

12 NYCRR Section 23-8.5 is amended to read as follows:

§ 23-8.5 Special provisions for crane operators

(a) Finding of fact. The board finds that the trade or occupation of operating cranes of the type described in subdivision (b) of this section, in construction, demolition and excavation work involves such elements of danger to the lives, health and safety of persons employed in such trade or occupation as to require special regulations for their protection and for the protection of other employees and the public in that such cranes may fall over, collapse, contact electric power lines, dislodge material and cause such material to fall or fail to support intended loads and convey them safely, unless such cranes are operated by persons of proper ability, judgment and diligence.

(b) Limited application of this section. This section applies only to mobile cranes having a manufacturers' maximum rated capacity exceeding five tons or a boom exceeding forty feet in length and to all tower cranes operating in construction, demolition and excavation work. The word crane as used in this section refers to tower cranes and to such mobile cranes of the following type: a mobile, carrier-mounted, power-operated hoisting machine utilizing hoisting rope and a power-operated boom which moves laterally by rotation of the machine on the carrier.

(c) Certificate of competence – Crane Classifications. The Commissioner has the authority to issue certificates of competence for the following classes of cranes:

(1) Class A – Unrestricted – Conventional, cable, lattice boom, and friction are names that have been used in reference to this class. This class includes all cranes having a fixed lattice boom, with or without free fall capability; conventional tower cranes, derricks and all cranes with free fall capability. A certificate of competence for Class A allows the holder to operate any crane.

(2) Class B – Hydraulic – This class includes all hydraulic cranes which have a telescopic boom and swinging cab; there is no restriction on maximum manufacturer's rating. This class also includes small trailer or truck mounted self-erecting tower cranes, as well as boom trucks having a manufacturer's rated capacity of over 28 tons. A certificate of competence for Class B allows the holder to operate Class B, C and D cranes.

(3) Class C – Boom Truck – This includes cranes having telescopic booms which are generally truck mounted and up to 28 ton maximum manufacturers' rated capacity. A certificate of competence for Class C allows the holder to operate Class C and D cranes.

(4) Class D – Restricted Boom Truck – These cranes are also referred to as sign hangers, but their use not restricted to that industry. This class includes cranes having telescopic booms which are generally truck mounted and up to 3 ton maximum manufacturer's rated capacity, and up to 125 feet of boom. A certificate of competence for Class D allows the holder to operate Class D cranes only.

(5) Class E – Reserved

(6) Class F – Line Truck – These cranes are also referred to as digger derricks. These cranes have up to 15 ton maximum manufacturers' rated capacity, 65 foot maximum

boom length, utilize a non-conductive tip with nylon rope, for use in electrical applications only. A certificate of competence for Class F allows the holder to operate Class F cranes only.

(d) Certificate of competence required. No person, whether the owner or otherwise, shall operate a crane in the State of New York unless such person is a certified crane operator by reason of the fact that:

(1) He holds a valid certificate of competence issued by the commissioner to operate [a] that class of crane; or

(2) He is at least 21 years of age and holds a valid license issued by the Federal government, a State government or by any political subdivision of this or any other State and such license has been accepted in writing by the commissioner as equivalent to a certificate of competence issued pursuant to this Part [by him]; or

(3) He is a person who:

(i) is at least 21 years of age and is employed by the Federal government, the State or a political subdivision, agency or authority of the State and is operating a crane owned or leased by the Federal government, the State or such political subdivision, agency or authority and his assigned duties include operation of a crane;

(ii) is at least 21 years of age and is employed only to test or repair a crane and is operating it for such purpose while under the direct supervision of a certified crane operator; or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and his assigned duties include the operation of a crane;

(iii) an apprentice or learner who is at least 18 years of age and who has the permission of the owner or lessee of a crane to take instruction in its operation and is operating such crane under the direct supervision of a certified crane operator or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and whose assigned duties include the operation of a crane.

(d) Application forms and photographs. An application for a certificate of competence or for a renewal thereof shall be made on forms provided by the commissioner. Upon notice from the commissioner to an applicant that a certificate of competence or a renewal thereof will be issued to him, the applicant must forward photographs of himself in such numbers and sizes as the commissioner shall prescribe, and such photographs must have been taken within 30 days of the request for such photographs.

(e) Physical condition. No person suffering from a physical handicap or illness, such as epilepsy, heart disease, or an uncorrected defect in vision or hearing, that might diminish his competence, shall be certified by the commissioner.

(f) Experience required. An applicant for a certificate of competence must be at least 21 years of age and must have had practical experience in the operation of cranes for at least three years and, in addition, have a practical knowledge of crane maintenance.

(g) Examining board. The commissioner may appoint an examining board which shall consist of at least three members, at least one of whom shall be a crane operator who

holds a valid certificate of competence issued by the commissioner, and at least one of whom shall be a representative of crane owners. The members of the examining board shall serve at the pleasure of the commissioner and their duties will include:

(1) The examination of applicants and their qualifications, and the making of recommendations to the commissioner with respect to the experience and competence of the applicants;

(2) The holding of hearings regarding appeals following denials of certificates;

(3) The holding of hearings prior to determinations of the commissioner to suspend or revoke certificates, or to refuse to issue renewals of certificates;

(4) The reporting of findings and recommendations to the commissioner with respect to such hearings;

(5) The acts and proceedings of the examining board shall be in accordance with regulations issued by the commissioner.

(h) General examination. Each applicant for a certificate of competence will, and each applicant for a renewal thereof may, be required by the commissioner to take an appropriate general examination.

(i) Operating examination. An applicant who passes the general examination will also be required to take a practical examination in crane operation, except that the commissioner may waive this requirement with respect to an applicant for a renewal of a certificate of competence. The commissioner shall designate one member of the examining board to conduct the practical examination for Class F line trucks. For all other practical examinations (for Classes A, B, C, D, and E), the commissioner shall designate a minimum of three members of the examining board to administer the practical examination, of which two members must be present at the practical examination and score the applicant and the other member(s) may review the video of the practical examination and score the applicant. When a practical examination is conducted by a single member of the examining board, the applicant must achieve a passing score from the member to receive a certificate of competence. When the practical examination is administered by three or more members of the examining board, the applicant must achieve a passing score, which shall be calculated as an average of all scores received from the three or more members that administered the practical examination. The procedures used regarding the conduct of the practical examination, the establishment of the passing score and the assignment of the board members to conduct individual examinations shall be set forth in a guidance document approved by the examining board.

(j) Contents of certificate. Each certificate of competence issued shall include the name and address of the certified crane operator, a brief description of him for the purpose of identification and his photograph.

(k) Term of certificate. Each certificate of competence or renewal thereof shall be valid for three years from the date issued, unless its term is extended by the commissioner or unless it is sooner suspended or revoked. The commissioner may extend the term of any certificate of competence as he may find necessary to relieve a certified operator of unnecessary hardship.

(1) Carrying certificate. Each certified crane operator shall carry his certificate on his person when operating any crane and failure to produce the certificate upon request by the commissioner shall be presumptive evidence that the operator is not certified.

(m) Renewals. An application for renewal of a crane operator's certificate of competence shall be made within one year from the expiration date of the certificate sought to be renewed, except that the commissioner may extend the time to make such application to prevent any undue hardship to a certified crane operator.

(n) Suspension, revocation, refusal to renew, denials of certificates, hearings.

(1) The commissioner may, upon notice to the interested parties and after a hearing before the examining board, suspend or revoke a certificate of competence upon finding that the certified operator has failed to comply with an order of the commissioner or that the certified operator is not a person of proper competence, judgment or ability in relation to the operation of cranes, or for other good cause shown.

(2) Prior to a determination by the commissioner not to renew a certificate of competence, the commissioner shall require a hearing before the examining board upon notice to the interested parties.

(3)[(i)] An applicant whose application for a certificate has been denied by the commissioner may[, upon his written] request [made to the commissioner within 30 days after the mailing or personal delivery to him of a notice of such denial, have a hearing before the examining board]an administrative review of the reasons for the denial and a written response will be provided to such applicant but no hearing shall be required in connection with a denial of an application other than a renewal.

[(ii) Such hearing shall be held by the examining board which](4)The commissioner shall designate a panel of two or more members of the examining board to conduct all hearings required pursuant to this section. The commissioner may also designate a hearing officer to assist the panel in conducting the hearings. The panel shall make its recommendations to the commissioner within three days after such hearing has been concluded. A written notice of the commissioner's decision, containing the reasons therefor, shall be promptly given to the certified operator or applicant, as the case may be, and to any interested parties who appeared at the hearing. Every such hearing shall be held in accordance with such regulations as the commissioner may establish.

Statutory authority: General Business Law Section 483