

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

Form #3

Do Not Mark In This Box

2012 AUG 01 09:09:02



**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: W. Va. Code Section 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 RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

QUESTIONNAIRE

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

DATE: August 31, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

304.558.7890 x 111

LEGISLATIVE RULE TITLE: Crane Operator Certification Act

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 30, 2012

b. What other notice, including advertising, did you give of the hearing?
Notice of the proposed rule and comment period was put on the Division of Labor's website.
Copies of the proposed rule were emailed to stakeholders.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 30, 2012

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)

August 31, 2012

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

David W. Mullins, Commissioner

West Virginia Division of Labor

State Capitol Complex

Building 6, Room B-749

Charleston, WV 25305

david.w.mullins@wv.gov

304.558.7890 x 111 (phone) 304.558.2273 (fax)

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

John R. Junkins, Deputy Commissioner

West Virginia Division of Labor

same as above

john.r.junkins@wv.gov

304.558.7890 x 146 (phone) 304.558.2273 (fax)

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

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

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

WEST VIRGINIA DIVISION OF LABOR

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 24

Crane Operator Certification Act

The West Virginia Division of Labor proposes the following amendments and revisions to Title 42, Series 24, 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.

In addition, the proposed rule adopts the 2011 American Society of Mechanical Engineers ("ASME") B30.5 standard and requires that written examinations and training courses cover the B30.5 2011 and the B30.23 2011 standards.

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Crane Operator Certification Act

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 and revisions to 42 CSR 24 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

Rule Title:

Crane Operator Certification Act

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

N/A

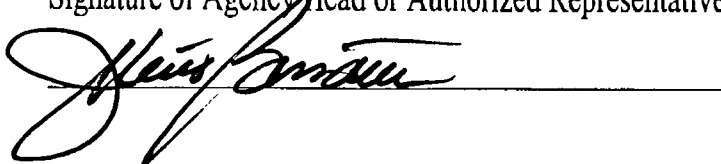
MEMORANDUM

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: August 31, 2012

Signature of Agency Head or Authorized Representative



TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 24
CRANE OPERATOR CERTIFICATION ACT

2012 AUG 31 PM 3:02
WEST VIRGINIA DIVISION OF LABOR

§42-24-1. General.

1.1. Scope. -- This legislative rule governs certification, fees, examinations, training, powers and duties of the Commissioner 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 15, 2011.~~

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

§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.~~ 3.1. "ANSI" refers to the American National Standards Institute, 1899 L Street NW, 11th Floor, Washington, D.C. 20036.

~~3.2.~~ 3.2. "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.

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

~~3.4.~~ 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 this rule.

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 this rule.

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. “Direct supervision by a certified 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.~~ 3.8. “Division” means the West Virginia Division of Labor.

~~3.7.~~ 3.9. “~~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.~~ 3.10. “NCCCO” refers to the National Commission for the Certification of Crane Operators, located at 2750 Prosperity Avenue, Suite 505, Fairfax, VA 22031.

~~3.9.~~ 3.11. “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.—~~ 3.12. “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. The following standard is adopted and incorporated by reference: ASME B30.3 - 2009, Tower Cranes, § 3-3.1.2, “Qualifications for Operators.”

4.2. The following standard is adopted and incorporated by reference: ASME B30.5 -~~2007~~

2011, Mobile and Locomotive Cranes, § 5-3.1.2, “Qualifications for Operators.”

§42-24-5. Minimum Qualifications for Initial Certification, Renewal Certification, and Recertification.

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

5.1.a. Is at least 18 years of age;

5.1.b. Submits an application on forms provided by the Commissioner;

5.1.c. Submits a copy of his or her written examination scores of at least 70% as provided to the applicant by the NCCCO;

5.1.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 an examiner approved by the Commissioner pursuant to 42 CSR 25-5;

~~5.1.e. Submits a copy of an NCCCO certification card which reflects that the applicant is current and in good status;~~

~~5.1.f. 5.1.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 dated within 1 year of the date of application for certification, or an equivalent physician’s certificate as approved by the Commissioner ; and

~~5.1.g. 5.1.f.~~ Pays the application fee of \$75.00.

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

5.2.a. Is at least 18 years of age;

5.2.b. Submits an application on forms provided by the Commissioner;

5.2.c. Submits a copy of his or her written examination scores of at least 60% as provided to the applicant by the ~~testing agency~~ NCCCO;

5.2.d. Submits a copy of his or her ~~certificate of completion of the practical examination from an approved examiner~~ practical examination scores of at least 75% as provided to the applicant by an examiner approved by the Commissioner pursuant to 42 CSR 25-5;

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

5.2.f. Pays the application fee of \$75.00 and all examination ~~and training~~ fees.

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.

5.4. Annual renewal of class A and B certification. Upon receipt of an annual renewal application on a form provided by the Commissioner and payment of an annual renewal fee of \$75.00, the Commissioner shall renew the class A or class B certification.

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:

5.5.a. To recertify a class A certification, the applicant shall ~~provide~~ submit a copy of ~~a current and valid certification issued by the National Commission for the Certification of Crane Operators (NCCCO)~~ his or her current written examination scores of at least 70% as provided by the NCCCO and a current physician's certificate as required by subdivision ~~5.1(f)~~ 5.1.e. of this rule.

5.5.b. To recertify a class B certification, the applicant shall ~~pass a~~ submit a copy of his or her current written examination ~~with a score~~ scores of at least 60% as provided by the NCCCO or successfully complete ~~an approved a~~ a training course approved by the Commissioner pursuant to section 8 of this rule and provide a current physician's certificate as required by 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:~~ 6.2. 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 W. Va. Code § 21-3D-1, *et seq.*, or this rule shall submit an application for examination to the Commissioner on forms provided by the Commissioner. The examination process consists of a written examination and a practical examination.

7.2. Written examination.

7.2.a. All persons desiring an initial class A or B crane certification under the provisions of 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 by ASME: ASME B30.3-2009, ASME B30.5-~~2007~~ 2011 and ASME B30.23-~~2005~~ 2011.

7.2.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.

7.2.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:

7.2.c.1. Fixed cab telescoping boom crane;

7.2.c.2. Lattice boom crawler crane;

7.2.c.3. Lattice boom truck crane;

7.2.c.4. Swing cab telescoping boom crane; and

7.2.c.5. Tower crane.

7.2.d. The Commissioner shall provide for the written examination of all applicants. The Commissioner may:

7.2.d.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 and the applicant shall pay all examination fees directly to the testing agent; or

7.2.d.2. Develop a written examination process within the 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 in advance of the examination.

7.2.e. The minimum passing score for a class A certification is a score of 70% for each examination.

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

7.2.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.

7.2.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.

7.3. Practical examination.

~~A person who applies for an initial class B certification shall be required to successfully complete a practical examination as provided for in 42 CSR 25-4.~~

All persons desiring an initial class A or B crane certification under the provisions of W. Va. Code § 21-3D-1, et seq., or this rule shall pass a practical examination as provided for in 42 CSR 25-4.

§42-24-8. Training.

8.1. The Commissioner may approve crane operator training courses from private sector sources to qualify applicants for class B recertifications. To apply for approval 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.

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

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

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

8.3.b. Familiarity with ASME B30.3-2009, ASME B30.5-2007 2011 and ASME B30.23-2005 2011 standards, and ~~OSHA requirements for safe operations~~ 29 C.F.R. §1926.1400, Subpart CC, "Cranes and Derricks in Construction" and manufacturer's operating manuals;

8.3.c. Responsibilities of the site supervisor, the crane operator and the crane owner;

8.3.d. Safety inspection procedures, accident prevention and maintenance;

8.3.e. Procedures for assembling and dismantling cranes and their transportation;

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

8.3.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

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

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:

8.4.a. The name and address of the training provider;

8.4.b. The student's name and social security number;

8.4.c. The dates and location of the training;

8.4.d. The length of the training in hours;

8.4.e. The title and level of the training course; and

8.4.f. The name and signature of the instructor.

8.5. The training provider shall annually submit a list of all scheduled training sessions and locations to the Commissioner on or before the first day of January. The training provider shall notify the Commissioner of any modifications to the annual schedule within 2 weeks of the date that the modifications are scheduled.

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

8.6.a.. The name and address of the training provider;

8.6.b. The dates and locations of scheduled training courses;

8.6.c. A schedule of fees; and

8.6.d. The type of training available.

8.7. The 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.