

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.135.301, 24.135.402,)
24.135.411, 24.135.501, 24.135.516,)
and 24.135.530 pertaining to fees,)
incorporation by reference of American)
National Standards Institute B30.5, and)
license requirements for crane and)
hoisting operating engineers)

TO: All Concerned Persons

1. On January 15, 2021, the Department of Labor and Industry (department) published MAR Notice No. 24-135-3 regarding the public hearing on the proposed amendment of the above-stated rules, at page 29 of the 2021 Montana Administrative Register, Issue No. 1.

2. On February 11, 2021, a public hearing was held on the proposed amendment of the above-stated rules in Helena via the remote conferencing platform. Several comments were received by the February 12, 2021 deadline.

3. The department has thoroughly considered the comments received. A summary of the comments and the department's responses are as follows:

COMMENT 1: Several commenters opposed the increase in license renewal fees in ARM 24.135.402 and questioned what licensees get in return for higher license fees.

RESPONSE 1: As explained in the proposal notice, it is necessary to increase the renewal fees to maintain fees commensurate with the costs of administering the program. Unless the fees increase as proposed, the program's operating funds shortfall will continue to grow, and the program will lack sufficient revenue to cover regular FY21 expenses.

Application and renewal fees are the only way the program gets funding and current fees are too low as the program is operating with a negative cash balance. Licensure fees cover costs for program employees' salaries and benefits, travel costs, vehicle expenses, computer and office equipment including cell phone usage, and occasional IT and legal expenses, as may arise.

COMMENT 2: Several commenters supported a smaller renewal fee increase than what is proposed in ARM 24.135.402.

RESPONSE 2: See RESPONSE 1.

COMMENT 3: One commenter reported concerns over the amount of visits program staff performs on their business location and proposed the department increase the fine for operating without a license instead of increasing license renewal fees.

RESPONSE 3: The department checks approximately 50 to 60 sites annually for crane operator licensure, including construction sites, oil refineries, mines, power companies, etc. The inspector uses information on building permits to plan inspections, as well as visually scouting for cranes when driving to building sites or businesses. While trying to cover as many sites as possible in an area, the inspector may visit the same locations depending on cranes in use or other information available.

The department's authority to seek remedy in court for the unlicensed practice of crane or hoist operation, or to issue citations and fines for licensed operators found working without proof of licensure is found in statute at 50-76-109 and 50-76-114, MCA, respectively. Any change to this authority, including the statutory \$100 fine in 50-76-114, MCA, must be accomplished through the legislature.

COMMENT 4: Two commenters suggested abolishing the program and utilizing the national certifications available.

RESPONSE 4: The department, through the program, is required to license and regulate crane and hoist engineers by statute at Title 50, chapter 76, part 1, MCA. Changes to the established statutory duties or elimination of the regulation can only be accomplished through the legislature.

COMMENT 5: Several commenters requested the program come into compliance with OSHA (Occupational Safety and Health Act). The commenters stated that currently the qualifications for a Montana crane operator license are not checked to the national industry standard.

RESPONSE 5: No amendments related to aligning with OSHA or other federal regulations were proposed; therefore, this action cannot be accomplished in a final notice. The department may consider the suggestions in future rulemaking.

COMMENT 6: A commenter asked if the state would be liable if someone was killed by the operation of an unlicensed operator if the state allowed the operator to continue working.

RESPONSE 6: This comment is outside the scope of this rulemaking project.

COMMENT 7: Some commenters expressed concern about the rules hearing being held via an electronic platform. The commenters asserted that many attendees could not give public testimony due to being muted.

RESPONSE 7: The department has conducted over 100 board meetings and rule hearings electronically over the past year. The platform used in the rules hearing allowed attendees to unmute themselves and provide comment and did not

intentionally block anyone from providing comment. The hearing officer received several public comments on the platform without issue. Additionally, the notice clearly provided several other formats to provide public comment in addition to the public hearing, such as e-mail, regular mail, and facsimile. The department considers and responds to all timely comments and no method of providing comment is any better or more well-received than another.

COMMENT 8: One commenter opposed that the rule hearing is not a question and answer session and asked when questions can be asked.

RESPONSE 8: Pursuant to 2-4-302, MCA, the public hearing is a time set for interested persons to submit data, views, or arguments orally or in writing regarding proposed rule changes. The program is willing to answer any questions about its rules and rulemaking process at any time outside the rules hearing.

COMMENT 9: One commenter asked whether the commenter would need to take a test for "the national license."

RESPONSE 9: The department has no jurisdiction to change the national certification requirements as set forth in statute at 50-76-113, MCA.

4. The department has amended ARM 24.135.301, 24.135.402, 24.135.411, 24.135.501, 24.135.516, and 24.135.530 exactly as proposed.

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 20, 2021.