**National Elevator Industry, Inc.**

**Statement for the Record**

**Hearing on Proposed Amendments to 1 RCNY 103-02**

**Submitted to**

**New York City Department of Buildings**

**New York, New York**

**March 13, 2024**

The National Elevator Industry, Inc. (NEII) is the leading trade association for companies that

manufacture, install, and maintain elevators, escalators, moving walkways, and other building transportation products. NEII members collectively represent over eighty-five percent of the work hours in the building transportation industry. NEII welcomes the opportunity to comment on proposed amendments to paragraph (3) of subdivision (h) and paragraph (3) of subdivision (i) of section 103-02 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York (Rule 103-02) and commends the Commissioner and the Department for their willingness to address implementation challenges faced by the regulated community.

The proposed rule would allow building owners and operators additional time to comply with the timelines and requirements to file affirmations of correction (AOC) established by Local Law No. 126 of 2021 (LL 126) and effective on January 15, 2022. LL 126 modified significantly well-established practices concerning the process and timelines governing annual elevator category tests and periodic inspections. Prior to LL 126, building owners had 12 months to file inspection and test reports and an AOC after which they could be cited for a failure to file. Rule 103-02 shortened the timeframe from 12 months to 14 days after the correction is made for the AOC to be filed. In addition to the imposition of late filing fees, a failure to file in the first instance results in a separate civil penalty of $1,000 or $3,000 depending upon the type of building or facility concerned.

Implementation of these important changes to the administrative process governing the correction of defects and the affirmation of correction, which have substantial implications for the management and operational practices in the industry and building owners, were not fully appreciated nor well understood. NEII appreciates the direct engagement of the senior leadership of the Department to work with all stakeholders toward a solution that mitigates the most pressing liabilities incurred by building owners.

The proposed rule would permit building owners to avoid the imposition of civil penalties if affirmations of correction are filed by the revised dates specified solely for the 2022 and 2023 test cycles. Late filing fees would still be applied in those cases where applicable. No changes would be made that would affect the 2024 inspection and test cycle.

While the proposed rule provides a bridge to transition fully to implementation of the revised timelines and requirements to file affirmations of corrections, the proposed rule would leave in place the imposition of the civil penalty in the first instance of the failure to file an AOC. This continues to be a concern given administrative and operational constraints affecting the industry and building owners.

NEII urges the Department to consider further amendment to Rule 103-02 (with conforming amendments to Title 28 of the Administrative Code) to modify the timing of the imposition of the civil penalties authorized by paragraph (3) of subdivision (h) and paragraph (3) of subdivision (i). The Department has a reasonable and compelling interest in ensuring compliance with the Rules of the City of New York and other administrative and statutory requirements. The availability of civil penalties is an important enforcement tool to ensure compliance. In this case, given the tight timeline within which to complete all necessary administrative requirements to support the filing of an affirmation of correction, the imposition of the $1,000 and $3,000 civil penalty respectively in the first instance of a failure to file may be excessive. In many instances, the 14-day window to file may be breached by administrative omissions, the unavailability of a person required for signature, or other clerical and technical errors. The additional civil penalties should be reserved for consistent failure to file.

Given the Department’s reasonable and compelling interest in compliance, NEII recognizes that the *status quo ante* of 12 months to file an AOC does not address the city’s objective. NEII recommends the imposition of the existing civil penalties for failure to file an affirmation of corrections at six months after the inspection and test. This proposal would leave undisturbed the requirement to correct defects within a timely manner as contemplated by the Rules of the City of New York and would leave in place the monthly late filing fees associated with the AOC. The repositioning of the timing of the larger civil penalties authorized by paragraph (3) of subdivision (h) and paragraph (3) of subdivision (i) of Rule 103-02 would align the rule with common administrative procedure and practice. The six-month window represents a compromise that balances the needs of the Department with the operational realities faced by the industry.

To fully accommodate these challenges in the transition to a revised and well-understood regulatory environment, NEII member companies also respectfully recommend aligning the deadline for the filing of AOCs associated with defects identified during the 2022 test cycle with the date for the 2023 test cycle (i.e., April 14, 2024). The misunderstanding and confusion accompanying implementation of the requirements effective in January 2022 delayed the ability of the industry and building owners to accommodate the changes necessary to file AOCs on the revised timeline. Aligning the compliance dates for the 2022 and 2023 test cycles would permit the earliest AOCs to catch up with the process and meet the spirit of the intent of the proposed rule to provide a safe harbor in the transition to a revised regulatory regime.

NEII appreciates the opportunity to comment on the proposed amendments to 1 RCNY 103-02 and reiterates its appreciation to the Commissioner and the Department’s senior leadership for taking steps necessary to ameliorate the implementation of these latest inspection and test cycle requirements. NEII staff and member companies are available to provide any additional information as needed.

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