

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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Oct 2 1 50 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY WV Code 21-3D-3

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

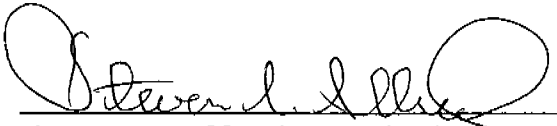
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Crane Operator Certification Act

TITLE OF RULE BEING PROPOSED: 24

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.


Steven A. Allred, Commissioner

\$5.60

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SECRETARY OF STATE

42CSR24
Title 42
Legislative Rule
West Virginia Division of Labor
Series 24

Crane Operator Certification Act

§42-24-1. General.

- 1.1. Scope. This legislative rule governs certification, fees, examinations, powers and duties of the commissioner and penalties for violations in accordance with W.Va. Code §21-3D-1 et seq, and W.Va. Code §29A-3-1 et seq.
- 1.2. Authority. W.Va. Code §21-3D-3.
- 1.3. Filing Date.
- 1.4. Effective Date.

§42-24-2. Application and Enforcement.

- 2.1. Application. This legislative rule applies to the West Virginia Division of Labor and all persons, materials and transactions governed or otherwise defined under coverage of the Crane Operator Certification Act, W.Va. Code §21-3D-1 et seq.
- 2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor.

§42-24-3. Definitions.

- 3.1. "Commissioner" means the commissioner of labor.
- 3.2. "Division" means the West Virginia Division of Labor.

§42-24-4. Adoption of standards.

4.1. National standards. For the enforcement of this article, the American National Standards Institute (A.N.S.I.) code B30 and B30.5 are hereby incorporated by reference.

4.2. State standards. [RESERVED]

§42-24-5. Certification required; exemptions.

5.1. Effective the first day of January, two thousand, a person may not operate a crane with a lifting capacity of five tons or more without certification issued under this rule.

5.2. A person is not required to obtain certification under this rule if the person:

- (a). Is a member of the armed forces of the United States or an employee of the United States, when such member or employee is engaged in the work of a crane operator exclusively for the government unit;
- (b). Is primarily the operator of farm machinery who is performing the work of a crane operator as part of an agricultural operation;
- (c). Is operating a crane on an emergency basis when the emergency is an occurrence of an event, circumstance or situation that presents an imminent threat to persons or property and constitutes a serious health or safety hazard;
- (d). Is operating a crane for personal use and not for profit on the site of real property which the person owns or leases;
- (e). Is under the direct supervision of a certified crane operator when the certified crane operator is within close proximity to the controls of the crane; and
 - 1. Who is enrolled in an industry recognized in-house training course based on the American National Standards Institute standards for crane operators and who is employed by the entity that either taught the training course or contracted to have the training course taught, all of which is approved by the commissioner; or
 - 2. Who is enrolled in an apprenticeship program or training program for crane operators approved by the United States Department of Labor, Bureau of Apprenticeship and Training;
- (f). Is an employee of and operating a crane at the direction of any manufacturing plant or other industrial establishment, including any mill, factory, tannery,

paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery or well, or is an employee of and operating a crane at the direction of the person, firm or corporation who owns or is operating such plant or establishment and on property owned or leased by such person, firm or corporation;

- (g). Is an employee of a public utility operating a crane to perform work in connection with facilities used to provide public service under the jurisdiction of the West Virginia Public Service Commission, Federal Energy Regulatory Commission or the Federal Communications Commission; or
- (h). Is operating timbering harvesting machinery associated with the production of timber and the manufacturing of wood products.

§42-24-6. Minimum Qualifications for Certification.

6.1. The commissioner shall certify an applicant for certification who:

- (a). Is at least eighteen years of age;
- (b). Submit an application on forms provided by the commissioner;
- (c). Pass the written examination;
- (d). Pass the practical examination unless otherwise exempted by the provisions of section seven [§42-24-7.2(b)] of this rule.
- (e). Presents the original, or a photographic copy, of a physician's certificate that he or she is physically qualified to drive a commercial motor vehicle as required by 49 CFR §391.41 current within one year of the date of application for certification, or an equivalent physician's certificate as approved by the commissioner; and
- (f). Pays the application fee of seventy-five (\$75) dollars and all examination fees.

6.2. Certification under this rule shall be valid throughout the state and is not assignable or transferable, and is valid for one year from the date on which it was issued.

6.3. Upon receipt of a renewal application on a form provided by the commissioner and payment of a renewal fee of seventy-five (\$75) dollars the commissioner shall renew the certification. *Provided, however,* That the applicant shall pass a written examination and

provide a current physician's certificate as required by section six [§42-24-6.1(e)] of this rule prior to renewal of a certification on each fifth anniversary of the original certification date.

§42-24-7. Examinations required. Any person desiring certification under the provisions of this article shall submit to the commissioner an application for examination on forms provided by the commissioner. The examination process consists of a written examination and a practical examination.

7.1. Written examination.

- (a). All persons desiring certification under the provisions of this article shall pass a written examination. The contents of the examination shall be based on the standards adopted under section four of this rule. All applicants are required to pass a core examination which shall test the applicant's general knowledge of crane safety and the applicable code standards. In addition to the core examination, the applicant shall pass a specialty examination for each class of crane for which certification is desired. The classifications of cranes is as follows:
 - 1. Lattice boom truck crane
 - 2. Lattice boom crawler crane
 - 3. Small telescoping boom crane
 - 4. Large telescoping boom crane
- (b). A private testing agent approved by the Commissioner shall conduct the examinations. Examination fees shall be charged for each classification examination requested and are the responsibility of the individual applicant. The applicant shall pay all examination fees directly to the approved testing agent. The testing agent shall charge examination fees according to the rate schedule as established and approved by the Commissioner.
- (c). The minimum passing score is a score of seventy (70%) percent for each examination. An applicant who fails the examination may request and the division shall provide the applicant with an analysis of his/or her performance on the failed examination. An applicant who fails the examination shall be afforded the opportunity to be re-examined after thirty (30) days and upon the submission of a new application and the payment of the fees required.
- (d). All persons issued certifications under the provisions of this article shall be required to repeat the written examination upon each fifth anniversary of the original certification date.

7.2. Practical examination.

- (a). [RESERVED] *The practical examination shall not be implemented until January 1, 2001, as provided for under WV Code §21-3D-3(a)(1). However, any person who applies for certification prior to that date and fails to meet the requirements for exemption of the practical examination as provided for under sub-division 7.2(b) of this rule, shall have the renewal of their certification conditioned on passing the practical examination.*
- (b). Exemption from practical examination. Any person who documents at least two thousand hours of on-the-job experience operating a crane during the four years immediately preceding the date of application for certification, is entitled to certification without a practical examination if the person applies for certification prior to the first day of January, two thousand. Documentation shall be by sworn affidavit on a form prescribed by the commissioner or an equivalent form approved by the commissioner.

§42-24-8. Denial, suspension, revocation, or reinstatement of certification.

8.1. The commissioner may deny, suspend, revoke or reinstate certification.

8.2. A violation of this article or this rule is grounds for the denial, suspension, revocation or refusal to reinstate certification and permits the imposition of disciplinary action: *Provided*, That no disciplinary action against a crane operator may be imposed without a proper prior notice as served under West Virginia Code [§56-2-1], and an opportunity for hearing held before the commissioner or his designee under the provisions of West Virginia Code [§29A-5-1, et seq], the Administrative Procedures Act, wherein the crane operator shall be provided the opportunity to present evidence in person, by counsel or both and after which, if the commissioner finds a violation of this article has occurred, the commissioner may impose any disciplinary action permitted in the article or rule.

8.3. Operation of a crane in violation of this article or other provision of this code may result in the suspension of certification for not less than twenty-four hours nor more than one year, or revocation of certification until reinstated.

8.4. Each certified crane operator shall carry proof of certification on his or her person during operation of a crane.

8.5. A person whose certification has been revoked may apply for certification one year after the date of the revocation.

§42-24-9. Effect of accident.

9.1. The commissioner may suspend or revoke the certification of a person involved in an accident relating to the operation of a crane by that person: *Provided*, That no disciplinary action against a crane operator may be imposed without a proper prior notice as served under West Virginia Code [§56-2-1], and hearing held before the commissioner or his or her designee pursuant to West Virginia Code [§29A-5-1 *et seq*], wherein the crane operator shall be provided the opportunity to present evidence in person, by counsel or both and after which, if the commissioner finds a violation of this article or rule has occurred, the commissioner may impose any disciplinary action permitted in this article.

9.2. If the commissioner makes a finding that the accident was caused by the actions or omissions of the certificate holder, the commissioner may require the certificate holder to retake and pass the certification examination and/or demonstration before the certificate holder may apply to have the certification reinstated.

§42-24-10. Penalties.

10.1. A person required to obtain certification under this article or rule, who operates a crane without certification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars for each violation.

10.2 (a). No person may knowingly or intentionally drive or operate a crane while:

1. Having any measurable alcohol in his or her system; or,
2. Under the influence of any controlled substance, as defined by West Virginia Code [§60A-1-101(d)]; or
3. Under the combined influence of alcohol and any controlled substance or any other drug.

(b). A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars. In addition to the fine, the commissioner of labor shall revoke the person's certification for not less than one year.

10.3. An employer who knowingly employs, permits or directs a person to operate a crane without proper certification is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars for each violation.

10.4. A person, operating a crane, who fails to produce the certification within twenty-four hours after request of the commissioner or his or her authorized representative, is

guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

10.5. If a person is convicted for an offense described in this section, and does not act to appeal the conviction within the time periods as hereinafter described, then the person's certification may be revoked or suspended in accordance with the provisions of this article and rule, and, further:

- (a). The clerk of the court in which a person is convicted for an offense described in this section shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered; and,
- (b). If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted for any of the offenses described in this section, the commissioner shall make and enter an order revoking or suspending the person's certificate to operate a crane in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided for by this article or by rule. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of a transcript of the judgment of conviction by the commissioner a presumption exists that the person named in the transcript of the judgment of conviction is the person named in the commissioner's order and such constitutes sufficient evidence to support revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order; and,
- (c). The provisions of this subsection shall not apply if an order reinstating the crane operator's certification of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction, and,
- (d). For the purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury.

§42-24-11. Crane Operator Certification Fund; Fees; Disposition of Funds.

11.1. A crane operator certification fund is established in the state treasurer's office in accordance with West Virginia Code [§21-3D-8(a)]. Payments are authorized from this fund for the enforcement of this article and this rule.

11.2. The annual certification fee shall be seventy-five dollars (\$75) which shall cover the costs incurred for the issuance or renewal of certificates.

§42-24-12. Reciprocity.

To the extent that other states provide for the certification of crane operators for similar action, the commissioner, in his or her discretion, may grant certification of the same or equivalent classification to persons certified by other states, without examination upon satisfactory proof furnished to the commissioner that the qualifications for the applicants are equal to the qualifications of the holders of similar certification in this state, and upon payment of the required application fee.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

September 23, 1998

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Andrew A. Brown
WV Division of Labor
Capitol Complex
Building 3, Room 319

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Crane Operator Certification Act, 42CSR24**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Division of Labor

Subject: Crane Operator Certification Act, 42CSR24

PERTINENT DATES

Filed for public comment: June 26, 1998

Public comment period ended: July 27, 1998

Filed following public comment period: July 30, 1998

Filed LRMRC: July 30, 1998

Filed as emergency:

Fiscal Impact: \$46,500 increase in cost

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 relates to application and enforcement of the proposed rule.

Section 3 defines terms.

Section 4 incorporates, by reference, the national standards for crane operators under the American National Standards Institute Code.

Section 5 requires all operators of cranes with a lifting capacity of 5 tons to be certified beginning January 1, 2000. It also specifies those persons who are exempt from certification. The provisions in this section are in the statute.

Section 6 basically sets forth the Code provisions regarding the minimum qualifications for certification. It provides for an application fee and a renewal fee of \$75 and unspecified examination fees.

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Section 7 requires applicants for certification to pass a written examination on crane safety and the national standards as well as a specialty exam for each class of crane for which certification is desired. Exams are to be given by private testing agents which are approved by the Commissioner. A practical exam will not be given until January 1, 2001. The exemption from the practical exam which is set forth in the statute is repeated.

Section 8 sets forth the provisions of the statute relating to the denial, suspension, revocation or reinstatement of certification.

Section 9 set forth the provisions of the statute regarding the effects of an accident.

Section 10 sets forth verbatim the provisions of the statute regarding penalties.

Section 11 refers to the fund established in the statute and also refers to the renewal fee established elsewhere in the proposed rule.

Section 12 sets forth the code section on reciprocity.

Section 13 is an unnecessary severability section.

AUTHORITY

Statutory authority: W.Va. Code, §21-3D-3, which provides, in part, as follows:

The commissioner shall:

(a) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, no later than the first day of July, one thousand nine hundred ninety-eight, which rules at the minimum shall include provisions for:

(1) Certification of individuals who operate cranes in the state of West Virginia...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Most of the proposed rule is unnecessary in that it sets forth the provisions of the statute. All unnecessary provisions should be deleted from the proposed rule.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.

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VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.