

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

Form #4

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SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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: 24

TITLE OF RULE BEING AMENDED: Crane Operator Certification Act

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, 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.


Authorized Signature

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 24
CRANE OPERATOR CERTIFICATION ACT

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SECRETARY OF STATE

§42-24-1. General.

1.1. Scope. -- This legislative rule governs certification, fees, examinations, training, powers and duties of the ~~commissioner~~ Commissioner and ~~penalties for violations~~ 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.

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

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

§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. "Approved training course" means a training course which has been reviewed and certified by the Commissioner as complying with the requirements of section 8 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 subdivision 7.2 (c) of this rule.

~~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 subdivision 7.2 (c) of this rule.

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

3.5. "Direct supervision by a crane operator" pursuant to the exemption in W. Va. Code § 21-3D-2 (b) (5) means that a certified crane operator is within immediate physical proximity of the controls of the crane.

3.6. "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 [§42-24-8] of this rule.~~

3.7. "Employee who operates a crane" pursuant to the exemption in W. Va. Code § 21-3D-2 (b) (6) means an employee who is limited to operating the crane only on the property owned or leased by his or her employer (i.e., the manufacturing plant, industrial establishment or mineral processing operation).

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

3.9. "Public Service Commission" pursuant to the exemption in W. Va. Code § 21-3D-2 (b) (7) means the West Virginia Public Service Commission.

3.10. "Recertification" means the renewal process that occurs on each fifth anniversary date of an applicant's original certification date.

§42-24-4. 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."

§42-24-5. Certification Required;

~~5.1. Effective the first day of September, two thousand-one, a person may not operate a mobile 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 5. Minimum Qualifications for Initial Certification, Renewal Certification, and Recertification.

~~6.1. 5.1. Initial class A certification requirements.~~ The ~~commissioner~~ Commissioner shall certify an applicant for an initial class A certification who:

- (a) Is at least ~~eighteen~~ 18 years of age;
- (b) Submits an application on forms provided by the ~~commissioner~~ Commissioner;
- (c) Submits a copy of his or her written examination scores of at least 70% as provided to the applicant by the NCCCO;
- (d) Submits a copy of his or her practical examination scores of at least 75% as provided to the applicant by the NCCCO, or a statement of exemption if the practical examination was not required by the NCCCO;
- (e) Submits a copy of an NCCCO certification card which reflects that the applicant is current and in good status;
- (f) 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~~ dated within ~~one~~ (1) year of the date of application for certification, or an equivalent physician's certificate as approved by the ~~commissioner~~ Commissioner ; and
- (g) Pays the application fee of ~~seventy-five (\$75) dollars~~ \$75.00.

~~6.2. 5.2. Initial class B certification requirements.~~ The ~~commissioner~~ Commissioner shall certify an applicant for an initial class B certification who:

- (a) Is at least ~~eighteen~~ 18 years of age;
- (b) Submits an application on forms provided by the ~~commissioner~~ Commissioner;
- (c) ~~(1) Passes the written examination, or~~
 - (2) ~~Is exempted by the provisions of W. Va. Code §21-3D-4(a)(3);~~
- (c) Submits a copy of his or her written examination scores of at least 60% as

provided to the applicant by the testing agency;

~~(d) (1) Passes the practical examination, or~~

~~(2) Is exempted by the provisions of WV Code §21-3D-4(a)(4);~~

(d) Submits a copy of his or her certificate of completion of the practical examination from an approved examiner;

(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 dated~~ within one year of the date of application for certification, or an equivalent physician's certificate as approved by the ~~commissioner~~ Commissioner; and

(f) Pays the application fee of ~~seventy-five (\$75) dollars~~ and all examination and training fees.

~~6.3:~~ 5.3. Certification under this rule is valid throughout the state, is not assignable or transferable, and is valid for one year from the date on which it was issued.

6.4: 5.4. Annual renewal of class A and B certification.

Upon receipt of a an annual renewal application on a form provided by the ~~commissioner~~ Commissioner and payment of a an annual renewal fee of ~~seventy-five (\$75) dollars~~ \$75.00, the ~~commissioner~~ Commissioner shall renew the class A or class B certification. ~~Provided, That the applicant shall meet the following special renewal requirements prior to renewal of a certification on each fifth anniversary of the original certification date:~~

5.5. Recertification. On each fifth anniversary of an applicant's initial certification date, an applicant shall meet the following recertification requirements prior to the renewal of his or her certification:

(a) ~~To renew~~ recertify a class A certification ~~on the fifth anniversary of the initial certification date,~~ the applicant shall provide a copy of a current and valid certification issued by the National Commission for the Certification of Crane Operators (NCCCO) and a current physician's certificate as required by ~~this~~ paragraph 4.5.1 (f) of this rule.

(b) ~~To renew~~ recertify a class B certification ~~on the fifth anniversary of the initial certification date,~~ the applicant shall pass a written examination with a score of at least 60% or successfully complete an approved training course and provide a current physician's certificate as required by ~~this~~ subdivision 5.2 (e) of this rule.

§42-24-6. Late Fees, Lapse, and Duplicate Certification.

6.1. If a renewal application is received or postmarked more than 15 days after the certification's expiration date, the applicant shall pay, in addition to the annual renewal fee, a late fee of \$25.00.

6.2. A certification that is not renewed on or before the renewal date lapses and cannot be renewed.

6.3. The Commissioner may issue a duplicate certification to a person who, by application and affidavit, states that the original certification has been permanently lost or destroyed and that the applicant is in full compliance with the requirements of W. Va. Code §21-3D-1, et seq., and this rule. The Division shall charge a fee of \$10.00 for each duplicate certification issued.

§42-24-7. Examinations Required.

7.1. Any person desiring an initial class A or B crane certification under the provisions of this article W. Va. Code § 21-3D-1, et seq., or this rule shall submit an application for examination to the commissioner Commissioner ~~an application for examination~~ on forms provided by the commissioner Commissioner. The examination process consists of a written examination and a practical examination.

7.2. Written examination.

(a) All persons desiring an initial class A or B crane certification under the provisions of this article W. Va. Code § 21-3D-1, et seq., or this rule shall pass a written examination. The contents of the examination shall be based on the following standards adopted under section four of this rule: by ASME : ASME B30.3-2009, ASME B30.5-2007 and ASME B30.23-2005.

~~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 a specialty examination for each class of crane for which certification is desired. The classifications of cranes are as follows:~~

- ~~1. — Lattice boom truck crane;~~
- ~~2. — Lattice boom crawler crane;~~
- ~~3. — Small telescoping boom crane; and~~

4. ~~Large telescoping boom crane.~~

(b) All applicants must obtain a passing score on a core examination that tests the applicant's general knowledge of crane safety and the applicable code standards.

(c) In addition to the core examination, the applicant must obtain a passing score on a specialty examination for each class of crane for which certification is desired. The classifications of crane certifications are as follows:

1. Fixed cab telescoping boom crane;
2. Lattice boom crawler crane;
3. Lattice boom truck crane;
4. Swing cab telescoping boom crane; and
5. Tower crane.

~~(b) (d)~~ The commissioner ~~Commissioner~~ shall provide for the written examination of all class B ~~certification~~ applicants. The ~~commissioner~~ Commissioner may:

(1) Contract with a private testing agent to conduct the written examinations. The private testing agent shall charge examination fees according to a rate schedule developed by the ~~commissioner~~ Commissioner and the applicant shall pay all examination fees directly to the testing agent; or

(2) Develop a written examination process within the ~~division~~ Division to include a fees schedule not to exceed the actual cost of administering the examinations. The certification applicant shall pay all fees directly to the ~~division~~ Division in advance of the examination.

~~(e) (e)~~ The minimum passing score for a class A certification is a score of seventy (70%) percent for each examination. An applicant who fails the examination may request and the division or private testing agent 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.

(f) The minimum passing score for a class B certification is a score of 60% for each examination.

(g) An applicant who fails the examination may request an analysis of his or her performance on the failed examination. The Division or private testing agent shall provide the applicant with the analysis.

(h) An applicant who fails the examination may retake the examination upon the submission of a new application and the payment of the fees required.

~~(d) All persons issued class B certifications under the provisions of this rule shall repeat the written examination upon each fifth anniversary of the original certification date. Provided, however, A class B certification applicant may substitute the successful completion of an approved training course for the required written examination.~~

7.3. Practical examination.

~~A person who applies for an initial class B certification shall be required to pass a practical examination as defined in Title 42 Code of State Regulations, Series 25 unless otherwise exempted by subsection b of section seven [§42-24-7.3(b)] of this section. successfully complete a practical examination as provided for in 42 CSR 25-5.~~

~~(1) A 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 applicant applies for certification prior to the first day of September, two thousand-one. Documentation shall be by sworn affidavit on a form prescribed by the commissioner or an equivalent form approved by the commissioner. The applicant shall document at least two hundred-fifty hours for each crane category for which certification is requested. Provided that, Documentation of five hundred (500) hours of experience as the operator of a large telescoping boom crane qualifies the applicant for the category of small telescoping boom crane as well as large telescoping boom crane.~~

~~(2) 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.~~

§42-24-8. Training.

8.1. The ~~commissioner~~ Commissioner may approve crane operator training courses from private sector sources to qualify applicants for class B ~~certifications~~ recertifications. To ~~qualify~~ apply for approval as an ~~acceptable course~~ from the Commissioner, the training provider shall submit a

request for approval to include a detailed instructional curriculum, copies of all manuals and study guides, a procedure for measuring the knowledge gained by students, a list of instructors and their credentials, and a proposed fees schedule. ~~The commissioner shall consider two levels of training as follows:~~

~~(a) A level one program is a basic training course structured for new operators and those operators pursuing initial state certification. The course shall consist of at least forty (40) hours of instructional time and follow the basic subject matter outline as defined in this section.~~

~~(b) A level two program is a refresher or continuing education course structured for certified crane operators. The course shall consist of at least twenty-four (24) hours of instructional time. A level two course is intended to further the education of the operator and provide regulatory and technological updates.~~

8.2. An approved training course for class B recertification shall consist of at least 24 hours of instructional time.

~~8.2.~~ 8.3. An approved training course ~~should~~ shall contain, at the minimum, instruction relative to the following subject matter:

(a) General crane knowledge to include types of cranes and their components, definition of terms and nomenclature;

(b) Familiarity with ~~A.N.S.I./~~ ASME B30.3-2009, ASME B30.5-2007 and ASME B30.23-2005 standards and OSHA requirements for safe operations and manufacturer's operating manuals;

(c) Responsibilities of the site supervisor, the crane operator and the crane owner;

(d) Safety inspection procedures, accident prevention and maintenance;

(e) Procedures for assembling and dismantling cranes and their transportation;

(f) Crane set-up to include site preparation, counterweights, outriggers, rigging methods and materials;

(g) General operation to include safe operating procedures, signaling, principles of leverage and power transmission, the purpose and use of load charts and boom angles, picking loads and adjacent hazards; and

(h) The effect of overloading, instability and structural or functional failures.

~~8.3.~~ 8.4. The training provider shall develop a methodology to measure the level of knowledge gained by the student. This methodology shall provide the means to determine if the student has successfully completed the training course. Upon the successful completion of a training course, the provider shall provide to the student a completion certificate which shall contain the following information:

- (a) The name and address of the training provider;
- (b) The student's name and social security number;
- (c) The dates and location of the training;
- (d) The length of the training in hours;
- (e) The title and level of the training course; and
- (f) The name and signature of the instructor.

~~8.4.~~ 8.5. The training provider shall ~~provide to the commissioner~~ annually submit a list of all scheduled training sessions and locations to the Commissioner. ~~The list shall be provided annually~~ on or before the first day of January. ~~The commissioner~~ training provider shall be notified ~~notify the Commissioner~~ of any modifications to the annual schedule within ~~two (2)~~ weeks of the date that the modifications are scheduled.

~~8.5.~~ 8.6. The ~~commissioner~~ Commissioner shall compile and maintain a public listing of all approved training courses. The list shall be compiled annually and shall contain the following:

- (a) The name and address of the training provider;
- (b) The dates and locations of scheduled training courses;
- (c) A schedule of fees; and
- (d) The type of training available.

~~8.6.~~ 8.7. The ~~commissioner~~ Commissioner shall provide for random site audits of an approved training course to insure that the training provided adheres to the specified curriculum and that operators are being adequately trained to safely operate a crane.

~~§42-24-9. Denial, Suspension, Revocation, or Reinstatement of Certification:~~

~~9.1. The commissioner may deny, suspend, revoke or reinstate certification.~~

~~9.2. A violation of W. Va. Code §21-3D 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 W. Va. Code §56-2-1, and an opportunity for hearing held before the commissioner or his designee under the provisions of W. Va. 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.~~

~~9.3. Operation of a crane in violation of W. Va. Code §21-3D or this rule 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.~~

~~9.4. Each certified crane operator shall carry proof of certification on his or her person during operation of a crane.~~

~~9.5. A person whose certification has been revoked may apply for certification one year after the date of the revocation.~~

~~§42-24-10. Effect of Accident.~~

~~10.1. 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 W. Va. Code §56-2-1, and hearing held before the commissioner or his or her designee pursuant to W. Va. 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.~~

~~10.2. 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.~~

~~§42-24-11. Penalties.~~

~~11.1. 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.~~

~~11.2.~~

~~(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 W. Va. 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.~~

~~11.3. 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.~~

~~11.4. 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.~~

~~11.5. 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.~~

~~§42-24-12. Crane Operator Certification Fund; Fees; Disposition of Funds.~~

~~12.1. A crane operator certification fund is established in the state treasurer's office in accordance with W. Va. Code §21-3D-8(a). Payments are authorized from this fund for the enforcement of W. Va. Code §21-3D and this rule.~~

~~12.2. The annual certification fee shall be seventy-five dollars (\$75) which shall cover the costs incurred for the issuance or renewal of certificates.~~

~~§42-24-13. 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.~~