

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Proposed Amendments to Chapter 12-48, Subtitle 7
Hawaii Administrative Rules
Hoisting Machine Operators

July 9, 2008

1. Sections 12-48, Hawaii Administrative Rules, is amended to read as follows:

- §12-48-1 Purpose
- §12-48-2 Scope
- §12-48-3 Definitions
- §12-48-4 Hoisting machine operators' advisory board
- §12-48-5 Certificate required
- §12-48-6 Application process
- §12-48-7 Special certification
- §12-48-8 Renewals
- §12-48-9 Denials, suspensions, and revocations
- §12-48-10 Appeals process
- §12-48-11 Fees

§12-48-1 Purpose. This chapter implements section 396-19, Hawaii Revised Statutes, and promulgates rules for the certification of hoisting machine operators. The provisions of this chapter shall apply to any person [or persons] who acts as a hoisting machine operator. [Eff: 12/6/02; am]
(Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-2 Scope. Certification of hoisting machine operators is limited to operators of equipment covered by ASME B30.3 and ASME B30.5, [and which has] with a lifting capacity of more than five tons and [who performs] used to perform construction work as defined by section 12-50-2, Hawaii Administrative Rules. [Eff: 12/6/02; am] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-3 Definitions. As used in this chapter:

"ASME B30.3" means ASME B30.3-1996, American Society of Mechanical Engineers Safety Standards.

"Certificate" means any hoisting machine operator certificate, special certificate, or renewal certificate issued by the director authorizing a person to operate a hoisting machine.

"Certified operator" means a person with a current and valid certificate, special certificate, or renewal certificate issued by the director to operate a hoisting machine.

"Crane maintenance or inspection work" means work done on or with a hoisting machine solely for purposes of testing, repairing, maintaining, or assessing its operational performance, integrity, or safety.

"Department" means the department of labor and industrial relations, State of Hawaii.

"Direct supervision" means [that a certified hoisting machine operator is visible to the operator of the hoisting machine or in voice contact with the operator at the site where the work is being performed] a certified operator is personally instructing, overseeing, monitoring, and guiding a hoisting machine operator at the same work site as the operator, and has actual and direct visual or voice contact with that operator.

"Hoisting machine" means any equipment covered by ASME B30.3 and ASME B30.5 with a lifting capacity over five tons and used to perform construction work as defined by section 12-50-2, Hawaii Administrative Rules.

"Non-certified operator" means any person who operates a hoisting machine without a valid and current certificate issued by the director.

"Tower crane" means a crane with a long horizontal boom, swinging jib, or other structural

member mounted on a vertical mast or tower and/or as defined in ASME B30.3. [Eff: 12/6/02; am]
(Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-5 Certificate required. (a) No person shall operate a hoisting machine [in the State without a current State-issued hoisting machine operator certificate] covered by this chapter without a current certificate, except as identified in this [section] chapter.

(b) [Each hoisting machine operator] Any person who operates a hoisting machine shall have and carry a current, [in their possession a] valid certificate [during the operation of] while operating a hoisting machine.

(c) An operator must have a current physical examination certificate as required in section 12-48-6(b) at all times. Such proof, must be submitted upon request to the director within two hours of request.

(d) A [hoisting machine operator] certificate is not required for operator assistants, apprentices, oilers, assistants to the engineers, and trainees, provided they are under the direct supervision of a certified [hoisting machine] operator at all times while operating a hoisting machine and [they] meet the training requirements of ASME B30.3 and ASME B30.5.

(e) A [hoisting machine operator] certificate is not required for a persons performing crane maintenance or inspection work. [Eff: 12/6/02; am]
(Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-6 Application process. (a) An applicant for a [hoisting machine operator] certificate shall be at least twenty-one years of age at the time of application and provide proof of age by submitting a valid original of any two of the following for the purpose of photocopying:

- (1) Birth certificate;
- (2) Driver's license;

- (3) Passport; or
- (4) Hawaii State ID.

(b) An [A]applicant must have passed a physical examination that meets the requirements of ASME B30.3, Section 3-3.1.2 (b) and ASME B30.5, Section 5-3.1.2(a), and provide evidence of such examination by submitting a complete and current copy of one of the following:

- (1) NCCCO medical examiner's certificate; or
- (2) A DOT certificate of medical examination.

(c) At the time of application, an applicant must provide a current NCCCO certificate or an equivalent [form of certification that is accepted by the board that possesses] board-accepted certificate showing the applicant has hoisting machine operation experience as required for the NCCCO written exam. A copy of the NCCCO experience form is acceptable.

(d) Applications shall be submitted on forms provided by the director. A completed application shall consist of the form provided by the director that is completely answered by the applicant, [the] an application fee, and all supporting documents required in subsections (a) through (c), unless an applicant is applying for a special certification, in which case section 12-48-7(b) applies in lieu of subsection (c). A completed application shall be submitted to the director.

(e) The director shall notify the applicant whether the application was approved or disapproved within sixty calendar days of receipt of a completed application. Approved applicants must submit the required certification fee within thirty calendar days of receiving notice of approval or must re-apply. The director shall issue the state hoisting machine operator certificate within thirty days of receipt of the certification fee.

(f) For initial applications only, [the state] a certificate shall be valid for the balance of any

current NCCCO certification or other equivalent board-accepted certification plus the term of any approved renewal NCCCO certification or its equivalent board-accepted certification. The applicant must submit proof of such approved NCCCO certification or renewal or its equivalent board-accepted certification or renewal at the time the application fee is submitted.

(g) A certificate to operate a tower crane will be issued to an approved applicant showing proof of having passed the written NCCCO tower crane examination or equivalent board-accepted examination in combination with a letter of experience in operating a tower crane from the applicant's current employer; or to an approved applicant providing a current NCCCO certificate or equivalent board-accepted certificate for operating tower cranes. [Eff: 12/6/02; am] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-7 Special certification. (a) A special certificate [~~is available for~~] may be issued to an applicant who cannot meet the requirements identified in section 12-48-6(c) and 12-48-6-(g), and the applicant works for only one employer and only operates [only specific] hoisting machines [as] identified by the applicant's current employer and specifically identified on the special certificate.

(b) At the time of application, the applicant's current employer must certify in writing to the director that [it has provided operator training to the applicant that meets the training qualifications] the applicant has met the qualifications for operators requirements of ASME B30.3 and/or ASME B30.5 for the specific hoisting machine or machines identified in the application. The applicant must comply with sections 12-48-6(a), (b), and (d).

(c) A special certificate is valid for two years or until the [holder] person who has been issued the special certificate terminates employment with the employer, whichever comes sooner. A special

certificate is not renewable and is valid for only those hoisting machines specifically identified on the certificate. A special certificate is nontransferable and shall be issued only once to an operator.

[(d) A special certificate is nontransferable. A special certificate shall be issued only once to an operator.] [Eff: 12/6/02; am]
(Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-8 Renewals. (a) Applications [for renewal of hoisting machine operator certificates] to renew a certificate shall be made on forms provided by the director and must be submitted to the director with a nonrefundable renewal fee. Renewal applications must be submitted with the required documents and forms identified in sections 12-48-6 (b) and (c).

(b) [The] An application for renewal must be filed with the director no later than ninety days after [the expiration of the] a current certificate expires. Renewals will be granted or denied within sixty days of [the] receipt of a complete renewal application as defined in [subsection (a)] section 12-48-6 (d). An application for renewal filed more than ninety days after a current certificate expires, shall be considered a new application.

(c) [If an application for renewal is filed ninety-one days or more after the expiration of the current certificate, it shall be considered a new application.] A renewal certificate shall be valid for the balance of the NCCCO certification or other equivalent certification approved by the board, but shall not exceed five years.

[(d) State-issued renewal certifications shall be valid for the balance of the NCCCO certification or other equivalent certification that is accepted by the board, but not to exceed five years.] [Eff 12/6/02; am] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-9 Denials, suspensions, and revocations.

(a) The director may deny, suspend, or revoke [the] a certificate or deny the issuance or renewal of a certificate [of a holder] for any of [these] the following reasons:

(1) A violation of ASME B30.3 or ASME B30.5;

(2) Non-compliance with an order of the director within the time specified in the order;

(3) [Proof that the applicant or holder has been convicted of a crime directly related to the applicant's possible performance under the certificate applied for and where the applicant has not been sufficiently rehabilitated to warrant the public trust;] Conviction of a crime directly related to the safe operation of a hoisting machine where an applicant or certified operator has not been sufficiently rehabilitated;

(4) [Proof that the applicant or holder suffers from a mental or physical defect that would interfere with or prevent the applicant's safe handling of a] A mental or physical defect that causes an inability to safely operate a hoisting machine;

(5) Providing false information or making any misrepresentation [for the purpose of obtaining] to obtain a certificate;

(6) [The applicant or holder is an unlawful user of narcotics or dangerous drugs;] Habitual intoxication, addiction to or the unlawful use of narcotics, or the use of any drugs or medications that could impair an operator's ability to safely operate a hoisting machine;

(7) [A finding that the certificate holder was responsible or contributed to an accident involving a hoisting machine; or] An accident involving a hoisting machine operated by the person applying for or seeking to renew a certificate; or

(8) For any other reason, which ~~at~~ in the discretion of the director would create a hazard or risk to persons or property.

(b) Operation of a hoisting machine in violation of ASME B30.3 or ASME B30.5, may result in the revocation of a certificate or the suspension of [certification] a certificate for not less than twenty-four hours [and] but not more than one year [, or revocation of certification.].

(c) If the director [makes a finding] finds [that] an accident was caused by the actions or omissions of a certified operator and [the director] suspends or revokes the [holder's] certified operator's certificate, the director may require the [certificate holder] certified operator to retake and pass [the] a certification examination before applying to have his or her [certification] certificate reinstated.

(d) A person whose certificate has been revoked may apply for certification not less than one year after the date of revocation. [Eff 12/6/02; am]
(Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-10 Appeals process. (a) Any denial, revocation, or suspension shall be final and conclusive against [the] an applicant or [holder] certified operator unless a written notice of contest is filed with the director. The written notice of contest shall be an original, served on the director, and must be postmarked, or if not mailed, received and filed by the director within twenty calendar days of the denial, revocation, or suspension.

(b) The [department] director shall hold [the appeals] a hearing within thirty calendar days [of receipt of the written request] after receiving a timely notice of contest. The [reconsideration] hearing shall be de novo and [its] all findings and

conclusions by the director may be contested on the record only to the [h] Hawaii labor relations board.

(c) The applicant or [holder] certified operator may request an informal conference to discuss [the] a denial, revocation, or suspension, but [the] an informal conference shall not suspend or change the twenty-day deadline for filing [requirement for the] a notice of contest.

(d) [Upon notice of revocation of a state hoisting machine operator certificate, the operator shall immediately surrender to the department the revoked state hoisting machine operator certificate.] A certified operator whose certificate is revoked shall, upon receiving notice of the revocation, immediately surrender the certificate to the department.

[Eff: 12/6/02; am] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-19)

§12-48-11 Fees. (a)[The] An applicant shall submit [the] a completed application to the director with a \$50 application fee.

(b) [After the applicant is notified of approval, the] Upon receiving notice that an application has been approved, an applicant shall remit a \$500 certification fee to the director within thirty calendar days [to the director]. For certification periods of less than five years, the [fee is prorated to a year or portion of a year.] certification fee for each year or portion of a year shall be \$100. [The fee for one year or a fraction of one year is \$100.]

(c) Upon [approval for a special certificate, the] receiving notice that an application for a special certificate has been approved, an [the] applicant shall remit a \$300 fee to the director within thirty calendar days [to the director].

(d) Renewal applications shall be submitted to the director and accompanied with [the] a renewal fee of \$500.

(e) All application and certification fees [are] shall be non-refundable. [Eff: 12/6/02; am]
(Auth: HRS §396-4)(Imp: HRS §§396-4, 396-19)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. These amendments to Title 12, Chapter 48, Hawaii Administrative Rules, shall take effect 10 days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

Director

APPROVED AS TO FORM:

Deputy Attorney General