

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

Form #2

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2012 JUL 30 PM 4:52

OFFICE 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: W. Va. Code Section 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: _____

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 30, 2012 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

David W. Mullins, Commissioner

West Virginia Division of Labor
State Capitol Complex

Building 6, Room B-749
Charleston, WV 25305

david.w.mullins@wv.gov

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

Angel R. Moore
Authorized Signature


ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Crane Operator Certification Act - Practical Examination

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia 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.

The proposed amendments to 42 CSR 25 will have no impact on the costs and 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

Rule Title: Crane Operator Certification Act - Practical Examination

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.

N/A

Date: July 26, 2012

Signature of Agency Head or Authorized Representative

Angel R. Moore

WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

EARL RAY TOMBLIN
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 2012 amendments to the Crane Operator Certification Act, W. Va. Code § 21-3D-1, *et seq.*, which contained the following provisions:

W. Va. Code §21-3D-3 now requires that an organization or program that administers crane operator written examinations and practical demonstrations be accredited by the American National Standards Institute's Personnel Certification Accreditation Program;

W. Va. Code §21-3D-3 now requires that Class B certification must include both the successful completion of a training course and a written examination;

Beginning November 10, 2014, W. Va. Code §21-3D-4 will require that all crane operators subject to the OSHA provisions of 29 C.F.R. §1926.1400, Subpart CC must hold a Class A crane operator certification; and

Beginning November 10, 2014, W. Va. Code §21-3D-4 will require that all crane operators not subject to the OSHA provisions of 29 C.F.R. §1926.1400, Subpart CC must hold a Class B crane operator certification.

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 25
CRANE OPERATOR CERTIFICATION ACT
PRACTICAL EXAMINATION

FILED
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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 15, 2011.~~

1.4. Effective Date. -- ~~May 2, 2011.~~

§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. "ANSI" refers to the American National Standards Institute, 1899 L Street NW, 11th Floor, Washington, D.C. 20036.

~~3.1.~~ 3.2. "Approved training course" means a training course which has been reviewed and certified by the Commissioner as complying with the requirements of sections 6 4 and 5 of this rule.

~~3.2.~~ 3.3. "ASME" refers to the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016-5990.

~~3.3.~~ 3.4. "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”) W. Va. Code §§21-3D-3(a)(1)(A) and -4(c)(1) and as required by a program that has been accredited by ANSI’s Personnel Certification Accreditation Program for the class or type of crane specified in subdivision 7.2.c. of the Division of Labor’s rule, “Crane Operator Certification Act,” 42 CSR 24.~~

Beginning November 10, 2014, “Class A certification” also means and includes all crane operators in West Virginia subject to the provisions of 29 C.F.R. §1926.1400, Subpart CC, “Cranes and Derricks in Construction.”

~~3.4: 3.5.~~ “Class B certification” means a certification issued to a person who has met all state level certification criteria as required by the Commissioner for the class or type of crane specified in subdivision 7.2.c. of the Division of Labor’s rule, “Crane Operator Certification Act,” 42 CSR 24.

Beginning November 14, 2014, “Class B certification” also means and includes all crane operators in West Virginia who are not subject to the provisions of 29 C.F.R. §1926.1400, Subpart CC, “Cranes and Derricks in Construction.”

3.6. “Code of Federal Regulations” or “C.F.R.” refers to rules published in the Federal Register by executive departments and agencies of the federal government of the United States.

~~3.5:~~ 3.7. “Division” means the West Virginia Division of Labor.

~~3.6:~~ 3.8. “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. Practical Examination.

~~4.1: An applicant for an initial class A certification shall hold a certification issued by the National Commission for the Certification of Crane Operators (NCCCO) which requires and administers its own practical examination.~~

~~4.2:~~ 4.1. An applicant for an initial class A or B certification shall submit a written certificate of completion from an approved a practical examination examiner approved by the Commissioner pursuant to section 5 of this rule.

~~4.3:~~ 4.2. 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 A or B certification. The Commissioner may authorize the use of an equivalent practical examination when the equivalent examination meets or exceeds the requirements of the NCCCO examination.

~~4.4:~~ 4.3. The Commissioner shall arrange for administering the practical examination

through approved examiners. The practical examination shall be given in the 4 basic crane categories:

- 4.4.a. ~~4.3.a.~~ Fixed cab telescoping boom crane;
- 4.4.b. ~~4.3.b.~~ Lattice boom crawler or truck crane;
- 4.4.c. ~~4.3.c.~~ Swing cab telescoping boom crane; and
- 4.4.d. ~~4.3.d.~~ Tower crane.

~~4.5.~~ 4.4. 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:

- ~~4.5.a.~~ 4.4.a. Task 1 – The rotation and placement of the overhaul ball in a designated stop circle;
- ~~4.5.b.~~ 4.4.b. Task 2 – The following of hand signals;
- ~~4.5.c.~~ 4.4.c. Task 3 – The rotation and placement of the overhaul ball in a fixed enclosure (barrel); and
- ~~4.5.d.~~ Task 4 – The negotiation of a zigzag corridor with a test weight.

§42-25-5. Examiners.

5.1. The Commissioner may approve and designate examiners to administer the practical examination required for a class A and B certification. A person desiring to become an approved examiner shall make application to the Commissioner on a form provided by the Commissioner. The applicant shall hold a full and current accreditation as a practical examiner from an ANSI-accredited Personnel Certification Accreditation Program, the NCCCO, as a practical examiner or the an equivalent organization or program as approved by the Commissioner. A copy of the examiner's accreditation certificate shall accompany the application.

5.2. An approved examiner shall administer all practical examinations in accordance with the practical examination requirements of the ANSI Personnel Certification Accreditation Program, the NCCCO, or an equivalent program as approved by the Commissioner.

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

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

5.4.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.

5.5. The Commissioner shall make available a list of approved examiners registered with the Division. An applicant shall make his or her own arrangements for the practical examination with an approved examiner.