

# WEST VIRGINIA CODE

## CHAPTER TWENTY-ONE, ARTICLE THREE D

### *CRANE OPERATOR CERTIFICATION ACT*

#### **§21-3D-1. Definitions.**

For purposes of this article:

(a) "Commissioner" means the Commissioner of the Division of Labor, or his or her authorized representative.

(b) "Crane" means a power-operated hoisting machine used in construction, demolition or excavation work, which has a power-operated winch and load line and a power-operated boom that moves laterally by the rotation of the machine on a carrier, and which has a manufacturer's rated lifting capacity of more than two thousand pounds. "Crane" does not mean a forklift, digger derrick truck, bucket truck or any vehicle, aircraft or helicopter, or equipment which does not have a power-operated winch and load line.

(c) "Emergency basis" means an occurrence of an event, circumstance or situation that presents an imminent threat to persons or property and constitutes a serious health or safety hazard.

(d) "Employer" means any person, firm, corporation or other entity who hires or permits any individual to work.

(e) "Employee" means any individual employed by an employer and also as defined by the commissioner.

(f) "Tower crane" means a crane in which a boom, swinging jib, or other structural member is mounted on a vertical mast or tower.

(g) "Training or training course" means a course approved by the commissioner which includes some form of testing throughout, or a final written examination or practical test, or both, which ensures, or tends to ensure that learning has occurred and that the objectives of the training have been realized. The commissioner will evaluate whether the approved training adequately demonstrates competency to safely operate cranes.

#### **§21-3D-2. Certification required; exemptions.**

(a) A person may not operate a crane or tower crane without certification issued under this article except for those persons exempted under subsection (b) of this section.

(b) A person is not required to obtain certification under this article if the person:

(1) Is a member of the Department of Defense or Armed Forces of the United States or an employee of the United States, when such member or employee is engaged in the work of a crane operator exclusively for such governmental unit; or

(2) Is primarily an operator of farm machinery who is performing the work of a crane operator as part of an agricultural operation; or

(3) Is operating a crane on an emergency basis; or

(4) Is operating a crane for personal use and not for profit on the site of real property which the person owns or leases; or

(5) Is an Operator-in-Training under the direct supervision of a certified crane operator and:

(A) Who is enrolled in an industry recognized in-house training course based on the American National Standards Institute Standards for Crane Operators and who is employed by the entity that either taught the training course or contracted to have the training course taught, all of which is approved by the commissioner; or

(B) Who is enrolled in an apprenticeship program or training program for crane operators approved by the United States Department of Labor, Bureau of Apprenticeship and Training;

(6) Is an employee of and operating a crane at the direction of any manufacturing plant or other industrial establishment, including any mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery or well or is an employee of and operating a crane at the direction of the person, firm or corporation who owns or is operating such plant or establishment;

(7) Is an employee of a public utility operating a crane to perform work in connection with facilities used to provide a public service under the jurisdiction of the Public Service Commission, Federal Energy Regulatory Commission or Federal Communications Commission; or

(8) Is operating timbering harvesting machinery associated with the production of timber and the manufacturing of wood products.

### **§21-3D-3. Powers and duties of commissioner.**

(a) The commissioner shall:

(1) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which rules at the minimum must include provisions for:

(A) A Class A certification program for individuals who operate cranes or tower cranes in the State of West Virginia, which must require both a written examination and a practical demonstration, and which must be accredited by the American National Standards Institute's Personnel Certification Accreditation Program;

(B) A Class B certification program for individuals who operate cranes or tower cranes in the State of West Virginia, which must require the successful completion of a training course;

(C) Certification categories including lattice boom truck cranes; lattice boom crawler cranes; fixed cab-telescoping boom cranes; swing cab-telescoping boom cranes; and tower cranes; *Provided*, That the holders of a certification for the large telescoping boom crane, upon application for recertification, will be provided with a one time election to either be certified as an operator of a

fixed-cab or swing-cab telescoping boom crane, and that holders of a certification for the small telescoping boom crane, upon application for recertification, will be automatically certified as a fixed cab operator.

(D) Class A certification renewal requirements of individuals who operate cranes in the State of West Virginia, that must include a written examination and a current physician's certificate at least every five years; and

(E) Class B certification renewal requirements of individuals who operate cranes in the State of West Virginia, that must include the successful completion of a training course approved by the commissioner;

(2) Prescribe application forms for original and renewal certification;

(3) Set application fees in amounts that are reasonable and necessary to defray the costs of the administration of this article in an amount not to exceed \$75 per year;

(4) Set examination and training course fees in an amount not to exceed the actual cost of the examination and the training course;

(5) Administer or cause to be administered the written examination, practical demonstrations and the training course as required for certification;

(6) Determine the standards for acceptable performance on the written examination, practical demonstration and the required training course: *Provided*, That the minimum standards must be consistent with national standards, current operating procedures and technology and be transferable to other states where possible;

(7) Provide the option for applicants and crane operators to take examinations that meet or exceed requirements for national crane operator certification; and

(8) Take other action as necessary to enforce this article.

(b) The commissioner, or his or her designee, upon receipt of information that a person has engaged in or is engaging in an act that constitutes a violation of this article, may issue a notice to the person to cease and desist and may apply to the circuit court for an order enjoining the act. Upon a showing the person has engaged in or is engaging in an act that constitutes a violation of this article, the court may order an injunction, restraining order or other order as the court considers appropriate.

#### **§21-3D-4. Minimum certification requirements.**

(a) The commissioner shall certify an applicant who:

(1) Is at least eighteen years of age;

(2) Meets the application requirements as prescribed by rule;

(3) Passes the written examination;

(4) Passes the practical demonstration: *Provided*, That the practical demonstration approved by the commissioner may be administered on-site by a qualified company representative;

(5) 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 C.F.R. §391.41, as of the effective date of this article or an equivalent physician's certificate as approved by the commissioner; and

(6) Pays the appropriate fees.

(b) Certification issued under this article is valid throughout the state and is not assignable or transferable, and is valid for one year from the date on which it was issued.

(c) Notwithstanding any other provision of this article to the contrary, the commissioner shall establish a dual classification system of certification as follows:

(1) Class A certification, which will provide eligibility for national certification, and for which the applicant must achieve a passing score of seventy on the national commission for the certification of crane operators written examination;

(2) Class B certification, for which the commissioner may accept a lesser score on the national commission for the certification of crane operators written examination: *Provided*, That this score may not be less than sixty for Class B certification.

(d) On and after November 10, 2014:

(1) All individuals who operate cranes in the State of West Virginia which are governed by the provisions of the Occupational Safety and Health Administration of the United States Department of Labor, 29 C.F.R. §1926.1400, Subpart CC, are required to hold a Class A certification; and

(2) All individuals who operate cranes in the State of West Virginia which are not governed by any provision of the Occupational Safety and Health Administration of the United States Department of Labor are required to hold a Class B certification.

#### **§21-3D-5. Denial, suspension, revocation, or reinstatement of certification.**

(a) The commissioner may deny, suspend, revoke or reinstate certification.

(b) A violation of this article or rule adopted pursuant to this article is grounds for the denial, suspension, revocation or refusal to reinstate certification and permits the imposition of disciplinary action: *Provided*, That no disciplinary action against a crane operator may be imposed without a proper prior notice as served under section one, article two, chapter fifty-six of this code, and an opportunity for hearing held before the commissioner or his designee wherein the crane operator will be provided the opportunity to present evidence in person, by counsel or both and after which, if the commissioner finds a violation of this article has occurred, the commissioner may impose any disciplinary action permitted in this article: *Provided, however*, That the provisions of subsection (e) of section seven of this article have not been met.

(c) Operation of a crane in violation of this article or other provision of this code may result in the suspension of certification for not less than twenty-four hours nor more than one year, or revocation of certification until reinstated.

(d) Each certified crane operator shall carry proof of certification on his or her person during operation of a crane.

(e) A person whose certification has been revoked may apply for certification one year after the date of the revocation.

#### **§21-3D-6. Effect of accident.**

(a) The commissioner may suspend or revoke the certification of a person involved in an accident relating to the operation of a crane by that person: *Provided*, That no disciplinary action against a crane operator may be imposed without a proper prior notice as served under section one, article two, chapter fifty-six of this code, and hearing held before the commissioner or his or her designee wherein the crane operator will be provided the opportunity to present evidence in person, by counsel or both and after which, the commissioner finds a violation of this article has occurred, the commissioner may impose any disciplinary action permitted in this article: *Provided, however*, That the provisions of subsection (e) of section seven of this article have not been met.

(b) If the commissioner makes a finding that the accident was caused by the actions or omissions of the certificate holder, the commissioner may require the certificate holder to retake and pass the written certification examination, or practical demonstration or both the certification examination and the practical demonstration or successfully completes a training course approved by the commissioner before the certificate holder may apply to have the certification reinstated.

#### **§21-3D-7. Penalties.**

(a) A person required to obtain certification under this article, who operates a crane or tower crane without certification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 for each violation.

(b) No person may knowingly or intentionally drive or operate a crane or tower crane while:

(1) Having any measurable alcohol in his or her system; or

(2) Under the influence of any controlled substance, as defined by subdivision (d), section one hundred one, article one, chapter sixty-a of this code; or

(3) Under the combined influence of alcohol and any controlled substance or any other drug.

A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000. In addition to the fine, the Commissioner of Labor shall revoke the person's certification for not less than one year.

(c) An employer who knowingly employs, permits or directs a person to operate a crane or tower crane without proper certification is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 for each violation.

(d) A person, operating a crane or tower crane, who fails to produce the certification within twenty-four hours after request of the commissioner or his or her authorized representative, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$100.

(e) If a person is convicted for an offense described in this section, and does not act to appeal the conviction within the time periods as hereinafter described, then the person's certification may be revoked or suspended in accordance with the provisions of this article, and, further:

(1) The clerk of the court in which a person is convicted for an offense described in this section shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered; and

(2) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted for any of the offenses described in this section, the commissioner shall make and enter an order revoking or suspending the person's certificate to operate a crane or tower crane in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided by this article or by rule. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of a transcript of the judgment of conviction by the commissioner a presumption exists that the person named in the transcript of the judgment of conviction is the person named in the commissioner's order and such constitutes sufficient evidence to support revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order; and

(3) The provisions of this subsection do not apply if an order reinstating the crane or tower crane operator's certification of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction; and

(4) For the purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury.

#### **§21-3D-8. Crane operator certification fund; fees; disposition of funds.**

(a) There is hereby established a crane operator certification fund in the state treasurer's office.

(b) The commissioner may set reasonable application fees for the issuance or renewal of certificates and other services associated with crane operator certification.

(c) (1) The commissioner shall receive and account for all money that is derived pursuant to the provisions of this article. The commissioner shall pay all money collected into the crane operator certification fund that has been established pursuant to subsection (a), section eight of this article, with the exception of money received as fines. This money shall be used exclusively by the commissioner for purposes of administration and enforcement of his or her duties pursuant to this article.

(2) Expenditures from the crane operator certification fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

### **§21-3D-9. Reciprocity.**

The commissioner, in his or her discretion, may grant certification to persons certified by other states, without examination or without the required training upon satisfactory proof that the qualifications for the applicants are equal to the qualifications of this state: *Provided*, That the other states extend similar reciprocity privileges to persons certified by this state.

Amended June 8, 2012.

**TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR  
  
SERIES 24  
CRANE OPERATOR CERTIFICATION ACT**

**§42-24-1. General.**

1.1. Scope. - This 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. - June 3, 2013.

1.4. Effective Date. - July 1, 2013.

**§42-24-2. Application and Enforcement.**

2.1. Application. This 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 rule is vested with the West Virginia Division of Labor.

**§42-24-3. Definitions.**

3.1. "ANSI" refers to the American National Standards Institute, 1899 L Street NW, 11<sup>th</sup> Floor, Washington, D.C. 20036.

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

3.4. "Class A certification" means a certification issued to a person who has met all national level certification criteria as required by W.Va. Code §21-3D-3(a)(1)(A) and W.Va. Code §21-3D-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 14, 2014, "Class A certification" also means and includes all crane operators in West Virginia subject to the provisions of OSHA 29 C.F.R. §1926.1400, Subpart CC, "Cranes and Derricks in Construction."

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 OSHA 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.

3.7. “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.

3.8. “Division” means the West Virginia Division of Labor.

3.9. “Employee” 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).

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

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.

3.12. “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 – 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 an examiner approved by the Commissioner pursuant to section 5 of the Division of Labor’s

rule titled “Crane Operator Certification Act – Practical Examination,” 42 CSR 25;

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.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 NCCCO;

5.2.d. Submits a copy of his or her practical examination scores of at least 75% as provided to the applicant by an examiner approved by the Commissioner pursuant to section 5 of the Division of Labor’s rule titled “Crane Operator Certification Act – Practical Examination,” 42 CSR 25;

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 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 submit a copy of 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.e. of this rule.

5.5.b. To recertify a class B certification, the applicant shall submit a copy of his or her current written examination scores of at least 60% as provided by the NCCCO or successfully complete 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. 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. A 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 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 – 2011 and ASME B30.23 – 2011.

7.2.b. An applicant 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

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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 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 section 4 of the Division of Labor's rule titled "Crane Operator Certification Act – Practical Examination," 42 CSR 25.

### **§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 – 2011 and ASME B30.23 – 2011 standards, 29 C.F.R. §1926.1400, Subpart CC, "Cranes and Derricks in Construction" and the 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 date(s) and location of the training;

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

8.4.e. The title and level of 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.

**TITLE 42  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF LABOR**

**SERIES 25  
CRANE OPERATOR CERTIFICATION ACT  
PRACTICAL EXAMINATION**

**§42-25-1. General.**

1.1. Scope. - This 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. - June 3, 2013.

1.4. Effective Date. - July 1, 2013.

**§42-25-2. Application and Enforcement.**

2.1. Application. This 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 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, 11<sup>th</sup> Floor, Washington, D.C. 20036.

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 4 and 5 of this rule.

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

3.4. "Class A certification" means a certification issued to a person who has met all national level certification criteria as required by W. Va. Code §21-3D-3 (a)(1)(A) and §21-3D-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 14, 2014, "Class A certification" also means and includes all crane operators in West Virginia subject to the provisions of OSHA 29 C.F.R. §1926.1400, Subpart CC, "Cranes and Derricks in Construction."

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 OSHA 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 the rules published in the Federal Register by executive departments and agencies of the federal government of the United States.

3.7. "Division" means the West Virginia Division of Labor.

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 or B certification shall submit a written certificate of completion from a practical examination examiner approved by the Commissioner pursuant to section 5 of this rule.

4.2. The practical examination as required by the 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.

4.3. The Commissioner shall arrange for administering the practical examination through approved examiners. The practical examination shall be given in 4 crane categories:

- 4.3.a. Fixed cab telescoping boom crane;
- 4.3.b. Lattice boom crawler or truck crane;
- 4.3.c. Swing cab telescoping boom crane; and
- 4.3.d. Tower crane.

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:

- 4.4.a. Task 1 - The rotation and placement of the overhaul ball in a designated stop circle;
- 4.4.b. Task 2 - The following of hand signals;
- 4.4.c. Task 3 - The rotation and placement of the overhaul ball in a fixed enclosure (barrel); and
- 4.4.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, or an equivalent organization or program as approved by the Commissioner. A copy of the 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.