

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

Form #3

Do Not Mark In This Box

FILED

15 JUL 21 P 3:10

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

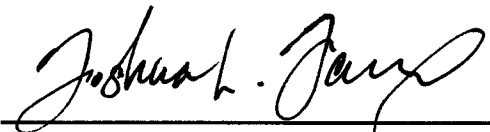
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21A

TITLE OF RULE BEING AMENDED: Licensing of Elevator Mechanics and Technicians and Registration of  
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

**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: \_\_\_\_\_  
Licensing of Elevator Mechanics and Technicians and  
Registration of Apprentices

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

www.wvlabor.org

EARL RAY TOMBLIN  
Governor



JOHN R. JUNKINS  
Acting Commissioner

## Statement of Facts and Circumstances

and

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

### Licensing of Elevator Mechanics and Technicians and Registration of Apprentices

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.

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.~~

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Licensing of Elevator Mechanics and Technicians and Registration of 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 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 rule will have no impact on the costs or 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.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	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
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title:

Licensing of Elevator Mechanics and Technicians and Registration of 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:

7-31-15

Signature of Agency Head or Authorized Representative

*Joshua H. Taylor*



TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR

FILED  
2015 JUL 31 P 3:10

SERIES 21A  
LICENSING OF ELEVATOR MECHANICS AND TECHNICIANS AND  
REGISTRATION OF APPRENTICES

WEST VIRGINIA  
SECRETARY OF STATE

**§42-21A-1. General.**

1.1. Scope. -- This 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. -- ~~June 3, 2013.~~

1.4. Effective Date. -- ~~July 1, 2013.~~

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

2.1. Application. This 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 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.

3.2. "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.

3.4. "Elevator apprentice" or "elevator mechanic apprentice" means a person who meets the requirements set forth in W. Va. Code §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.

3.6. "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 ~~A17.1b - 2009~~ A17.1 - 2013/CSA B44-13, "Safety Code for Elevators and Escalators;"

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 17.3 - 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.~~

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

5.1. A person may not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevator, 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 not work as an elevator apprentice unless he or she is registered with the Commissioner and meets the requirements set forth in section 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 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.

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

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 2 years from the date on which it was issued.

6.4. A licensee or registrant performing the work of an elevator mechanic, an accessibility technician, a LULA elevator technician, a limited 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.*

6.5. 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 work performed pursuant to W. Va. Code §21-3C-1, *et seq.*

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

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

7.1. Governors;

7.2. Sheave wheels or bearings;

7.3. Cables and shackles;

7.4. Ring gears and worn gears;

7.5. Buffers;

7.6. Traveling cables;

7.7. Hydro pumps;

- 7.8. Hydro pump motors;
- 7.9. Hydro valve chests;
- 7.10. Jack packing and seals; or
- 7.11. Rope grippers.

**§42-21A-8. Expiration and Renewal.**

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

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 lapses.

8.4. The Commissioner shall not renew a license or registration which has lapsed for a period of 90 days or more.

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.

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 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 may 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 a declared emergency exists in the state, and the number of persons holding current elevator mechanic licenses or accessibility technician licenses granted by the Commissioner is insufficient to cope with the emergency, a licensed elevator contractor 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 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 an applicant's certification of competency from a licensed elevator contractor, the Commissioner shall issue an emergency elevator mechanic license or an emergency accessibility technician license.

10.4. An emergency elevator mechanic license or an emergency accessibility technician license is valid for a period of not more than 30 days from the date of issuance, and shall identify those specific elevators, accessibility equipment, or geographical areas 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 an applicant's certification of competency from a licensed elevator contractor, the Commissioner shall issue a temporary elevator mechanic license.

11.4. A temporary elevator mechanic license is valid for not more than 30 days from the date of issuance, and shall identify particular elevators or geographical areas where the licensee is authorized to work.

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

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.

12.2. The Commissioner shall not impose any disciplinary action against a licensee or registrant without notice and an opportunity for a hearing before the Commissioner, or his or her designee.

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.

12.3. If the Commissioner suspends a license or registration, the suspension 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.

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

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.

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-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-14. Disposition of Complaints.**

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:

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

14.1.b. The date of the alleged violation;

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

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.

14.3.b. If the person is properly licensed or registered, 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. The licensee or registrant has 30 days to file a response to the complaint with the Commissioner.

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 13 of this rule.

**§42-21A-15. Fees.**

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).

15.2. The Commissioner shall charge the following fees:

15.2.a. Initial license .. \$180.00

15.2.b. Biannual renewal of license .. \$180.00

15.2.c. Temporary license .. \$90

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

15.2.e. Reinstatement of lapsed license .. \$230.00.

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**

## **THE DIVISION OF LABOR'S (the "Division") RESPONSES**

### **1. Comment by Ryan White, White Law Offices**

"The proposed rule seeks to amend Title 42, Series 21A of the Code of West Virginia Regulations with respect to how elevators will be inspected in West Virginia. Specifically, the new rule would eliminate the reference to and requirements of Section American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.1 - 3 (ASME A17.1-3). In Brief, we submit that this revision is misguided as it ultimately undermines public safety in an unacceptable manner and is wholly inconsistent with the underlying West Virginia statute governing the elevator industry. For these reasons, we respectfully request that this matter be reconsidered and that ASME A17.1-3 not be removed from WV regulations."

### **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 1§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.

### **2. Comment by Ryan White, White Law Offices**

“Some building owners may argue against utilizing ASME Code A17.3 solely for cost reasons and because they may not recognize the important safety benefits. Cost issues, however, could be addressed by giving owners a time period to comply, which would allow them to establish a plan and budget for ASME Code A17.3.”

### **Response by the Division**

The Division supports Mr. White’s comment that owners be given a time period to comply with A17.3, and believes that a grace period for compliance needs to be set forth in the Elevator Safety Act rather than the proposed rule.

### **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.

July 27, 2015

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

***Re: Rule Title: Licensing of Elevator Mechanics and Technicians and Registration of Apprentices Proposed Amendments to Title 42, Series 21A***

Dear Mr. Junkins:

On behalf of the Elevator Industry Work Preservation Fund ("Fund"), the undersigned submits the following comments on the above-referenced rule-making. The Fund, established by the International Union of Elevator Constructors and a number of industry contractors, serves as an industry-wide labor-management cooperation committee that addresses worker safety, public safety and other issues of interest to the elevator industry throughout the United States. Thank you for providing this opportunity to comment on this important matter.

**I. Overview**

The proposed rule seeks to amend Title 42, Series 21A of the Code of West Virginia Regulations with respect to how elevators will be inspected in West Virginia. Specifically, the new rule would eliminate the reference to and requirements of Section American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.1 – 3 (ASME A17.1 -3). In brief, we submit that this revision is misguided as it ultimately undermines public safety in an unacceptable manner and is wholly inconsistent with the underlying West Virginia statute governing the elevator industry. For these reasons, we respectfully request that this matter be reconsidered and that ASME A17.1 – 3 not be removed from WV regulations.

In addition, the rationale offered for the rule change merely indicates that it is being driven by concerns over "cost" to building owners. In fact, cost is the one and only issue referenced as its impetus; thus the rationale for the proposed rule appears to completely ignore any countervailing concerns that are relevant here, including public safety, which should be at the forefront of any such analysis. While we recognize that the cost impact of regulatory rules on building owners is a legitimate issue, safety must come first. As discussed below, the proposed rule change would subject the general public to significant, undue and unacceptable risk and should not be implemented; the cost impact does not justify the revision and, moreover, can be minimized through appropriate steps.

## **II. The Proposed Rule is Contrary to Controlling State Legislation**

Pursuant to §21-3C-1(2) of the Code of West Virginia, 1931 (amended), the West Virginia General Assembly specifically requires that elevator 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 express intent of the State Legislature to require elevator inspections to be performed in compliance with ASME Code 17.3. The removal of the specific standard is wholly inconsistent with the clear intent of the West Virginia Legislature and, therefore, inappropriate. Administrative agencies are obligated to faithfully execute the legislation to which they are entrusted and to promulgate rules that effectively implement such legislation, not undermine it.

## **III. The Importance of Ensuring Compliance with Professional Safety Codes**

State legislatures follow and adopt professional safety codes for a good reason—expertise. This is especially true and entirely critical when it comes to highly complex technical issues, such as appropriate engineering and safety standards essential for public safety, including elevator inspection standards. Lawmakers purposely rely on the experience and expertise of the engineers and other technical experts who develop industry codes because it is vital to getting the job done and done right. Regulations should not undermine the safety standards established by statute and expert industry codes.

ASME Code A17.3 is a safety code 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. It was recognized that 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 ninth edition that became effective in 2014. 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 building owners may argue against utilizing ASME Code A17.3 solely for cost reasons and because they may not recognize its important safety benefits. Cost issues, however, could be addressed by giving owners a time period to comply, which would allow them to establish a plan and budget for ASME Code A17.3 requirements. As a result, over time, many elevators would be updated with firemen service, door restrictors, hydraulic cylinders with safety bulkheads, car top inspection, pit ladders, pit lighting, and many other features; all designed to make the work place safer for elevator technicians and the riding public.

#### **IV. The Proposed Rule Poses A Significant Threat to Public Safety**

Without ASME Code A17.3, elevator equipment will continue to deteriorate as owners fail to properly maintain equipment and also seek to reduce future operating costs and expenses. Regulations must stay in place and be enforced to keep the industry and owners responsible for the safety of workers and the public. 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 will surely protest and demand explanations. Part of an on-going problem is that the law providing for safe elevators exists now but is not always being enforced and, therefore, equipment is not being modernized as it should be to ensure safety. Reducing and eliminating inspection requirement will make conditions worse not better.

The reason ASME Code A17.3 is not being enforced is because AHJs are not always adhering to applicable code requirements of the time. Because AHJs fail 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 adopted 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.

## V. Maintaining Proper Codes Standards is Vital to Public Safety

Maintaining full compliance of ASME Code A17.3 under the state regulations will help ensure that elevator equipment in the state is properly upgraded and maintained. By way of example, just some of the advantages of complying with A17.3 in this industry include the following:

- 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

## VI. Conclusion

For the reasons set forth herein, we respectfully request that this matter be reconsidered and that ASME A17.1 – 3 not be removed from WV regulations. Thank you for your attention in this matter.

Sincerely,



Ryan White



Industries, Inc.

6720 N. Teutonia Ave. Phone: (414) 352-9000 E-mail: [toma@pflow.com](mailto:toma@pflow.com)  
Milwaukee, WI 53209 Fax: (414) 352-9002 Web: [www.pflow.com](http://www.pflow.com)

---

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](mailto: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