

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

FILED
JUN 26 1 30 PM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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: _____

TITLE OF RULE BEING AMENDED: _____

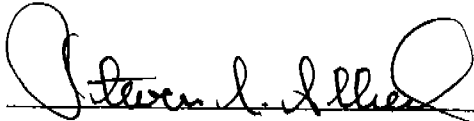
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: Crane Operator Certification Act

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 July 27, 1998 AT 4:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Andrew A. Brown
West Virginia Division of Labor
Building 3, Room 319
State Capitol Complex
Charleston, WV 25305

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.80

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Crane Operator Certification Act

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency West Virginia Division of Labor

Address Building 3, Room 319
State Capitol Complex
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 46,517	\$ -0-	\$ 46,517	\$ 41,150	\$ 43,200
PERSONAL SERVICES	17,749	-0-	17,749	18,600	20,000
CURRENT EXPENSE	9,268	-0-	9,268	9,500	9,500
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	8,500	-0-	8,500	1,500	1,500
OTHER	11,000	-0-	11,000	11,500	12,200

2. Explanation of above estimates:

PERSONAL SERVICES: Wages and fringe benefits for one office asst. I.
CURRENT EXPENSE: Telephone, printing, space rental and general office costs.
EQUIPMENT: Computer hardware and furniture.
OTHER: Salary and expense reimbursement for the utilization of current field officers for the enforcement of the Act.

3. Objectives of these rules:

Implementation of the provisions of H.B. 4105 as passed by the 1998 Legislature.

Rule Title: Crane Operator Certification Act

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

This is a new enforcement program with an annual cost of approximately \$47,000 and expected revenues of about \$10,000. The anticipated funding short-fall is approximately \$36,000.

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

Crane operators must be certified at an annual cost of \$75. Also, the applicant must bear the cost of examinations when required.

C. Economic Impact on Citizens/Public at Large.

None

Date: 6-28-98

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

CECIL H. UNDERWOOD
Governor



STEVEN A. ALLRED
Commissioner

Facts and Circumstances

During the 1998 Regular Session, the West Virginia Legislature passed H.B. 4105, "Crane Operator Certification Act". This Legislative Rule, 42CSR24, is necessary to provide administrative procedures for the enforcement of the Act. West Virginia Code §21-3D-3(a) requires that this rule be filed not later than July 1, 1998.

We are an Equal Opportunity Employer

WEST VIRGINIA DIVISION OF LABOR

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

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

CECIL H. UNDERWOOD
Governor



STEVEN A. ALLRED
Commissioner

SUMMARY

Section 1. This section provides the scope of the rule, the authority (WV Code §21-3D) and provides for the filing and effective dates.

Section 2. Defines the application as the Act applies to crane operators who are required to be certified. Enforcement of the Act is vested with the West Virginia Division of Labor.

Section 3. This section provides definition of terms used in the rule.

Section 4. 4.1 provides for the adoption of standards as required by §21-3D-3.

4.2 provides for the adoption of state standards and this section is presently "Reserved".

Section 5. This section defines the requirement for certification and the exemptions therefrom.

Section 6. Establishes the minimum criteria for certification.

Section 7. 7.1 provides for a written examination.

7.2(a) provides for a practical examination. However, the practical examination is delayed until January 1, 2001 and the criteria is presently "Reserved".

7.2(b) provides a "grandfather provision" for the practical examination.

Section 8. This section provides for denial, suspension, revocation or reinstatement of certifications.

We are an Equal Opportunity Employer

Section 9. Provides for disciplinary actions against an operators who cause accidents.

Section 10. Provides criteria and penalties for violation of the Act or this rule.

Section 11. This section sets the annual certification fee at seventy-five dollars and establishes a special revenue account for the deposit of all fees and funding for the enforcement of the Act.

Section 12. This section sets criteria for reciprocity with other states as authorized by the Act.

Section 13. Severability clause.

FILED

JUN 26 1 30 PM '98

OFFICE OF WEST VIRGINIA
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 and notwithstanding the provisions of section 5.2. of this rule, 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 such government unit; or
- b. Is primarily the operator of farm machinery who is performing the work of a crane operator as part of an agricultural operation; or
- c. Is operating a crane on an emergency basis when such 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; or
- d. Is operating a crane for personal use and not for profit on the site of real property which the person owns or leases; or
- e. Is under the direct supervision of a certified crane operator when such 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; or
- 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 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. A certification issued under the provisions of this rule shall be renewed upon receipt of a renewal application on a form provided by the commissioner and payment of

a renewal fee of seventy-five (\$75) dollars. *Provided, however,* That the applicant shall be required to pass a written examination and provide 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 must submit to the commissioner an application for examination on forms provided by the commissioner. The examination process will consist of a written examination and a practical examination.

7.1. Written examination. All persons desiring certification under the provisions of this article shall be required to pass written examinations. The contents of the examination shall be based on the standards adopted by this rule, (A.N.S.I. B30 and B30.5). All applicants will be required to pass a core examination which shall test the applicant's general knowledge of crane safety and the applicable code standards (A.N.S.I. B30 and B30.5). In addition to the core examination, the applicant shall be required to pass a specialty examination for each class of crane for which certification is desired. The classifications of cranes is as follows:

- a. Lattice boom truck crane
- b. Lattice boom crawler crane
- c. Small telescoping crane
- d. Large telescoping crane

Examinations shall be made available by a private testing agent(s) approved by the Commissioner to conduct the examinations. Examination fees will be charged for each classification examination requested and are the responsibility of the individual applicant. The applicant shall pay all examination fee(s) 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 minimum passing score shall be a score of seventy (70%) percent for each examination. If requested by the person taking the examination, an applicant who fails the examination shall be provided with an analysis of his/or her performance on the failed examination. A person 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 fee(s) required.

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] *Note: Implementation of the practical examination has been*

delayed until January 1, 2001, see §21-3D-2(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 under sub-section b of section seven-two of this rule, shall have the renewal of their certification conditional to 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 section one, article two, chapter fifty-six of the Code of West Virginia, [§56-2-1], and an opportunity for hearing held before the commissioner or his designee under the provisions of article five, chapter twenty-nine-a of this Code, the Administrative Procedures Act [§29A-5-1 *et seq*], wherein the crane operator will 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 section one, article two, chapter fifty-six of the Code of West Virginia [§56-2-1], and hearing held before the commissioner or his or her designee pursuant to article five, chapter twenty-nine-a of the Code of West Virginia, the Administrative Procedures Act [§29A-5-1 *et seq*], wherein the crane operator will 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. No person may knowingly or intentionally drive or operate a crane while:

- a. Having any measurable alcohol in his or her system; or,
- b. Under the influence of any controlled substance, as defined by section one hundred and one-d, article one, chapter sixty-A of the Code of West Virginia {§60A-1-101(d)}; or
- c. Under the combined influence of alcohol and any controlled substance or any other drug.

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 shall determine 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 section eight-a, article three-D, chapter twenty-one of the code of West Virginia [§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.

§42-24-13. Severability.

If any provision of this rule or their application to any person is held invalid, the invalidity shall not affect the provisions or application of this rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are severable.