) and 1.1.2(g)."

Response by the Division

The Division agrees that vertical reciprocating conveyors are exempt from the Elevator Safety Act. W. Va. Code §21-3C-13 provides that the “provisions of this article shall not be applicable to elevators or similar devices used by mining or industrial operations. . .” The Division will issue a letter as requested by Pflow confirming that vertical reciprocating conveyors are exempt pursuant W. Va. Code §21-3C-13.



**Comments of the National Elevator Industry, Inc. to the
West Virginia Department of Labor
regarding proposed changes to Elevator Safety Codes**

Title 42, Series 21, Elevator Safety Act

Submitted July 21, 2015

As the West Virginia Department Labor considers amendments to the state's building codes, the National Elevator Industry Inc (*NEII*®) encourages the adoption of ASME A17.1-2013/CSA B44-13, published October 21, 2013 with an effective date of April 21, 2013.

The most effective way of ensuring the safety of the riding public, as well as elevator personnel, is by the adoption of the latest version of the ASME A17.1/CSA B44 Safety Code for Elevators and Escalators. This state-of-the-art code is widely used throughout North America and is updated regularly. ASME A17.1/CSA B44 represents the optimum in safety, as it is developed and refined by hundreds of experienced experts representing all aspects of the elevator industry. Such expertise is drawn from enforcing authorities, mechanical and electrical engineering and design experts, inspectors, consultants, labor authorities, building and facility owners, and installation and maintenance specialists.

The code development process consists of a thorough consensus-building protocol, which invites examination of proposed code language and the opportunity to submit comments and/or suggests modifications related to such language. The process also includes the opportunity for a thorough public review of any proposed language. In view of the thoroughness of the process, all issues are examined in-depth, with any pitfalls or shortcomings being addressed fully prior to publication. It is important to note that particular attention is given to requirements for acceptance, periodic inspection and ongoing maintenance. Requirements in these areas are regularly updated to ensure the highest levels of safety.

Adoption of the 2013 version of the ASME A17.1/CSA B44 code without modification ensures a uniform high level of safety throughout North America, without conflicts to other adopted national standards published by ICC, NFPA, ASME, etc. *NEII*® encourages West Virginia to adopt ASME A17.1-2013/CSA B44-13 due to some of the important enhancements which are not included in the 2010 version.

Examples of significant improvements in the 2013 model codes are as follows:

- Requirements for Occupant Evacuation Operation that coincide with allowances in the model building codes for using elevators for the evacuation of building occupants in case of a fire. Based on research and hazard assessments that arose from the World Trade Center tragedy, this new operation provides a safe and effective way to move persons out of harm's way in mid and high rise fires.
- Elevator code seismic requirements are aligned with those in the model building codes.
- Expanded Maintenance Control Program (MCP) provisions.
- Clarification and expansion of the alternative testing provisions of the code.
- Improved door restriction requirements, including the recognition of electronic door restrictors and a reduction of the door unlocking zone.
- Requirements for certifying agencies that provide accreditation for Qualified Elevator Inspectors (QEI) are included.
- Update the Fire Service to the latest A17.1-2013 which would include the FEO-K1 key as standard across all elevator systems,

It should be noted that the 2007, 2010 and 2013 editions of ASME A17.1/CSA B44 incorporate adoption of the ASME A17.7/CSA B44.7 performance-based code (i.e., PBC) for elevators and escalators. Advances in technology continue to lead to remarkable feats of architecture and engineering, and progress within the elevator and escalator industry is no exception. The PBC allows new technology to be introduced under the rigorous oversight of a third-party certification organization. The PBC also facilitates innovations in accessibility and green technology that can benefit both building occupants and the community at large. The result for West Virginia means the utmost in safety and the opportunity for the most advanced technologies. *NEII*® encourages the adoption of ASME A17.7/CSA B44.7 in conjunction with the adoption of ASME A17.1-2013/CSA B44-13 to clarify its recognition across the state.

NEII® is opposed to the elimination of ASME A17.3 Safety Code for Existing Elevators and Escalators. This standard was developed to ensure that critical safety features are added to existing elevators to protect the safety of passengers and elevator personnel. While it is true that updating elevators based on ASME A17.3 will add costs, safety is the number one priority and *NEII*® strongly encourages West Virginia to keep this important safety standard in place and update to the latest edition which is ASME A17.3-2011.

NEII® is committed to public and elevator personnel safety and is ready to support the authorities having jurisdiction in understanding the latest version of the code and assisting in the process of adoption. *NEII*® provides information and training on the code and related issues, using webinars and podcasts in addition to meetings with interested parties. In addition, *NEII*® representatives are willing to meet with any state officials to discuss these comments and any other elevator and escalator code issues.

NEII® is an outgrowth of the Elevator Manufacturers' Association established in 1934. Officially renamed the National Elevator Industry, Inc. in 1969, *NEII*® is the premier national trade association representing the interest of firms that install, maintain and/or manufacture (including parts or components) elevators, escalators, moving walks and other building transportation products. The *NEII*® membership includes the top elevator companies in the United States, if not the world, and reports more than eighty percent of the work hours for the industry. Member companies include: Otis Elevator Company, Schindler Elevator Corp., ThyssenKrupp Elevator Corporation, KONE, Inc., and many other companies.

Thank you for the opportunity to provide the elevator industry's comments. Again, *NEII*® strongly encourages the state of West Virginia to adopt the 2013 edition of the codes for elevators and escalators (i.e., ASME A17.1-2013/CSA B44-13) to ensure the most advanced safety for the riding public and elevator personnel.

Representatives from *NEII*® and our member companies operating in West Virginia are available to discuss specific issues within the proposal and provide additional technical input as needed. Please let us know if the West Virginia Department of Labor would like to meet for a more in depth dialogue. In addition, *NEII*® reserves the right to provide supplemental comments on the proposed code updates.

For additional information, please contact:

Kevin Brinkman
NEII® Codes & Safety Director
Eureka, IL 61530
Tel: 309-467-2379

Amy Blankenbiller
NEII® Government Affairs Director
Topeka, KS 66610
Tel: 785-286-7599

Farber, Elizabeth G

From: Junkins, John
Sent: Tuesday, July 28, 2015 2:08 PM
To: Farber, Elizabeth G
Subject: FW: Comments on Proposed Changes to Elevator Safety Act

From: Ceriello, Elizabeth A BIS [<mailto:Elizabeth.Ceriello@otis.com>]
Sent: Wednesday, July 22, 2015 8:39 AM
To: Kevin Brinkman; Junkins, John
Cc: Amy Blankenbiller; McColl, David BIS
Subject: RE: Comments on Proposed Changes to Elevator Safety Act

Looks good. I have one comment. For A17.3, we should add another paragraph advocating for their removing it? How many states have A17.3? Any stats that show safety records are greater in those states? Or that many/most/some accidents happen bc of an elevator that has out of date safety features? Any in West Virginia or nearby states (VA, MD, DC, PA) that could be good examples? Need to make it compelling argument. Provocative...something that is hard to argue with. May take a bit of time to research but customizing to their situation and giving alternatives would be good to do.

Also, an alternative to revoking it as they are proposing here, is to phase the improvements over time OR mandate only certain retro improvements and give an general cost – say door restrictors be in a range of x to y dollars....low cost compared to injury or death of one person. Got to hit them hard on this one...so they know the counter arguments.

My two sense. Your thoughts?

From: Kevin Brinkman [<mailto:klbrinkman@neii.org>]
Sent: Tuesday, July 21, 2015 9:55 AM
To: john.r.junkins@wv.gov
Cc: Amy Blankenbiller; McColl, David BIS; Ceriello, Elizabeth A BIS
Subject: [External] Comments on Proposed Changes to Elevator Safety Act

Dear Mr. Junkins,

Please find attached written comments from the National Elevator Industry, Inc. (NEII®) regarding the proposed changes by the West Virginia Department of Labor to the Elevator Safety Act. Please feel free to contact me with any questions you may have. Thank you.

Regards,

Kevin L. Brinkman, PE
Code & Safety Director
National Elevator Industry, Inc.
925 W. Center St.
Eureka, IL 61530
309-467-2379 Office
309-208-0812 Cell
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Industries, Inc.

July 24, 2015

Mr. John R. Junkins
Acting Commissioner
West Virginia Department of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, West Virginia 25305

Email: john.r.junkins@wv.gov

Re: Comments to Proposed Rules: Elevator Safety Act

Dear Commissioner Junkins:

We appreciate the opportunity to submit these comments in response to the notice of rule-making by your agency.

We request that your agency issue a clarification letter to confirm that vertical reciprocating conveyors are not subject to the Elevator Safety Act and the Licensing of Elevator Mechanics.

Vertical Reciprocating Conveyors (VRCs) are regulated by ASME B20.1 National Safety Standard for Conveyors and Related Equipment.

VRCs are used in industrial/commercial applications and are not accessible to the general public. VRCs are within the jurisdiction of OSHA, and exempt from the Elevator Safety Act under §21-3C-13.

Moreover, VRCs are specifically excluded from elevator requirements per ASME A17.1 Rules 1.1.1(c) and 1.1.2(g).

The clarification letter from your agency is required to avoid confusion in the field due to the overly-broad definition of "elevator" in the statute.

Thank you for your consideration, and please feel free to contact me if I can assist in any way.

Sincerely,

PFLOW INDUSTRIES, INC.

Thomas Archie
Director of Regulatory Compliance