

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

Form #3

Do Not Mark In This Box

2012 AUG 31 PM 3:04

OFFICE WEST VIRGINIA
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: 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: _____

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 - Practical Examination~~

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

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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 2009 amendments to the Crane Operator Certification Act, W. Va. Code § 21-3D-1, *et seq.*, which eliminated the small and large telescoping boom crane classifications, and added the fixed cab and swing cab telescoping boom crane and the tower crane classifications.

In addition, the proposed rule clarifies the specific American Society of Mechanical Engineers ("ASME") standard that are incorporated by reference and identifies the yearly edition of the ASME standards that are being used in the written and practical examinations.

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 - 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 and revisions 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

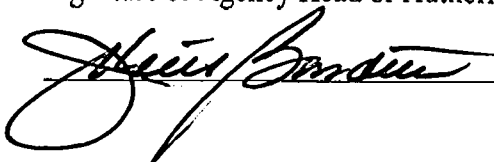
MEMORANDUM

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: August 31, 2012

Signature of Agency Head or Authorized Representative



TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

FILED
2012 AUG 31 PM 3:04

SERIES 25
CRANE OPERATOR CERTIFICATION ACT
PRACTICAL EXAMINATION

OFFICE OF 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.