



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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

AGENCY: Labor TITLE-SERIES: 42-21
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 42-21 Elevator Safety Act

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §§21-3C-6(a), 21-3C-10 and 21-3C-11(a)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §21-3C-6(a) authorizes the Division to propose rules that prescribe inspection procedures and reporting requirements.

W. Va. Code §21-3C-10 authorizes the Division to propose rules for procedures to be used in sealing and barricading an elevator once it has been declared inoperable.

W. V. Code §21-3C-11(a) authorizes the Division to propose rules for the implementation and enforcement of the Elevator Safety Act, W. Va. Code §21-3C-1 et seq., including the following: standards, qualifications and procedures for applications, examinations, the issuance and renewal of licenses, certificates of competency and certificates of operation; procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures; fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of the Elevator Safety Act, W. Va. Code §21-3C-1 et seq.; enforcement procedures; and any other rules necessary to effectuate the purposes of the Elevator Safety Act, W. Va. Code §21-3C-1 et seq.

In accordance with its rule-making authority, the rule includes the following sections: definitions; the adoption of the American Society of Mechanical Engineers (ASME) Codes A17.1, A17.2, and A18.1; requirements for the registration of elevators; requirements concerning a certificate of operation, the issuance of a certificate of operation, and the fee for a certificate of operation; requirements concerning inspections and safety tests, conflict of interest prohibitions, inspection report requirements and requirements for a hearing on an inspection report's findings; fees for inspection by the Division; grounds for the revocation of a certificate of operation; protocol for unsafe conditions or imminent danger, requirements for written notice and provisions for sealing an elevator out of service; requirements concerning applications for a certificate of competency, payment of fees and renewal; grounds for the suspension or revocation of a certificate of competency; and requirements concerning work-

sharing agreements between the Division and counties or municipalities.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/21/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/22/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The purpose of the rule is to comply with the Division's rule-making responsibilities for administering the Elevator Safety Act, W. Va. Code §21-3C-1 et seq.

The proposed rule incorporates the provisions of SB 419, passed during the 2017 regular legislative session, which amended W. Va. Code §21-3C-11(b) by authorizing a fee increase not to exceed \$90.00 for the issuance of a certificate of operation, to be set by legislative rule. The proposed rule also includes some new definitions, clarifies the requirements for the inspection and safety testing for elevators, includes provisions concerning an elevators non-compliance with ASME codes, includes grounds for the suspension or revocation of an inspector's certificate of competency, and includes some technical corrections.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The proposed rule incorporates the provisions of SB 419, passed during the 2017 regular legislative session, which amended W. Va. Code §21-3C-11(b) by authorizing a fee increase not to exceed \$90.00 for the issuance of a certificate of operation, to be set by legislative rule.

Pursuant to its W. Va. Code §§21-3C-6(a), 21-3C-10 and 21-3C11(a) rule-making authority, the Division also finds it necessary define some new terms, to clarify its requirements for the inspection and safety testing of elevators, and non-compliance with ASME codes, and to establish grounds for the suspension or revocation of an inspector's certificate of competency.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Division currently issues approximately 5,000 certificates of operation annually, and estimates that the annual fee increase from \$50.00 to \$90.00 will generate an additional \$200,000.00 per year.

The Division does not anticipate an increases in the costs of state government.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Elevator owners or operators will be responsible for the increase in fees for the issuance of certificates of operation.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	-	-	-
Personal Services	-	-	-
Current Expenses	-	-	-
Repairs and Alterations	-	-	-
Assets	-	-	-
Other	-	-	-
	-	+\$200,000.00	\$450,000.00

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 21
ELEVATOR SAFETY ACT

§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, 2016.~~

1.4. Effective Date. -- ~~May 1, 2016.~~

1.5. Sunset Date. This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.

§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~~ Elevator Safety Act.

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~~ the Elevator Safety Act.

§42-21-3. Definitions.

3.1. "Act" means the Elevator Safety Act, W. Va. Code §21-3C-1, et seq.

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

3.3. "Certificate of acceptance" means and includes a completed device registration form and acceptance inspection report, certifying that a newly installed elevator or modernized has been inspected and installed in compliance with ASME Code A17.1.

3.4. "Certificate of competency" means the document issued by the Commissioner to an inspector upon receipt of a complete application, certifying that the individual is qualified to inspect elevators.

3.5. "Certificate of operation" means the document issued by the Commissioner to an owner or operator upon receipt of an inspection report completed by an inspector, certifying that the elevator has been inspected according to the applicable ASME Code and is safe for operation.

3.6. "Commissioner" means the Commissioner of the West Virginia Division of Labor and his or her authorized representatives.

3.7. "Complete application" means an application that includes all the information required by the Commissioner on the form supplied by the Division.

3.8. "Compliant" means meeting all applicable ASME standards.

~~3.2.~~ 3.9. "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.~~ 3.10. "Inspector" means both either a Division inspector and or a private inspector as defined in W. Va. Code §21-3C-1 (7 and 17) who holds has been issued a certificate of competency issued by the Division Commissioner and is qualified to conduct safety inspections on elevators.

3.11. "Modernized" means any change to an elevator's equipment, including its parts, components or subsystems, but excluding routine maintenance, repair or replacement.

3.12. "Normal business hours" means Monday through Friday between the hours of 8:00 am and 5:00 pm.

~~3.4.~~ 3.13. "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- 2013/CSA B44-13, "Safety Code for Elevators and Escalators;"

4.2. ASME Code A17.2-2014, "Guide for Inspection of Elevators, Escalators, and Moving Walks;" and

4.3 ASME Code A18.1 - 2014, "Safety Standard for Platform Lifts and Stairway Chairlifts."

§42-21-5. Registration of Elevators.

5.1. The owner or operator of any elevator a newly installed elevator shall register every elevator operated by him or her with the Division, providing all required information the device and provide all information as the Commissioner may require on a form supplied by the Division.

5.2. Once an owner or operator of an elevator has registered the device with the Division, it shall not be necessary to submit an annual registration.

§42-21-6. Certificate of Operation Required; Issuance of a Certificate of Operation; Certificate of Operation Fee; Annual Renewal Revocation.

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

6.2. Upon receipt of the documents comprising a certificate of acceptance, the Commissioner shall issue a certificate of operation for a newly installed or modernized elevator.

~~6.1.b. 6.3. The Division Commissioner shall not issue a certificate of operation until the elevator has been inspected and certified safe for operation by~~ upon receipt of a compliant inspection report for an existing elevator from an inspector who holds a valid certificate of competency issued by the Division.

6.4. The application fee for a certificate of operation shall be \$90.00.

~~6.1.a. 6.5. 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.~~

6.6. The preferred means of paying the application fee is by credit card.

~~6.1.c. 6.7. A certificate of operation is valid for 12 months from the date of issuance~~ inspection.

6.8. The Division shall provide a renewal application to each owner or operator at least 30 days prior to the certificate of operation's expiration date.

~~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 Required; Safety Test Required; Conflict of Interest; Inspection Reports; Hearing on an Inspection Report's Findings Fees.

~~7.1. Inspection required.~~ As required by ~~W. Va. Code § 21-3C-1, et seq.,~~ the Act and this rule, an inspector ~~elevators must shall be inspected~~ inspect an elevator for safety according to the appropriate ASME code and ~~certified shall certify that it is safe for operation by an inspector who has been certified for competency by the Division~~ prior to the Commissioner issuing of a certificate of operation.

7.2. A elevator mechanic licensed pursuant to the Act shall perform a safety test on an elevator in accordance with the appropriate ASME Code requirements, and an inspector shall be physically present to witness the entire safety test.

~~7.1.a.~~ 7.3. A private inspector shall not inspect repairs or routine maintenance work performed by the private inspector, an employee of the private inspector, the private inspector's employer or another employee of the private inspector's employer.

~~7.1.b.~~ 7.4. The ~~Division~~ Commissioner and its ~~certified inspectors or employees may are~~ authorized to enter into any establishment in which an elevator is located for the purpose of inspecting the elevator for safety.

~~7.1.c.~~ 7.5. The Commissioner is authorized to make ~~An~~ announced or unannounced inspections ~~may occur at any time between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, during normal business hours~~ or at any other reasonable time considered necessary by the ~~Division~~ Commissioner in the exercise of its his or her duties.

~~7.2.~~ 7.6. Inspection Report. ~~Every~~ An inspector shall ~~prepare~~ complete an inspection report of inspection and provide all information as the Commissioner may require on a form approved by the Division, showing the true and exact condition of each elevator inspected.

~~7.2.a.~~ 7.6.a. The inspector shall leave a copy of ~~the~~ a compliant inspection report with the elevator owner or his or her representative on the day of inspection and shall forward a copy of the inspection report of inspection to the ~~Division~~ Commissioner by mail or email within 7 days of completing the inspection.

~~7.2.b.~~ 7.6.b. If the inspector determines that the elevator is not compliant with the applicable ASME Codes and 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~~ identify the areas of non-compliance and the required changes or repairs in the inspection report and shall forward the report to the Commissioner by mail or email within 7 days of completing the inspection.

7.6.c. The Commissioner shall ensure that the elevator owner is provided with a copy of the non-compliant inspection report.

7.7. Unless an owner or operator requests a hearing on the report's findings, he or she shall make the required changes or repairs within 30 days of notification of non-compliant inspection report before the Commissioner may issue a certificate of operation.

7.8. If the owner or operator objects to the inspection report's findings, he or she shall notify the Commissioner in writing to request a hearing within 20 days of receipt of the inspection report.

7.8.a. The Commissioner shall promptly notify the owner or operator in writing of the date, place, and time of the hearing.

7.8.b. After hearing the parties' evidence, the Commissioner shall make findings based on reasonable grounds of safety concerning the recommended changes or repairs set forth in the inspection report, and shall enter an order that requires the owner or operator to make the recommended changes and repairs or approves the owner's or operator's modified repair plans and specifications.

7.8.c. An owner or operator who is adversely affected by the Commissioner's findings and order shall be entitled to judicial review in accordance with W. Va. Code §29A-5-4.

§ 42-21-8. Fees for Inspections by a Division Inspector.

~~7.3. Inspection fees.~~

~~7.3.a. 8.1. The fee for the an inspection of each an elevator by the a Division inspector is shall be \$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. 8.2. If changes or repairs are required prior to the issuance of a certificate of operation, the Division shall not charge an inspection fee will not be charged by the Division for the first follow-up inspection.~~

~~7.3.d. 8.3. If subsequent follow-up inspections are required because of the owner's or operator's failure to make the required repairs or changes, the Division's inspection fees shall be charged at the same rates as set forth in subdivisions subsections 7.3.a. 8.1 and 7.3.b. 8.2 of this rule for each subsequent follow-up inspection.~~

~~7.3.e. 8.4. If an owner or operator fails The failure to pay the required inspection fee, is sufficient grounds for the Division Commissioner shall to withhold the issuance of a certificate of operation until the fee is paid.~~

§42-21-9. Revocation of Certificate of Operation.

The Commissioner shall revoke a certificate of operation for good cause, including but not limited to, the following reasons:

9.1. Any condition that presents an imminent danger;

9.2. The unauthorized removal of the seal that seals an elevator out of service;

9.3. The unauthorized removal of any barricade placed on or around an elevator that has been declared inoperable by the Division;

9.4. The submission of any intentionally misleading or falsified reports or information to the Division;

9.5. The elevator owner's or operator's failure or refusal to permit the Commissioner's access to records that are required by the Act or this rule;

9.6. The elevator owner's or operator's failure to make reports or to provide information required by

the Act or this rule;

9.7. The elevator owner's or operator's failure or refusal to permit entry or inspection as required by the Act or this rule; or

9.8. The elevator owner's or operator's failure to pay any fee required by the Act or this rule.

§ 42-21-8 10. Unsafe Condition or Imminent Danger; Written Notice; Sealing the Elevator Out of Service.

~~8.1.~~ 10.1. The ~~Division Commissioner~~ or ~~a certified~~ an inspector shall seal out of service any elevator that is found to be unsafe or poses a risk of imminent danger.

~~8.2.~~ 10.2. ~~Notice of unsafe condition or imminent danger.~~ If during the course of an inspection, ~~the Division or a certified~~ an 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 Commissioner~~ or inspector shall immediately ~~notify~~ provide the elevator owner or elevator operator in writing with a written notice, stating the deficiencies of the unsafe condition or imminent danger, and including specification of the required repairs or changes needed to correct the unsafe conditions or imminent danger, and shall seal the elevator out of service.

~~8.3.~~ 10.3. ~~A certified~~ An inspector shall immediately notify the ~~Division immediately~~ Commissioner ~~as to~~ of the location and condition of the sealed elevator.

~~8.4.~~ 10.4. Once sealed out of service, a passenger elevator shall not be operated except for the purpose of making the repairs required by the ~~Division Commissioner~~.

~~8.5.~~ 10.5. A seal placed on an elevator's electric box in accordance with the ~~provisions of W. Va. Code § 21-3C-1, et seq., Act~~ or this rule shall not be removed, obstructed or in any way altered without the Commissioner's written consent of the Division.

~~8.6.~~ 10.6. When the required repairs have been made to an elevator that has been sealed out of service, ~~the Division or a certified~~ an inspector shall perform a complete inspection and safety test before the elevator can be placed back into service.

§42-21-9 11. Inspectors Certificate of Competency Application; application; certificate of competency Payment of Fees; Renewal.

~~9.1.~~ 11.1. ~~Certificate of Competency.~~ No person may serve as ~~a elevator~~ an inspector unless he or she holds a certificate of competency issued by the Division.

~~9.2.~~ 11.2. ~~Application required.~~ Any person desiring to obtain a certificate of competency from the Division shall submit a written application ~~accompanied by a \$10.00 fee, and provide all information as the Commissioner may require on a form furnished by the Division, and shall pay the~~ accompanied by a \$10.00 fee. 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 with the application:

~~9.2.a.~~ 11.2.a. A letter from one or more previous employers concerning his or her character and relevant experience;

~~9.2.b.~~ 11.2.b. Proof that the applicant is at least 21 years of age; and

~~9.2.e.~~ 11.2.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.

11.3. The preferred means of paying the application fee is by credit card.

11.4. Upon receipt of a complete application, the Commissioner shall issue a certificate of competency to the inspector.

11.5. A certificate of competency shall expire annually on July 31.

11.6. The Division shall provide a renewal application to each inspector at least 30 days prior to the certificate of competency's expiration date.

§42-21-12. Suspension or Revocation of Certificate of Competency.

12.1. The Commissioner may suspend or revoke an inspector's certificate of competency for good cause, including but not limited to, the following:

12.1.a. a finding that the inspector is unable to properly perform inspections as required by the Act and this rule;

12.1.b. a finding that the inspector is untrustworthy;

12.1.c. falsification of any information or statement in his or her application;

12.1.d. falsification of any information or statement contained in an inspection report; or

12.1.e. failure to comply with the Act or this rule.

12.2. If the Commissioner finds that suspension or revocation of a certificate of competency is warranted, he or she shall give written notice of the reasons to the inspector and shall afford the inspector an opportunity to respond.

§42-21-~~10~~ 13. Work-Sharing Agreement Between the Division and Counties and Municipalities.

~~10.1.~~ 13.1. ~~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 §21-36-1,~~ et seq the Act.

~~10.2.~~ 13.2. 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.~~ 13.3. With the approval of the Division, counties and municipalities may combine their jurisdictions into a single work-sharing agreement.

~~10.4.~~ 13.4. A work-sharing agreement shall include the following provisions:

~~10.4.a.~~ 13.4.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.~~ 13.4.b. that no elevator covered by ~~W. Va. Code §21-3C-1, *et seq.*, the Act~~ shall be permitted to operate without having first obtained a certificate of operation from the Division;

~~10.4.c.~~ 13.4.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.~~ 13.4.d. that all inspections for safety are conducted in accordance with the ~~provisions of W. Va. Code § 21-3C-1, *et seq.*, the Act~~ or this rule;

~~10.4.e.~~ 13.4.e. that reports on inspection are filed with the Division within 5 days of the date of inspection;

~~10.4.f.~~ 13.4.f. that the county or municipality shall comply with any written orders issued by the Division;

~~10.4.g.~~ 13.4.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.*~~ Act;

~~10.4.h.~~ 13.4.h. that the Division shall provide the report and inspection forms required by the Division;

~~10.4.i.~~ 13.4.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.~~ 13.4.j. that the Division shall provide direct supervision, where considered necessary by the Division, to county or municipal inspectors.