

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

Form #3

Do Not Mark In This Box

FILED

2010 JUL 23 AM 11:15

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code 21-3D-3

AMENDMENT TO AN EXISTING RULE: YES NO

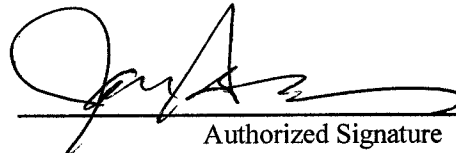
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: Crane Operator Certification Act - Practical Examination

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 21, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305
304.558.7890 x 111

LEGISLATIVE RULE TITLE: _____
Crane Operator Certification Act - Practical Examination

1. Authorizing statute(s) citation _____
W. Va. Code 21-3D-3

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 16, 2010 - Public Comment Period

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 16, 2010

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received x

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 23, 2010

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David W. Mullins, Commissioner

W. Va. Division of Labor

State Capitol Complex

Building 6, Room B-749

Charleston, WV 25305

304.558.7890 x 111

david.w.mullins@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

WEST VIRGINIA DIVISION OF LABOR

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JOE MANCHIN, III
Governor



DAVID W. MULLINS
Commissioner

Statement of Facts and Circumstances

and

Summary of Proposed Amendments to Title 42, Series 25

Crane Operator Certification Act - Practical Examination

The West Virginia Division of Labor proposes the following amendments and revisions to Title 42, Series 25, of the West Virginia Code of State Regulations.

Specifically, the Division proposes to incorporate the 2009 amendments to the Crane Operator Certification Act, W. Va. Code § 21-3D-1, *et seq.*, which eliminated the small and large telescoping boom crane classifications, and added the fixed cab and swing cab telescoping boom crane and the tower crane classifications.

In addition, the proposed rule clarifies the specific American Society of Mechanical Engineers ("ASME") standard that are incorporated by reference and identifies the yearly edition of the ASME standards that are being used in the written and practical examinations.

Other technical changes are also proposed to clarify current administrative practices and eliminate redundant provisions.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Crane Operator Certification Act - Practical Examination

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Labor

Address: State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

Phone Number: 304.558.7890 x 111 Email: david.w.mullins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

It is anticipated that the changes in the proposed rule will have no impact on the costs or revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Crane Operator Certification Act - Practical Examination

Rule Title: _____ +

Rule Title:

Crane Operator Certification Act - Practical Examination

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

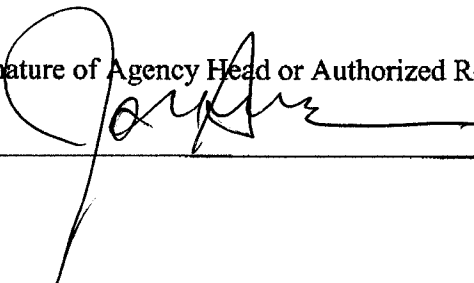
The changes to the proposed rule reflect the 2009 amendments to the Crane Operator Certification Act, W. Va. Code 21-3D-1, et seq., which eliminated the small and large telescoping boom crane classifications, and added the fixed cab and swing cab telescoping boom crane and the tower crane classifications.

The changes to the proposed rule also include references to the most current American Society of Mechanical Engineers ("ASME") standards.

Date:

7/22/10

Signature of Agency Head or Authorized Representative



TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

FILED

2010 JUL 23 AM 11: 15

SERIES 25
CRANE OPERATOR CERTIFICATION ACT
PRACTICAL EXAMINATION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-25-1. General.

1.1. Scope. -- This legislative rule governs the practical examination of crane operators in accordance with W. Va. Code §§21-3D-1, *et seq.*, and 29A-3-1, *et seq.*

1.2. Authority. -- W. Va. Code §21-3D-3(1).

1.3. Filing Date. -- ~~April 26, 2001.~~

1.4. Effective Date. ~~May 1, 2001.~~

§42-25-2. 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.*, as it relates to the practical examination of crane operators.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor.

§42-25-3. Definitions.

3.1. "Approved training course" means a training course which has been reviewed and certified by the Commissioner as complying with the requirements of section 6 of this rule.

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

~~3.1.~~ 3.3. "Class A certification" means a certification issued to a person who has met all national level certification criteria as required by the National Commission for the Certification of Crane Operators ("NCCCO") for the class or type of crane specified in 42 CSR 24-7.2 (c).

~~3.2.~~ 3.4. "Class B certification" means a certification issued to a person who has met all state

level certification criteria as required by the ~~commissioner~~ Commissioner for the class or type of crane specified in 42 CSR 24-7.2 (c).

~~3.3. "Commissioner" means the commissioner of labor.~~

~~3.4.~~ 3.5. "Division" means the West Virginia Division of Labor.

~~3.5. "Approved training course" means a training course which has been reviewed and certified by the commissioner as complying with the requirements of section eight of the Division of Labor Rule, Crane Operator Certification Act, 42CSR24.~~

3.6. "NCCCO" refers to the National Commission for the Certification of Crane Operators, located at 2750 Prosperity Avenue, Suite 505, Fairfax, VA 22031.

§42-25-4. Adoption of Standards.

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

4.1. The following standard is adopted and incorporated by reference: ASME B30.3 - 2009, Tower Cranes, § 3-3.1.2, "Qualifications for Operators."

~~4.2. State standards. [RESERVED]~~

4.2. The following standard is adopted and incorporated by reference: ASME B30.5 - 2007, Mobile and Locomotive Cranes, § 5-3.1.2, "Qualifications for Operators."

§42-25-5. Practical Examination.

~~5.1. On or after the first day of September, two thousand-one, an An applicant for an initial class A crane operator certification shall hold a certification issued by the National Commission for the Certification of Crane Operators (NCCCO) The NCCCO which requires and administers its own practical examination.~~

~~5.2. On or after the first day of September, two thousand-one, an An applicant for an initial class B certification shall pass a practical examination as defined in this rule submit a written certificate of completion from an approved practical examination examiner. Provided, That, A person who documents the successful completion of an approved training course and makes application prior to September 1, 2001 is entitled to certification without a practical examination.~~

5.3. The practical examination as required by the National Commission for the Certification of Crane Operators (NCCCO) is hereby incorporated by reference as the state practical examination

required for an initial class B crane operator certifications. The ~~commissioner~~ Commissioner may authorize the use of an equivalent practical examination when the equivalent examination ~~has been found to meet or exceed~~ meets or exceeds the requirements of the NCCCO examination.

5.4. The ~~commissioner~~ Commissioner shall arrange for administering the practical examination through ~~authorized~~ approved examiners. The practical examination shall be given in ~~three~~ 4 basic categories:

- ~~(a) Lattice Boom Crane (truck or crawler);~~
- ~~(b) Telescopic Boom Crane (5 to 17.5 tons capacity); and~~
- ~~(c) Telescopic Boom Crane (greater than 17.5 tons capacity).~~
- (a) Fixed cab telescoping boom crane;
- (b) Lattice boom crawler or truck crane;
- (c) Swing cab telescoping boom crane; and
- (d) Tower crane.

5.5. The practical examination shall consist of four primary exercises or tasks and shall evaluate the applicant's skills in hoisting, booming, swinging, following hand signals, and combination or multi-function operations. The practical examination exercises shall be performed with a load and without a load. The exercises or tasks shall consist of the following:

- (a) Task 1 – The rotation and placement of the overhaul ball in a designated stop circle;
- (b) Task 2 – The following of hand signals;
- (c) Task 3 – The rotation and placement of the overhaul ball in a fixed enclosure (barrel); and
- (d) Task 4 – The negotiation of a zigzag corridor with a test weight.

~~5.6. The combination of the four tasks defined in section 5.5 of this rule is designed to evaluate the applicant's skills. The skills tested are: hoisting, booming, swinging, following hand signals, and combination (multi-function) operations. Crane operations with load and without load are required.~~

§42-25-6. Examiners.

6.1. The ~~commissioner~~ Commissioner may approve and designate examiners to administer the practical examination required for a class B ~~crane operator~~ certification. A person desiring to become an approved examiner shall make application to the ~~commissioner~~ Commissioner on a form provided by the ~~commissioner~~ Commissioner. The applicant shall hold a full and current accreditation from the NCCCO as a practical examiner or the equivalent as approved by the ~~commissioner~~ Commissioner. A copy of the accreditation certificate shall accompany the application.

6.2. An approved examiner shall administer all practical examinations in accordance with the practical examination requirements of the NCCCO or equivalent program as approved by the ~~commissioner~~ Commissioner.

6.3. An approved examiner may charge examination fees authorized by the ~~commissioner~~ Commissioner. The applicant shall pay all applicable fees directly to the approved examiner.

6.4. The approved examiner shall provide the applicant with an official document depicting the final results of the practical examination.

(a) If the applicant successfully completes the practical examination, the examiner shall notify the applicant and forward a copy of the notice to the ~~commissioner~~ Commissioner.

~~(b) An applicant who fails the practical examination may request and the examiner shall provide the applicant with an analysis of his or her performance on the failed examination. An applicant who fails the practical 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 required fees.~~

(b) An applicant who fails the practical examination may request an analysis of his or her performance on the failed examination. The examiner shall provide the applicant with the analysis.

(c) An applicant who fails the examination shall be afforded an opportunity to be re-examined upon the submission of a new application and the payment of the fees required.

6.5. The ~~division~~ Commissioner shall make available a list of approved examiners registered with the ~~division~~ Division. ~~A person desiring a practical examination shall contact the examiner of his or her choice and schedule the examination. An applicant shall make his or her own arrangements for the practical examination with an approved examiner.~~