

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

orm #3

FILED

SEP 1 12 50 PM '00

OFFICE OF THE SECRETARY OF STATE

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

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY WV Code 21-3D-3

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 24

TITLE OF RULE BEING AMENDED: Crane Operator Certification Act

IF NO, SERIES NUMBER OF NEW 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.

[Handwritten signature]

DATE: September 1, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Labor

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation WV Code 21-3D-3

2. a. Date filed in State Register with Notice of Hearing:

July 25, 2000

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of hearing (s): Public Comment Period Only

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)

September 1, 2000

f. Name and phone number of agency person to contact for additional information:

Andrew A. Brown (304) 558-7890-

West Virginia Division of Labor

Room 709, Building #6

State Capitol Complex

Charleston, WV 25305



**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

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JUL 25 2 21 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #2

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative; CITE AUTHORITY WV 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 NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 26, 2000 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Division of Labor

Attn: Andrew A. Brown

Room B-749, Building #6

State Capitol Complex

Charleston, WV 25305

RECEIVED

JUL 25 2000

Legislative Rule Making  
Review Committee

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Crane Operator Certification Act

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Division of Labor

Address: Rm. B-749, Building #6  
State Capitol Complex  
Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ 58,600	\$ 58,600	\$ 60,500
PERSONAL SERVICES	-0-	-0-	27,978	27,978	30,775
CURRENT EXPENSE	-0-	-0-	27,022	27,022	29,725
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	3,600	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. **Explanation of above estimates:** The above estimates are based on the current year's expenditures schedule (FY2001). The adoption of this rule will have no fiscal impact upon the enforcement activity.

3. **Objectives of these rules:** This rule is amended to implement changes which were mandated by the passage of House Bill 4645 during the 2000 regular session of the WV Legislature.

Rule Title: Crane Operator Certification Act

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

-None-

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

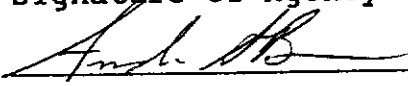
-None-

C. Economic Impact on Citizens/Public at Large.

-None-

Date: 7-25-00

Signature of Agency Head or Authorized Representative



# WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-3797

[HTTP://WWW.STATE.WV.US/LABOR](http://www.state.wv.us/labor)

CECIL H. UNDERWOOD  
Governor



STEVEN A. ALLRED  
Commissioner

## Facts and Circumstances

During the 2000 Regular Session, the West Virginia Legislature passed House Bill 4645. This bill was an amendment to WV Code §21-3D, Crane Operator Certification Act. This amendment was so extensive that it required the complete re-write of the Legislative rule, 42 CSR 24.

To facilitate a smooth transition into this regulatory process, the West Virginia Division of Labor assembled an advisory group to assist in the drafting of this rule. The group was intended to provide representation from all parties affected by the Act. This rule is the result of the efforts of that advisory group.

The Crane Operator Certification Advisory Group consisted of representatives from the following organizations:

WV Building and Construction Trades Council, AFL-CIO  
Local #132, Operating Engineers  
United Mine Workers of America, Dist. 17  
United Steel Workers of America  
Contractors Association of West Virginia  
Associated Builders and Contractors, Inc.  
All Crane & Equipment Rental Corp.  
Anthony Crane and Equipment Rental  
Anderson of West Virginia  
Ahern and Associates, Inc.

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Governor



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Commissioner

## Summary of Changes

§42-24-1. No change.

§42-24-2. Filing and effective dates deleted and will be changed upon adoption of this rule amendment.

§42-24-3. Definitions were added for Class A certification, Class B certification and Approved Training Course as mandated by H.B. 4645. The existing definitions were re-numbered.

§42-24-4. No change.

§42-24-5.1. The effective date was changed to reflect the mandate of H.B. 4645. The word "mobile" was added for clarification and in compliance with the adopted standards of American National Standards Institute (ANSI) and the Occupational Safety and Health Administration (OSHA).

§42-24-6. House Bill 4645 mandated a two tiered classification system, one for national certification and one for state only certification. This section defines the minimum qualifications for each of the two classifications.

§42-24-7. This section addresses the examination process and involves several changes.

7.1(b). The original rule established the written examination to be administered by a private vendor. This has resulted in numerous complaints about high examination costs. It was therefore decided to provide the commissioner with an option to develop and administer a state level examination and reduce the costs to the applicant. The commissioner will continue to have the option to utilize the services of a private testing company.

7.1(c). As provided for in H.B. 4645, the commissioner has the option to accept a lesser passing score (not less than 60%) on the national examination for the issuance of Class B certifications only.

7.1(d). As provided for in H.B. 4645, a class B crane operator may be re-certified every fifth year by substituting the completion of an approved training course for the required written examination. Prior to H.B. 4645, the operator had to pass the written examination prior to the fifth year re-certification.

7.2. House Bill 4645 provided for two substitutions for the required practical examination:

(b) (1). Any person who documents 2,000 hours of crane operating experience in the four years immediately preceding the date of application and applies for certification prior to September 1, 2001 shall not be required to take a practical examination. The Crane Operator Certification Advisory Group has requested and this proposed rule incorporates an extension of the experience substitution provision. This proposed provision would require a minimum of 250 hours of experience in all crane categories requested by the applicant with the total hours of experience being the minimum of 2000 hours as required by H.B. 4645. This is a safety issue. The Advisory Group was of the opinion that the Division of Labor should not "grandfather" an operator to operate a crane on which they had little or no experience. While this provision may exceed the statutory authority of the commissioner, it is requested that the provision be authorized by the adoption of this rule.

(b) (2). As provided for by H.B. 4645, the successful completion of an approved training course may be substituted for the required practical examination.

§42-24-8. This section contains new subject matter. House Bill 4645 authorized the substitution of an approved training program for the written and practical examinations required for class B certifications. This section attempts to set the criteria for the composition and administering of approved training programs.

**All changes to other sections involve re-numbering only.**

FILED

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OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**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, training, 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. ~~March 26, 1999~~
- 1.4. Effective Date. ~~May 1, 1999~~

**§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. “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).
- 3.2. “Class B certification” means a certification issued to a person who has met all state level certification criteria as required by the commissioner.

~~3.1.~~ 3.3. "Commissioner" means the commissioner of labor.

~~3.2.~~ 3.4. "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.

#### **§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~~ September, two ~~thousand~~ 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. Minimum Qualifications for Certification.**

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

- (a) Is at least eighteen years of age;
- (b) Submits an application on forms provided by the commissioner;
- (c) Submits copy of written examination scores as provided to the applicant by the NCCCO;
- (d) Submits copy of practical examination scores as provided to the applicant by the NCCCO, or statement of exemption if the practical examination was not required by the NCCCO;
- (e) Submits a copy of a NCCCO certification card which reflects that the holder 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 within one year of the date of application for certification, or an equivalent physician's certificate as approved by the commissioner; and

(g) Pays the application fee of seventy-five (\$75) dollars.

~~6.1.~~ 6.2. The commissioner shall certify an applicant for a class B certification who:

(a) Is at least eighteen years of age;

(b) ~~Submit~~ Submits an application on forms provided by the commissioner;

(c) (1) ~~Pass~~ Passes the written examination, or

(2) Successfully complete an approved training course and makes application prior to September 1, 2001, or

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

(d) (1) ~~Pass~~ Passes the practical examination, or unless otherwise exempted by the provisions of section seven [§42-24-7.2(b)] of this rule. WV Code §21-3D-4(a)(4);

(2) Successfully completes an approved training course and makes application prior to September 1, 2001; or

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

(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 and/or training fees.

~~6.2.~~ 6.3. 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.~~ 6.4. 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

meet special renewal requirements prior to renewal of a certification on each fifth anniversary of the original certification date.

- (a) To renew a class B certification on the fifth anniversary of the initial certification date, the applicant must pass a written examination or successfully complete an approved training course and provide a current physician's certificate as required by section six [§42-24-6.1(e)] [§42-24-6.2(e)] of this rule prior to renewal of a certification on each fifth anniversary of the original certification date.
- (b) To renew a class A certification on the fifth anniversary of the initial certification date, the applicant must 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 section six [§42-24-6.1(f)] of this rule.

**§42-24-7. Examinations required.** Any person desiring a class B 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 class B 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~~ are 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. The commissioner shall provide for the written examination of all class B certification applicants.~~

The commissioner may:

- (1) Contract with a private testing agent to conduct the written examinations. The private testing agent must charge examination fees according to a rate schedule developed by the commissioner and the applicant shall pay all examination fees directly to the testing agent; or
  - (2) Develop a written examination process within the division of labor 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 in advance of the examination.
- (c) The minimum passing score is a score of seventy (70%) percent for each examination. Provided however, the commissioner may accept a score of sixty (60%) percent on the national commission for the certification of crane operators written examination for class B applicants. An applicant who fails the examination may request and the division or 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.
- (d) All persons issued class B certifications under the provisions of this article shall be required to 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.

7.2. 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. A person who applies for a class B certification shall be required to pass a practical examination as defined in 42 CSR 25 unless otherwise exempted by subsection b of section seven [§42-24-7.2(b)] of this rule.~~
- (b) (1) ~~Exemption from practical examination. Any~~ 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 person applies for certification prior to the first day of ~~January, two thousand~~ 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 must document at least two hundred-fifty hours for each crane category for which certification is requested. Provided however, Documentation of five hundred (500) hours of experience as the operator of a large telescoping boom crane shall qualify 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 may approve crane operator training courses from private sector sources to qualify applicants for class B certifications. To qualify for approval as an acceptable program, the training provider must 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 shall be 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 shall be 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 should 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 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, 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. 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 date(s) and location of the training;
- (d) The length of the training in hours;
- (e) The title and level of training course; and
- (f) The name and signature of the instructor.

8.4. The training provider shall provide to the commissioner a list of all scheduled training sessions and locations. The list shall be provided annually on or before the first day of January. The commissioner shall be notified of any modifications to the annual schedule within two (2) weeks of the date that the modifications are scheduled. A schedule of fees subject to approval by the commissioner shall be contained in the request for training program approval.

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

- (a) Name and address of the training provider;

(b) Dates and locations of scheduled training classes;

(c) Schedule of fees; and

(d) Type of training available.

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

**~~§42-24-8~~ §42-24-9. Denial, suspension, revocation, or reinstatement of certification.**

~~8.1.~~ 9.1. The commissioner may deny, suspend, revoke or reinstate certification.

~~8.2.~~ 9.2. 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.~~ 9.3. 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.~~ 9.4. Each certified crane operator shall carry proof of certification on his or her person during operation of a crane.

~~8.5.~~ 9.5. A person whose certification has been revoked may apply for certification one year after the date of the revocation.

**~~§42-24-9.~~ §42-24-10. Effect of accident.**

~~9.1.~~ 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 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.~~ 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.

~~§42-24-10.~~ §42-24-11. **Penalties.**

~~10.1.~~ 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.

~~10.2.~~ 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 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.~~ 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.

~~10.4.~~ 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.

~~10.5.~~ 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.

~~§42-24-11.~~ §42-24-12. **Crane Operator Certification Fund; Fees; Disposition of Funds.**

~~11.1.~~ 12.1. 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.~~ 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.

~~§42-24-12.~~ **§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.