

**STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS**

IN THE MATTER OF THE ADOPTION OF PERMANENT REGULATION RELATING TO SAFETY OF CERTAIN MECHANICAL EQUIPMENT; ADOPTING PROVISIONS GOVERNING THE ACCESS TO CERTAIN AREAS OF AN ELEVATOR; REVISING PROVISIONS GOVERNING THE ENFORCEMENT OF EXISTING LAW AND REGULATIONS GOVERNING BOILERS AND ELEVATORS; REVISING THE ADOPTION BY REFERENCE OF CERTAIN MANUALS, CODES AND STANDARDS GOVERNING ELEVATORS AND BOILERS; REVISING PROVISIONS GOVERNING THE EXPIRATION AND RENEWAL OF CERTAIN CERTIFICATES AND WORK CARDS; REVISING PROVISIONS GOVERNING PERMITS AUTHORIZING THE OPERATION OF BOILERS AND PRESSURE VESSELS; REVISING PROVISIONS GOVERNING CERTAIN SAFETY VALVES; REVISING FEES FOR CERTAIN SERVICES; REVISING PROVISIONS GOVERNING THE ISSUANCE AND MAINTENANCE OF PERMITS FOR THE CONSTRUCTION, INSTALLATION, ALTERATION AND OPERATION OF ELEVATORS; REVISING PROVISIONS GOVERNING THE PERFORMANCE OF INSPECTION OF ELEVATORS AND PAYMENT THEREFOR; REVISING PROVISIONS RELATING TO ACCIDENTS INVOLVING ELEVATORS; REVISING PROVISIONS GOVERNING ADMINISTRATIVE ACTIONS FOR VIOLATIONS OF CERTAIN REGULATIONS; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

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**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066
LCB FILE NO. R045-20**

INFORMATIONAL STATEMENT

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 455C.

- 1. A clear and concise explanation of the need for the adopted regulation.**

The Division of Industrial Relations, Mechanical Compliance Section's (MCS) proposed changes to various definitions in NAC 455C.006 through 455C.080 and NAC 455C.410 through 455C.434; updates manuals, codes and standards in NAC 455C.108 and 455C.500; and amends various sections between NAC 455C.114 through 455C.278 for certificates, operating permits, inspections, installations, numbering and safety requirements for boilers and pressure vessels; and amends various sections between NAC 455C.446 and 455C.530 for certificates, work cards, requirements, standards and procedures for elevators, escalators and moving walkways; and proposed changes to various between NAC 455C.604 and 455C.638 governing administrative actions for violations of certain regulations. The proposed regulations are necessary to update the adopted standards for boilers, pressure vessels, elevators and escalators; exempt water heaters under 200,000 BTU from regulation; provide relief for industry from over-regulation; authorize any qualified Division staff to inspect elevators, boilers and pressure vessels at mine sites; and clarify existing regulations regarding licensing, permitting and appealing MCS determinations.

2. A description of how public comment was solicited, a summary of public responses, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notice of workshop and notice of intent to act upon a regulation were sent by e-mail to 90 persons who were known to have an interest in the subject of Chapter 455C of the Nevada Administrative Code ("NAC") concerning Boilers, Elevators and Pressure Vessels, as well as any persons who had specifically requested such notice. These documents were also made available at the websites of the State of Nevada and the Department of Business and Industry, Division of Industrial Relations (www.dir.nv.gov/Meetings/Meetings).

The requirements set forth in NRS 241.020(4)(a) for the physical posting of agendas for public meetings was suspended in Governor Sisolak's March 22, 2020 Declaration of Emergency Directive 006.

A copy of this summary of the public response to the proposed regulations may be obtained from Donald C. Smith, Esq. at the Division of Industrial Relations, Legal Department, 3360 W. Sahara Ave., #250, Las Vegas, NV 89102, telephone at 702-486-9071, or e-mail to donalddsmith@dir.nv.gov.

3. The number of persons who:

- (a) Attended each hearing;**
- (b) Testified at each hearing; and**
- (c) Submitted to the agency written comments.**

4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information, if provided to the agency conducting the hearing:

- (a) Name;**
- (b) Telephone number;**
- (c) Business address;**
- (d) Business telephone number;**
- (e) Electronic mail address; and**
- (f) Name of entity or organization represented.**

At the **October 1, 2020, Workshop**, which was held by Webex videoconference and also available by telephone and streamed on Microsoft Linc and Skype, twenty-four (24) people attended; with testimony received from four (4) attendees. A summary of the testimony at this public hearing follows:

Amy Blankenbiller, National Elevator Industry, Inc., 10504 Turning Leaf Lane, Spotsylvania, Virginia 22551; (785) 286-7599; ajblankenbiller@nei.org. I wanted to comment on **Section 1** and we wanted to make a discussion point about the fact that an elevator machine room, a control room is very different from a hoistway or a pit and that through the code, model code and through the deliberation of that process it's been determined that the hoistway and pit are group 1 security keys versus the machine room or control room or control space which are group 2 security keys. We do not agree that the machine room, control room, pit, and hoistway can all be treated in the same fashion from a security key and access perspective.

Jennifer Gaynor, J. Gaynor Law, 1810 S. 7th Street, Las Vegas, Nevada 89104; Representing National Elevator Industry, Inc.; (702) 608-2920; jennifer@jgaynorlaw.com. On **Sections 1, 46, and 66**. I just have a short comment on what Amy said regarding **Section 1**, we are fine with hoistway and pit areas, that makes sense. However, we run into problems when you restrict access to elevator machine rooms and control spaces and control rooms to only mechanics or those accompanied by a mechanic. We suggest that the regulations be modified to allow authorized personnel as designated by the owner to be allowed to enter these other spaces without being accompanied by mechanic.

On **Section 46** we appreciate the change made at this section allowing that exemptions may be applied for by an agent of persons responsible for the operation of an elevator.

On **Section 66** putting a limit of 30 days on the time limit to update violations, for most repairs 30 days is perfectly adequate at times to address the repairs but we understand there's certain situations such as custom or older equipment or more time may be needed. We suggest that language be added into the section noting the availability of such exemptions for clarity because of custom or older equipment.

Timothy Barker, FM Global, 601 108th Avenue, N.E., #1400, Bellevue, Washington 98004; (360) 801-3790; timothy.barker@fmglobal.com. On **Section 35**, amending NAC 455C.206 requiring emergency shut-off valve on various boilers, this should be applied to new boilers and not retroactively as that would be a burden for the current stakeholders in the State of Nevada.

Harriette Underwood, High Sierra Elevator Inspections, 6440 Skye Point Drive, #140-124, Las Vegas, Nevada 89131; (702) 876-8600; haujbu@aol.com. On **Section 47**, the whole system of scheduling inspections and the collection of operating fees needs to be revamped. I think it would be easier to divide the state into three sections, as an example there's 12,000 elevators if you put 4,000 in each section you know it's starting April, every 4 months if permit holders can get their inspection done any time in that prior four months and if they pass, their permit expiration date stays static, if they have deficiencies they have that 4 months to get their corrections made. A lot of them

will be done prior to that but by keeping the permit date static they're at least getting the full allotment out of the permit fees.

Jennifer Gaynor, J. Gaynor Law, 1810 S. 7th Street, Las Vegas, Nevada 89104; Representing National Elevator Industry, Inc.; (702) 608-2920; jennifer@jgaynorlaw.com. On **Section 54**, a general comment, NEII does support auto adoption of code and we appreciate this revision, but we do have two requested areas where we would suggest changes. The first is not to include guides in auto adoption along with codes and standards because guides include a range of potential actions that one may change depending on the circumstances. And our second comment on **Section 54** is to note that when you are auto adopting the effective date must be clear and you must allow adequate time for compliance and as written the auto-adopt provision could require compliance within as little as a month of a new code being published and it's unclear when the effective date would be.

Amy Blankenbiller, National Elevator Industry, Inc., 10504 Turning Leaf Lane, Spotsylvania, Virginia 22551; (785) 286-7599; ajblankenbiller@neii.org. Everyone is aware, I think, within the stakeholder group, that the elevator industry tends to work with on-time delivery and so when elevator equipment is ordered, it is put in a queue to be sent on site for installation on what's to be considered to be on-time delivery status so that the equipment is not sitting in a warehouse. The on-time delivery aspect means equipment ordered well in advance of when it's actually transported to the state of Nevada and that could result in significant costs if equipment had to be reordered after a contractor signs to comply with newly adopted codes.

Jennifer Gaynor, J. Gaynor Law, 1810 S. 7th Street, Las Vegas, Nevada 89104; Representing National Elevator Industry, Inc.; (702) 608-2920; jennifer@jgaynorlaw.com. **Section 58** deals with the posting of permits. We recognize and support most of the proposed changes in this section. We just suggest one minor revision to clarify that electronic access to permits will satisfy the requirement to make permits available on the elevator premises.

Harriette Underwood, High Sierra Elevator Inspections, 6440 Skye Point Drive, #140-124, Las Vegas, Nevada 89131; (702) 876-8600; haujbu@aol.com. On **Section 59**, in regard to Subsection 3 where it says an inspector or special inspector must witness any periodic test performed on an elevator. One of the goals in 2015 was to develop a strong third-party inspection sector in the state. Competing with the state for inspections we got the authorized inspection agency industry. If the state wants inspectors to start doing inspections, I think before you go out in any of our jobs if it has passed, the Authorized Inspection Agencies (AIAs) should be afforded a courtesy call. My preference would be for state inspectors to only do follow-ups.

In **Section 60**, subsection 3, I am concerned about the change of State inspectors now being able to do inspections. Now you're changing the wording from 100 miles to 25 miles, this also limits AIA's ability to do inspections, schedule inspections.

On **Section 61**, subsection 2 says a special inspector is responsible for billing and collecting from the owner of the equipment. Special inspectors don't bill, the AIAs do and again that comes down to should AIAs be billing or is it the State?

Jennifer Gaynor, J. Gaynor Law, 1810 S. 7th Street, Las Vegas, Nevada 89104; Representing National Elevator Industry, Inc.; (702) 608-2920; jennifer@jgaynorlaw.com. On Section 65 deals with accident reporting on elevators and escalators. We have a few serious concerns with this section. As it is written, it's overly broad and its sets licensees up for confusion and failure. The term "bodily injury" is not defined within the regulation and at subsection 2 requires accident reporting within 8 hours of such an undefined bodily injury. One revision we suggest is to add a definition and we use the term "serious bodily injury" rather than "bodily injury" and adding a definition.

Amy Blankenbiller, National Elevator Industry, Inc., 10504 Turning Leaf Lane, Spotsylvania, Virginia 22551; (785) 286-7599; ajblankenbiller@neii.org. On Section 65, one of the things I just wanted to add to the comments is that our proposed changes are consistent with the Federal OSHA definitions of injury ... is that where we derived our comments and suggestions on to make it consistent with the type of definitions that are used in Federal OSHA.

Jennifer Gaynor, J. Gaynor Law, 1810 S. 7th Street, Las Vegas, Nevada 89104; Representing National Elevator Industry, Inc.; (702) 608-2920; jennifer@jgaynorlaw.com. On Section 70 which has to do with the potential dollar amount of the proposed fine. Fines of ten thousand dollars, twenty-five thousand dollars and fifty thousand dollars would be among the highest fines provided for in any state. It is our understanding that these are extreme fines that they are not meant for regular applications but more as meant as a tool to deal with serial violators. The limit on the top fine amounts should only be twenty thousand dollars and change the term "subsequent" to "repeat" to address serial violators who repeatedly commit the same violations, and "repeat" violations have reduced time periods from 24 months to 12 months for the second repeated violation and 18 months for the third.

Harriette Underwood, High Sierra Elevator Inspections, 6440 Skye Point Drive, #140-124, Las Vegas, Nevada 89131; (702) 876-8600; haujbu@aol.com. On Section 70, the permitting process needs to be redone. The State needs to look at every state in their efforts ... fees and Colorado is a good example of the maintenance companies and the affidavits when issues have been resolved and the state's follow-ups and QA inspections are random submittals since you are spot checking compliance, with the number of elevators that we have in this area.

Written comments were received for the October 1, 2020 public workshop and shortly thereafter. A summary of the written comments follows:

September 30, 2020 Comments to Revised Proposed Regulation of the Division of Industrial Relations of the Department of Business and Industry LCB File No. R045-20RP1 (Sept. 15, 2020) from National Elevator Industry, Inc., 10504 Turning Leaf Lane, Spotsylvania, Virginia 22551; (785) 286-7599. On the new Section 1 NEII does not agree that the machine room, control room, pit, and hoistway of an elevator can all be treated in the same fashion from a security key and access perspective. Problems occur when you restrict access to elevator machine rooms and control spaces and control rooms to only mechanics or those accompanied by a mechanic. Electricians, plumbers, janitors and other trades need to perform non-elevator work in control rooms and machine rooms on a routine basis. It would be prohibitively costly and inefficient to require a licensed elevator mechanic be on site to accompany electricians and janitorial staff when those people are

performing routine tasks. We suggest that the regulations be modified to allow authorized personnel as designated by the owner to be allowed to enter these other spaces without being accompanied by an elevator mechanic.

On **Section 46** amending NAC 455C.504, NEII appreciates the change which allows that exemptions may be applied for by an “agent” of persons responsible for the operation of an elevator.

On **Section 54** amending NAC 455C.500, NEII and its members support auto-adoption of industry publications in the regulations. We appreciate this revision to the regulations. However, we have two suggested revisions. First, the Handbook on Safety Code for Elevators and Escalators, A17.1/CSA B44; the Guide for Inspection of Elevators, Escalators, and Moving Walks, A17.2; and the Guide for Emergency Personnel, A17.4 are a handbook and two guides, not standards. Second, when codes are auto-adopted the effective date must be clear, and there must be an adequate time lag between adoption and the effective or enforcement date of the new code sections to allow adequate time for compliance. NEII also requests that there be an exemption that licensees may request that will exempt certain equipment from meeting a newly adopted code revision, to account for the long period between when a contract is signed and equipment ordered, and the time when the contractor applies for a permit and actual installation.

On **Section 58**, amending NAC 455C.510, NEII supports the change deleting subsection 7, because the state system for issuing elevator operating permits is now paperless. NEII supports this change and suggests that language be added to clarify that permittees may choose to make the permit available electronically versus having a physical copy on the premises. Finally, NEII understands that subsection 1, which requires that “The owner shall post information in each elevator regarding the operating permit when required by the Mechanical Compliance Section,” is not meant to mean that physical copies of permits must be posted in each elevator, but instead is a forward-looking addition to the regulations to allow the Mechanical Compliance Section to roll out a planned QR (Quick Response) code sticker program in the future. NEII supports this regulatory amendment as well.

On **Section 65**, amending NAC 455C.526 regarding the reporting of accidents, the language included in NAC 455C.526 is overly broad and should be modified to focus on serious injuries and fatalities, rather than every incident. In addition, it is unreasonable to require a report for bodily injuries within eight hours and for all other cases (even those incidents without injury) within 24 hours. Once a building owner has knowledge, it is reasonable to impose a deadline in which a report should be made to the Mechanical Compliance Section. Further, the Department’s requirements should be consistent with the federal reporting definitions to avoid unnecessary confusion.

On **Section 66**, amending NAC 455C.528, for a large portion of repairs, 30 days is adequate time to abate the violation. However, there are some rare situations where 30 days does not provide enough time. Under NAC 455C.448, an exemption to the 30-day limit may be requested for such situations. NEII suggests changes to clarify that an exemption is available under NAC 455C.448 and to direct licensees to request such exemption.

On **Section 70**, amending NAC 455C.616 concerning the amount of administrative fines, NEII and its members have serious concerns about the increased dollar amounts of the fines and suggest a top fine amount to \$20,000; change the term “subsequent” to “repeat” to make it clear this is meant to address serial violators, who repeatedly commit the same violation, rather than a licensee who may have two unrelated violations within a period; and reduce the period for repeated violations as a

trigger for the higher fines from 24 months to 12 months for the second repeated violation and 18 months for the third.

Finally, as a general comment, NEII requests that the Division add a clarifying definition of "authorized personnel" as referenced in ASME A17.1-2013/CSA B-44-13 Section 8.6.11.1 for Firefighters' Emergency Operation to reflect that a C-7 license is not required to undertake this monthly activity.

October 1, 2020 e-mail attachment from Harriette Underwood, High Sierra Elevator Inspections, 6440 Skye Pointe Drive, #140-124, Las Vegas, Nevada 89131; (702) 876-8600; haujbu@aol.com. We suggest changes in NAC 455C.510 through 455C.528 (Sections 58 through 66) fixing the expiration date of an operating permit and allowing inspections to be performed for up to 4 months in advance.

On **Section 47**, amending NAC 455C.450 regarding fees, permit holders with deficiencies who are not receiving permits are also charged at the time of inspection. High Sierra Elevator Inspections proposes the State collect fees for units with deficiencies to create more incentive to work with customers to help resolve issues in a timely manner.

On **Section 61**, amending NAC 455C.519, AIAs, not special inspectors, collect fees from inspections. The state, not the AIAs should be collecting permitting fees from elevator owners or reimburse the state for the expenses AIAs incur in collecting these fees.

On **Section 70**, amending NAC 455C.616, an owner should not be subject to any administrative fine as long as the owner is working to correct any violations noted in an inspection.

On **Section 59**, amending NAC 455C.512 about periodic tests, state inspectors should not be witnessing periodic tests.

Finally, High Sierra Elevator Inspections request that prior to regulation enforcement, additional workshops are held to provide further opportunities for the industry to evaluate these changes and to provide feedback. Proposed changes should be put on hold until in-person workshops can be attended by a combination of stakeholders.

October 7, 2020 comments from David Ostrovsky, Facilities Director, 4 Queens Hotel & Casino and Binion's Gambling Hall & Hotel, 202 Fremont Street, Las Vegas, NV. 89101; Cell: 702.285.9565; Office: 702.385.4011; dostrovsky@tlccasinos.com. On **Section 1** regarding the access to machine rooms and the work that takes place therein for elevator equipment and axillary equipment, these regulations would present an undue burden upon my employer and our ability to conduct normal business. If these areas are restricted to the persons as recommended in the changes to the NAC, building engineers would no longer be able to service the auxiliary equipment that the elevator companies do not care for and will not care for as they do not fall under their scope of work. Some of these items are housekeeping issues, building electrical needs, HVAC equipment that provides cooling to these areas (refrigerant based as well as hydronic), room lighting and the simple ability to pass from one part of the building to another. In the case of Binion's and 4Queens the building were constructed long before these types of restrictions were ever considered and both properties have areas of the building or roofs that can only be accessed by traversing an elevator equipment room. There are also machine rooms that due to the age of the building have other

equipment located in them such as telephone punch down boards or breaker panels, etc. These items have been in existence in these areas for half a century and the requirement that we call an elevator mechanic to escort an engineer or a contractor is onerous and fiscally burdensome. This is assuming a mechanic would be available on standby time. As it is now I have difficulty with some elevator companies getting my normal service performed in a timely manner due to a lack of manpower besides other reasons. These areas should continue to be allowed to be accessed by authorized personnel.

On Section 54; amending NAC 455C.500 adopting standards and codes by reference, in my opinion should adopt the language as recommended by the NEII to let the State of Nevada decide on a case by case basis what is right for Nevada and when.

On Section 58; amending NAC 455C.510 should allow for the location of the permits to be kept on the premises where the equipment is located not necessarily in the conveyance itself.

On Section 65; amending NAC 455C.526 regarding reporting accidents, is a particularly troubling and confusing section for my properties and I would like to see the language as recommended by the NEII adopted at a minimum. As it stands now Binion's and 4Queens are both required to call in to the State of Nevada emergency hotline for elevator accidents any incident even without injury that involves an entrapment. This has been required of my properties for quite some time now and has caused a great deal of confusion with my vendors. My vendors continually tell me that I am the only property in the State of Nevada required to do this and I have untold cases of inspectors asking my engineers when they call these entrapments in, as to why we are doing so. There needs to be careful consideration to the language of this section so that it is clear what needs to be called in and when. As long as that word accident remains in the language and isn't properly defined there will be confusion as to this section.

In NAC 455C.526(5) it states that if any accident by the failure, malfunction or destruction of any part of an elevator, the elevator must be shut down "immediately", and cannot be restored to service until: the Mechanical Compliance Section has been notified;... does this mean if a door gib has come out of adjustment and prevents the car from working properly until a mechanic adjusts it, it must report this accident to the MCS? I am told yes. Every elevator company that has ever worked at either of these properties clearly states the disconnect is not their responsibility and they will not work on it, be responsible for it and it is the property of the building owner. They do not have the proper contractor's license to do work on electrical feeder equipment nor the qualified personnel. I assure you this is the case with elevator companies and mechanics throughout the state and certainly the City of Las Vegas where disconnects are being operated daily by electricians and operating engineers. The intent by these people is not to work on elevators nor are they scofflaws, they are simply doing the job at hand and the job no elevator mechanic will do and in almost all cases trying to prevent further danger to the public in the event of erratically acting piece of equipment until a mechanic can be brought on site. I therefore ask that the NEII recommendations be added to this section and adopted.

On Section 66 amending NAC 455C.528, must allow for more time extensions will be a necessity to allow for proper responses to be planned and scheduled. Too often I cannot get a vendor to see to my equipment in a timely manner by no fault of my own.

On Section 70, amending NAC 455C.616, I urge you to consider the recommendation offered by the NEII and adopt the language as suggested.

Mario Vicchiullo, International Union of Elevator Constructors, 8152 Cane Creek Mill Court, Las Vegas, Nevada 89131; (702) 465-2927; mvicchiullo@iuec.org. On **Section 1**, a new provision, in subsection 1 the phrase should be amended to “authorized elevator personnel.”

On **Sections 48 through 53**, suggests certificates should have a renewal date of the certificate holder’s birthday.

On **Section 56**, amending NAC 455C.506, on an exemption for temporary cosmetic wraps on elevator hoistway doors, doors on cars or on the interior panels of cars, a new permit should invalidate or supercede any existing permit on the object.

October 7, 2020 Additional Comments to Revised Proposed Regulation of the Division of Industrial Relations of the Department of Business and Industry LCB File No. R045-20RP1 (Sept. 15, 2020) from National Elevator Industry, Inc., 10504 Turning Leaf Lane, Spotsylvania, Virginia 22551; (785) 286-7599. On **Section 54** amending NAC 455C.500, NEII shared another scenario where code auto-adoption will create a situation where such exemptions are needed going back to the contract date. For large construction projects (such as the examples we provided above, with the new Raiders Stadium, the convention center expansion, or new casino resort construction), where there are a large number of elevator/escalators included as part of the project, and such elevators/escalators may be installed in phases. If a code is auto-adopted and goes into effect after only some of the equipment is installed or permitted, but before all such equipment meets the current cut-off for exemptions (permit approval or equipment arrives in the State of Nevada), it can create a situation where some of the equipment falls under a different code standard than other equipment in the same new-build project.

October 7, 2020 Comments to Revised Proposed Regulation of the Division of Industrial Relations LCB File No. R045-20RP1 From Nevada Resort Association, 10000 W. Charleston Blvd. Suite 165, Las Vegas, Nevada 89135; (702) 735-4888. We reviewed the revised proposed regulations and attended the public workshop held on October 1 via Webex. We have also discussed the proposed regulations with our colleagues at NEII and reviewed their written comments. We support the NEII’s comments and recommendations for amendments to the proposed regulations and respectfully request that you incorporate the NEII recommendations into the final regulations.

October 8, 2020 Supplemental Comments on behalf of High Sierra Elevator Inspections, Fennemore Craig, 7800 Rancharrah Parkway, Reno, Nevada 89511; (775) 788-2245. On **Section 63**, amending NAC 455C.522, the date the operating permit fee becomes due should be extended from 30 to 90 days; permit fees should not be collected until the elevator is in compliance; and MCS should establish an additional fee payable by owners to Authorized Inspection Agencies (AIAs) for the additional expense of collecting fees from owners.

Section 58, amending NAC 455C.510, should be amended to provide that if the elevator operators completes an inspection within 120 days before the permit expiration date and has no deficiencies, the permit is renewed for a period of one year from the previous expiration date.

Section 60, amending NAC 455C.516, should not be amended to allow state inspectors to perform inspections. Additionally, AIAs should be authorized to allow an owner up to 90, rather than 30, days to bring an elevator into compliance.

On **Section 70**, amending NAC 455C.616, the fine increases are substantial and are not aligned with approaches taken in other jurisdictions. Further consideration of this issue should include an evaluation of other states' penalty systems and the success of those systems in bringing operators into compliance. Moreover, safeguards should be included in regulation to ensure that: (i) operators working in good faith with the MCS to resolve issues are not subject to these penalties; and (ii) operators are not subject to penalties where delays on the part of the MCS contributed to the violation.

At the **October 16, 2020, public hearing** on adopting the regulations, which was held by Webex videoconference; also available by telephone and streamed on Microsoft Linc and Skype, fourteen (14) people attended and there was testimony from one (1) attendee. A summary of the testimony at this public hearing follows:

Jennifer Gaynor, J. Gaynor Law, 1810 S. 7th Street, Las Vegas, Nevada 89104; Representing National Elevator Industry, Inc.; (702) 608-2920; jennifer@jgaynorlaw.com. It is our understanding the Division plans not to consider any amendments today and to adopt the regulations as is. We feel that this is ill-advised and we request that the Division reconsider. However, with that being said, if these amendments are adopted as is, I had a good conversation with the Division Counsel as to how many of our concerns center on how the changes are enforced and practiced. We believe we can work together with the Division to ensure there's clarity for licensees and fair enforcement.

On **Section 1**, limiting access to machine rooms, control rooms to only mechanics or those accompanied by a mechanic, this restriction is fine when it comes to hoistway and pits but to limit access to authorized personnel to machine rooms and control rooms can be very problematic and costly. Electricians, janitors or other authorized personnel instructed in these areas to do routine tests or maintenance should be authorized.

On **Section 66**, amending NAC 455C.528, generally 30 days is a long enough time for abatement of violations and we also understand and appreciate that when more time is needed for customer appointments, there is an exemption available under NAC 455C.448.

On **Section 54**, amending NAC 455C.500 adding auto-adoption of new industry code, some of the publications adopted are actually guides and not code and should not be strictly enforced as such; and we would like some clarification from the Division as to how the effective date will roll out by the new code publication because that is not entirely clear in the face of the regulation.

On **Section 58**, amending NAC 455C.510 regarding posting elevator permits and information on the premises, NEII does support these changes, but wants to clarify on the record that the language requiring an operating permit to be "retained on the premises" does include either a physical copy of the permit or provide electronic access to the permit in a manner that it may be accessed from the location premises. And we also wanted to note that a language requiring for the owners to post information in each elevator regarding a permit when required by the Mechanical Compliance

Section is there only in reference as to a plan to a future roll out a stickers program that will be placed in each unit and in which we also support.

On **Section 65**, amending NAC 455C.526 regarding the reporting of accidents to the Division, NEII objects to the amendment to this section to implement accident standards that are both unclear and we believe are unduly burdensome for the elevator owners and contractors.

On **Section 70**, amending NAC 455C.616 by increasing the dollar amount of administrative fines, we continue to object to some of the changes in this section including the raising of additional fines up to fifty thousand dollars. After conversations with the CAO and counsel, we understand that these large fine amounts are intended for serial egregious violators and that the Mechanical Compliance Section will not be administrating these large fine amounts for minor and non-repeated violations.

Written comments were received on or before the October 19, 2020 deadline, following the October 16, 2020 public hearing regarding the adoption of these regulations. A summary of the written comments follows:

Follow-up Comments Dated 10/19/2020, Comments to Revised Proposed Regulation of the Division of Industrial Relations of the Department of Business and Industry LCB File No. R045-20RP1 (Sept. 15, 2020) from National Elevator Industry, Inc., 10504 Turning Leaf Lane, Spotsylvania, Virginia 22551; (785) 286-7599. It is our understanding the Division plans not to consider any amendments today and to adopt the regulations as is. We feel that this is ill-advised and we request that the Division reconsider. However, with that being said, if these amendments are adopted as is, I had a good conversation with the Division Counsel as to how many of our concerns center on how the changes are enforced and practiced. We believe we can work together with the Division to ensure there's clarity for licensees and fair enforcement.

On **Section 1**, limiting access to machine rooms, control rooms to only mechanics or those accompanied by a mechanic, this restriction is fine when it comes to hoistway and pits but to limit access to authorized personnel to machine rooms and control rooms can be very problematic and costly. Electricians, janitors or other authorized personnel instructed in these areas to do routine tests or maintenance should be authorized.

On **Section 54**, amending NAC 455C.500 adding auto-adoption of new industry code, some of the publications adopted are actually guides and not code and should not be strictly enforced as such; and we would like some clarification from the Division as to how the effective date will roll out by the new code publication because that is not entirely clear in the face of the regulation.

On **Section 58**, amending NAC 455C.510 regarding posting elevator permits and information on the premises, NEII does support these changes, but wants to clarify on the record that the language requiring an operating permit to be "retained on the premises" does include either a physical copy of the permit or provide electronic access to the permit in a manner that it may be accessed from the location premises. And we also wanted to note that a language requiring for the owners to post information in each elevator regarding a permit when required by the Mechanical Compliance Section is there only in reference as to a plan to a future roll out a stickers program that will be placed in each unit and in which we also support.

On **Section 65**, amending NAC 455C.526 regarding the reporting of accidents to the Division, NEII objects to the amendment to this section to implement accident standards that are both unclear and we believe are unduly burdensome for the elevator owners and contractors.

On **Section 66**, amending NAC 455C.528, generally 30 days is a long enough time for abatement of violations and we also understand and appreciate that when more time is needed for customer appointments, there is an exemption available under NAC 455C.448.

On **Section 70**, amending NAC 455C.616 by increasing the dollar amount of administrative fines, we continue to object to some of the changes in this section including the raising of additional fines up to fifty thousand dollars. After conversations with the CAO and counsel, we understand that these large fine amounts are intended for serial egregious violators and that the Mechanical Compliance Section will not be administering these large fine amounts for minor and non-repeated violations.

October 19, 2020 Additional Comments attached to e-mail Harriette Underwood, High Sierra Elevator Inspections, 6440 Skye Pointe Drive, #140-124, Las Vegas, Nevada 89131; (702) 876-8600; haujbu@aol.com. On **Section 47**, amending NAC 455C.450(4), the small business impact statement is not factual in numerous areas; the Mechanical Compliance Section is requiring us to collect fees that are not allowed to be billed for, i.e., units inspected with deficiencies which are not being permitted at the time, with payment being required upon submission; stating that fees for annual renewal of operating permits “is at the discretion of the Administrator” gives too much power to the Administrator, making it possible for individual inspection companies to be targeted for retaliation; and our company wants reimbursement to do the state’s billing and collecting.

October 19, 2020 Written Comments from Fennemore Craig Attorneys, 7800 Rancharra Parkway, Reno, Nevada 89511; (775) 788-2226; Representing Rinnai America Corporation. Rinnai America Corporation (Rinnai) is opposed to the proposed amendment of NAC 455C.114(7), **Section 13**, as the revision limits the exemption to directly fired storage water heaters and does not apply to tankless water heaters. The notice of proposed rulemaking and the small business impact statement are misleading because of the disparity in treatment between directly fired storage water heaters and tankless water heaters, while both types are subject to the same industry standard and technical standards and requirements of the American National Standards Institute and American Society of Mechanical Engineers; imposes a greater regulatory burden on tankless water heaters; and the disparity will impact consumers. There is no legitimate government interest for treating these products and businesses differently. Rinnai suggests that this disparity could be corrected by adding “instantaneous (tankless) water heater” to the definition of potable water heater in **Section 9**, NAC 455C.064; and amending **Section 13**, NAC 455C.114(7) by adding the word “potable” before “water heater” and striking the phrases, “fired storage” and “that is directly fired with oil, gas or electricity.”

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

The Division met with stakeholder groups, including but not limited to, the Associated General Contractors Association; the Plumbing, Heating and Cooling Contractors of Nevada; the Nevada Resort Association; the elevator union (IUEC); National Elevator Industry, Inc.; and the State Fire

Marshall. Copies of the proposed regulations were provided and discussed with these stakeholder meetings.

A copy of this summary of the public response to the proposed regulations may be obtained from Donald C. Smith, Esq. at the Division of Industrial Relations, Legal Department, 3360 W. Sahara Ave., #250. Las Vegas, NV 89102, by telephone at 702-486-9070, or e-mail to donalddsmith@dir.nv.gov.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulations without change.

A number of revisions were suggested at the October 1, and 16, 2020 hearings and written comments received by October 8 and 19, 2020, none of which were not incorporated into the proposed regulation by the Division. Each of those suggested revisions are discussed separately below.

Testimony and written comments were received on **Section 1**, a new provision, be modified to allow authorized personnel as designated by the owner, such as janitors and electricians, to enter machine rooms and control spaces. MCS specifically chose to not allow access to elevator machine rooms and control spaces to personnel unaccompanied by trained elevator mechanics or inspectors. Elevator machine rooms contain equipment which present hazards to people not trained in elevator safety. For this reason, the ASME A17.1 requires that machine rooms be secured behind locked doors, that equipment not essential to the elevator not be located in these spaces, and that machine rooms may not be used to access other portions of the building. Proposed **Section 1** was not amended or deleted.

A written comment was made that **Section 13**, amending NAC 455C.114 be modified to include tankless water heaters in the subsection 7 exemption and amending **Section 9**, NAC 455C.064 defining potable water heaters, to include tankless water heaters. The intention of this amendment was to exempt traditional fired storage water heaters in commercial spaces if the devices fell under certain limits by regulation. Such devices are long established technology and are considered to be low risk. Installations of single tankless water heaters could be granted an exemption under NAC 455C.116. “Tankless” water heaters in commercial spaces, however, are sometimes connected or “daisy-chained” together to form de facto “modular boiler” systems, designed to replace traditional boiler set-ups. Such installations carry all of the same attendant risks as traditional boiler installations, including evolution of heat, makeup air requirements, and potential for catastrophic explosions in the case of unregulated natural gas release. Proposed **Sections 13 and 9** were not amended or deleted.

Testimony was received that **Section 35**, amending NAC 455C.200 to require an emergency shut-off valve be installed on the gas line which feeds the installation, upstream of any other valves, actuated by the emergency shut-down switch for the boiler, be amended to clarify that this requirement is not to be applied retroactively on existing boiler installations. MCS will not be applying this change retroactively to existing boiler installations and will not be requiring owners to retrofit their equipment to comply with this requirement. Proposed **Section 35** was not amended or deleted.

A suggestion was made that **Section 47**, amending NAC 455C.450, be revised to amend the whole system of scheduling inspections and the collection of operating fees by dividing the state into three

sections, and issuing operating permits for each section in either in April, August and December and authorizing permit holders to get their inspection done any time in that prior four months and if they pass, their permit expiration date stays static, and if they have deficiencies they have that 4 months to get their corrections made. An additional proposed amendment was suggested that the State collect fees for units with deficiencies to create more incentive to work with customers to help resolve issues in a timely manner. This suggestion was beyond the scope of the proposed amendment and is impractical. The State does not mandate the scheduling of inspections to be done in any particular way – this is left to the owner of a piece of equipment to coordinate with their hired contractors. Such a change would not be in line with the testing requirements for elevators found in adopted code, would not comport with escalator testing requirements (every year for elevators; every six months for escalators and moving walkways), and would be vastly different from requirements in all other jurisdictions, potentially leading to great confusion. Additionally, there is no practical basis for dividing the state into separate jurisdictional units. Proposed **Section 47** was not amended or deleted.

A written comment was made that **Sections 48 through 53**, NAC 455C.460 through NAC 455C.470 on certificates to work as an elevator mechanic, helper, apprentice or special inspector should have a renewal date of the certificate holder's birthday. This suggestion has not been studied. The MCS would like to conduct surveys and studies in order to consider incorporating this suggestion into future revisions of the NAC. Proposed **Sections 48 through 53** were not amended or deleted.

Testimony and written comments were received regarding **Section 54**, amending NAC 455C.500 to authorize the automatic adoption of revised codes, standards, guides and handbooks by reference, be amended to exclude guides and handbooks, which are not codes or standards; and provide clarity as to when a new code or standard is effective. MCS and special inspectors will not be issuing violations based on guides and handbooks, which are not adopted codes or standards. However, MCS believes that the most recent guides and handbooks are useful references which can be consulted. Effective dates are stated on the documents adopted by reference in each publication. Proposed **Section 54** was not amended or deleted.

Testimony and a written comment were made that **Section 56**, amending NAC 455C.506 to authorize an exemption from alteration permits for the application of cosmetic wraps on elevator hoistway doors, doors of cars or interior panels of cars under certain conditions, be amended to clarify that the issuance of a new permit should invalidate or supercede any existing permit on the object. This section specifically exempts certain temporary cosmetic wraps from permitting. Therefore, an existing permit would not be superceded. Proposed **Section 56** was not amended or deleted.

Testimony and written comments were received that **Section 58**, amending NAC 455C.510 on the posting of operating permits, be amended to include either a physical copy of the permit or provide electronic access to the permit in a manner that it may be accessed from the location premises; and that the language requiring owners to post information in each elevator regarding a permit is there only in reference to a planned future roll out of a stickers program that will be placed in each unit. MCS does not wish to mandate the means by which operating permits are made available, so long as they are available on the premises and easily accessible. MCS leaves decisions up to the individual owners of equipment, based on their particular needs. Proposed **Section 58** was not amended or deleted.

Testimony and written comments were received that **Section 59**, amending 455C.512 authorizing inspectors and special inspectors to witness periodic tests on elevators, not be amended to authorize

inspectors to witness periodic tests. It is occasionally necessary for jurisdictional or state inspectors to witness periodic tests on equipment when a special inspector is not available. For example, as part of an alteration inspection; in rural areas where special inspectors cannot or do not effectively provide service; as part of an accident investigation; or in areas which may not allow access to special inspectors for security reasons. MCS will not be competing with Authorized Inspection Agencies for inspections. It is important that this proposed amendment be retained. Proposed **Section 59** was not amended or deleted.

Testimony and written comments were received that **Section 60**, amending 455C.516 authorizing inspectors and special inspectors to conduct renewal inspections, not be amended to authorize inspectors to conduct renewal inspections. It is occasionally necessary for jurisdictional or state inspectors to witness periodic tests on equipment when a special inspector is not available. For example, as part of an alteration inspection; in rural areas where special inspectors cannot or do not effectively provide service; as part of an accident investigation; or in areas which may not allow access to special inspectors for security reasons. MCS will not be competing with Authorized Inspection Agencies for inspections. It is important that this proposed amendment be retained. Proposed **Section 60** was not amended or deleted.

Testimony and a written comment were received that **Section 61**, amending NAC 455C.519, should be revised to note that Authorized Inspection Agencies, not special inspectors, bill and collect for their services from the owners of objects. The purpose of this revision is to ensure that special inspectors are not hired and paid for by the elevator contractors who they are supposed to be ensuring are conducting tests appropriately. Additionally, the MCS does not wish to regulate the financial relationship between an AIA and the inspectors who work for them. Some AIAs, for example, require their employees to bill owners of equipment on an individual basis. Proposed **Section 61** was not amended or deleted.

A written comment was received on **Section 63**, amending NAC 455C.522, regarding inspections and periodic tests, to conform to the addition of **Section 1** of this proposed regulation. It was suggested that the date the operating permit fee becomes due should be extended from 30 to 90 days; permit fees should not be collected until the elevator is in compliance; and MCS should establish an additional fee payable by owners to Authorized Inspection Agencies (AIAs) for the additional expense of collecting fees from owners. The MCS would like to conduct surveys and studies in order to consider incorporating this suggestion into future revisions of the NAC. Proposed **Section 63** was not amended or deleted.

Testimony and written comments were received on **Section 65**, amending NAC 455C.526, specifying the time within which an elevator contractor before an initial operating permit is issued or the owner after an operating permit has been issued must report accidents involving elevators. It was suggested that the language be modified to focus on serious injuries and fatalities; that the time for reporting is based on the time the elevator contractor or owner learns of the accident; and the definition of an “accident” should be consistent with the federal accident reporting definitions. It is important that accidents involving elevator equipment be reported as soon as possible to MCS. This is to ensure that further accidents do not result from unaddressed issues, and to allow elevator equipment to function for public use without spending unnecessary time shut down awaiting investigation. Additionally, accidents which do not cause injury may have been “near misses” in which it is reasonably suspected that a recurrence of the incident may cause serious harm or death to riders of the equipment. Proposed **Section 65** was not amended or deleted.

Testimony and written comments were received on **Section 66**, amending NAC 455C.528, concerning the reporting of violations by inspectors and special inspectors, to set forth a limit of “not to exceed 30 days” to abate the reported violations. It was suggested that 30 days may be too short a time limit to abate some violations and that the limit should be extended to 90 days. Most violations can be abated within 30 days. If there are unusual circumstances in which a violation cannot be abated within 30 days, a temporary exemption may be available under NAC 455C.448. Alternatively, an owner may shut down the elevator until repairs can be made, which is an abatement of the violation until corrective action can be completed. Proposed **Section 66** was not amended or deleted.

Testimony and written comments were received on **Section 70**, amending NAC 455C.616 to increase the amount of an administrative fine from \$5,000 to a sliding scale of up to \$50,000 for violators with multiple fines within a 24 month period. It was suggested that the maximum fine should be reduced to \$20,000 and the time measurement be reduced from a maximum of 24 to 12 months and that safeguards should be included to ensure that: (i) operators working in good faith with the MCS to resolve issues are not subject to these penalties; and (ii) operators are not subject to penalties where delays on the part of the MCS contributed to the violation. The amendment as written considers that operators working in good faith will not be subject to penalties, as the penalty system is based on multiple violations of the same provision of code over a certain amount of time. The experience of the MCS is that fines are typically one-time affairs, and that those entities which are fined for violation of the NAC do not do so again. However, the MCS has also seen some repeat offenders completely disregard the corrective response that such fines are designed to have, instead simply considering such fines to be “the cost of doing business.” This amendment must remain unchanged in order to safeguard the public against repeat offenders. Proposed **Section 70** was not amended or deleted.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

The Division anticipates no adverse effects, either direct or indirect, on regulated businesses as the result of these regulations. The adverse effects, if any, are difficult to determine at this time. There will be no direct or indirect cost to regulated or small businesses.

The Division believes that there will be no beneficial effects, either direct or indirect, on regulated businesses as the result of these regulations.

The Division does not anticipate any immediate effects, either adverse or beneficial, on regulated businesses as a result of these regulations. There will be no direct or indirect costs to regulated or small businesses.

The Division does not anticipate any long term effects, either adverse or beneficial, on regulated businesses as a result of these regulations. There will be no direct or indirect costs to regulated or small businesses.

The Division anticipates no adverse effects, either direct or indirect, on the public as the result of these regulations. There will be no direct or indirect cost to the public.

The Division believes that there will be no beneficial effects, either direct or indirect, on the public as the result of these regulations.

The Division does not anticipate any immediate effects, either adverse or beneficial, on the public as a result of these regulations. There will be no direct or indirect costs to the public.

The Division does not anticipate any long term effects, either adverse or beneficial, on the public as a result of these regulations. There will be no direct or indirect costs to the public.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of these regulations.

9. A description of any regulations of other state or government agencies, which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulations duplicate.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The proposed regulations do not include any provisions which duplicate or are more stringent than existing federal, state or local standards.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation does not provide for a new fee or increase an existing fee payable to the Division.

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12. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?

The Administrator has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business.

Dated this 23d day of October, 2020.

By: /s/ *Donald C. Smith*
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