

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CRANE OPERATORS [49 PA. CODE CH. 6] Crane Operators; Initial Rulemaking

The State Board of Crane Operators (Board) adopts Chapter 6 to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The Board will make applications available through its web site after the final-form rulemaking has been approved by the Office of Attorney General; however, licenses will not be issued until the final-form rulemaking is published in the *Pennsylvania Bulletin*.

Statutory Authority

This final-form rulemaking is authorized by sections 302 and 2102 of the Crane Operator Licensure Act (act) (63 P. S. §§ 2400.302 and 2400.2102).

Background and Need for the Regulations

Section 2102 of the act requires the Board to promulgate regulations. Section 302 of the act directs the Board to regulate and enforce the act. Accordingly, the Board developed a comprehensive regulatory scheme to implement and effect the General Assembly's intent as manifested by the act.

In the proposed rulemaking published at 40 Pa.B. 3041 (June 5, 2010), the Board provided an extensive discussion of several important background topics to explain the rationale and history of the act. Those subjects included the legislative history, historical background, the American Society of Mechanical Engineers (ASME) standards and the origins of crane operation standards, industry and regulatory trends and explanatory notes about the ASME B 30 Standards. There is no need to repeat a discussion of those subjects at length in this final-form rulemaking, and the Board incorporates that discussion by reference in this final-form rulemaking.

One important development occurred after publication of the proposed rulemaking. As the Board predicted and planned, the Occupational Safety and Health Administration (OSHA) announced the promulgation of a final rulemaking amending 29 CFR Part 1926 (relating to safety and health regulations for construction) on July 28, 2010, published at 75 FR 47906 (August 9, 2010). Several commentators, including the Independent Regulatory Review Commission (IRRC), the International Union of Operating Engineers and the Associated Petroleum Industries of Pennsylvania (API), urged the Board to defer promulgation of its final-form rulemaking until after OSHA's new construction rules for cranes were issued. There was some concern that the Board's regulations could conflict with OSHA's regulations. Comments urging deferral were filed before OSHA announced the publication date of the crane regulations. Therefore, the comments were speculative and based upon the commenta-

tors suggesting the possibility of a conflict between OSHA and the Board's final-form rulemaking.

In fact, the Board closely monitored the OSHA regulations during the development of the proposed rulemaking and was confident that the proposed rulemaking would be consistent with OSHA's regulations. Upon review of OSHA's regulations on July 28, 2010, the Board's position was borne out. OSHA expressly provided that any state licensing law that meets its regulatory requirements would be enforceable and not preempted. See 29 CFR 1926.1427(a)(1) (relating to operator qualification and certification). Furthermore, employer audited certification programs would not be compliant with OSHA regulations in Pennsylvania because the Commonwealth has a licensing program that meets OSHA's construction regulation standards.

Based upon the same Federal regulatory authority previously cited, as well as the lack of statutory authority in the act and the lack of portability that is a feature of an employer audited certification program, the Board concluded that it cannot recognize these certification programs. The Board also took into consideration the fact that employer audited certification programs restrict labor market competition because it limits a crane operator's ability to leave one employer and operate a crane for another employer.

Summary of Comments and Board's Response

The Board received 33 separate written public comments from 31 individuals. One individual submitted three written comments and joined a fourth. Of the 33 comments, 25 raised only objections to §§ 6.51–6.56 (relating to certifying organizations) and the definition of "certifying organization" in § 6.2 (relating to definitions). Nearly all of these commentators are affiliated with one of three potential certifying organizations, including Crane Institute Certification (CIC), National Center for Construction Education and Research (NCCER) and Operating Engineers Certification Program (OECF).

Four commentators, including representatives of the National Commission for the Certification of Crane Operators (NCCCO), officers of Stephenson Equipment, Inc. and North Shore Crane Corporation, supported the proposed rulemaking without modification. A fifth commentator representing the American National Standards Institute (ANSI) addressed only issues of accreditation regarding §§ 6.51–6.56 and was neutral as to the content and substance of the proposed rulemaking.

Three commentators addressed a broader range of provisions in the proposed rulemaking that pertained to particular industries. API raised several issues regarding the jurisdiction of the Board and the application of the regulations to the petroleum industry, a second commentator, the Pennsylvania Coal Association (PCA), was focused on the coal industry, and a third commentator, Pennsylvania Power & Light (PPL) was focused on the electric power generation industry.

The Board also reviewed written legislative comments. The House Professional Licensure Committee (HPLC) commented on the certifying organization provisions, as well as implementation issues. Senator Waugh commented on provisions relating to licenses without certification.

IRRC submitted written comments on August 5, 2010, which the Board duly considered.

In addition to written comments, the Board also solicited and received extensive oral comments. On June 16, 2010, Acting Secretary Basil L. Merenda, Board counsel and other staff from the Department of State met with representatives of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). At the request of CIC, on June 29, 2010, three Board members and Board counsel heard from CIC representatives Paul Zorich, Anthony Brown and John Giannelli. On June 30, 2010, two Board members and Board counsel participated in a telephone conference call with John Giannelli, James Kendzel of the Institute for Credentialing Excellence (ICE), the parent organization of the National Commission for Certifying Agencies (NCCA), and Debbie Dickinson of CIC. Finally, on July 28, 2010, 3 professional Board members conducted a lengthy public work session with 24 members of the public, including representatives of PPL, CIC, NCCER and others whose principal interest related to the subject of certifying organizations. The HPLC was also represented at the public work session.

Finally, on August 10, 2010, the Board conducted a public meeting to consider all public comments, both oral and written, and to revise the proposed rulemaking and adopt a final-form rulemaking. Persons who submitted written comments were provided with notice of the meeting, provided with a copy of a working draft of the revised rulemaking and invited to participate. Fourteen members of the public attended and participated, including Anthony Brown, Debbi Dickinson and John Giannelli; Elizabeth Nadeau representing the International Union of Operating Engineers; James Kendzel; Dr. Roy Swift of ANSI; and Graham Brent of NCCCO. The participants provided the Board with additional oral comments to clarify and inform the Board on several topics.

General Provisions

§ 6.1. Findings and purpose.

The Board added subsection (b)(6) to identify another purpose of the regulations as preserving the value of crane operator certification. This paragraph was added after the Board considered public comments on the subject of accreditation. In particular, the Board reviewed written and oral comments submitted by James Kendzel of the ICE, the parent organization of NCCA, as well as Dr. Swift of ANSI.

The Board had extensive discussion about the comparability of certification offered by different certifying organizations. There was a consensus that certification offered by one organization should be equivalent to the certification offered by another. The participants did not want a system in which crane operators shop for the easiest test to pass and there is universal agreement with the principle that safety is jeopardized if crane operator certification is debased by invalid assessments. The Board concluded that it is necessary to assure that crane operator certification offered by multiple certifying organizations have equal merit. In other words, a person who relies upon crane operator certification must be able to rely upon the fact that the certification offered by one organization is as valid as another in measuring the threshold competency of crane operators.

§ 6.2. Definitions.

In the definition of "certification" and throughout the remainder of the regulations, the Board referenced applicable provisions of ASME B 30 for the sake of brevity and to keep the regulations current with industry standards.

API remarked that this constitutes an improper delegation of legislative authority to a private body under *State Bd. of Chiropractic Examiners v. Life Fellowship of Pennsylvania*, 272 A.2d 478 (1971). The Board considered this argument and determined that it is without merit. The case cited by API is not applicable because *State Bd. of Chiropractic Examiners* involved a provision of the Chiropractic Registration Act of 1951 that conferred a benefit upon the Pennsylvania Chiropractic Society by requiring licensees to attend a conference sponsored by that organization as a condition of renewal of their licenses. In this final-form rulemaking, ASME does not receive remuneration or benefit of any kind. Therefore, a violation of Article II, Section 1 does not exist and a impermissible delegation of legislative authority has not occurred. Furthermore, section 703(a)(9) of the act (63 P. S. § 2400.703(a)(9)) specifically authorizes the Board to take disciplinary action for unprofessional conduct, which includes "...departure from or failing to conform to operating practices or professional standards embraced by the crane operating profession, including those recognized by the American Society of Mechanical Engineers ASME B 30.5 and an agency of the Federal Government."

The more appropriate precedent is *Pennsylvania Medical Soc. v. Foster*, 137 Pa. Cmwlth. 192, 585 A.2d 595 (1991). In that case, the General Assembly used as a standard the Medicare rates promulgated by the Federal government, which, in turn, relied upon a private corporation, Pennsylvania Blue Shield, to determine reasonable charges for physicians' services. The court determined that an impermissible delegation of legislative authority did not occur. "While the legislature cannot delegate the power to make, alter, or repeal laws, it can delegate the power to determine some fact or state of things to form a basis upon which the law depends." *Pennsylvania Medical Soc.*, 137 Pa. Cmwlth. at 204, 585 A.2d at 600.

In this final-form rulemaking, the Board employs a Nationally recognized standard developed by ASME as a standard of practice for the operation of cranes. It is the same private industry standard that forms the basis for OSHA's regulations. This is similar to other licensing bodies and other regulatory agencies. For example, accountants are held to the standards of the American Institute of Certified Public Accountants in § 11.27 (relating to auditing standards and other technical standards) and Generally Accepted Accounting Principles established by the private Financial Accounting Standards Board. Certified real estate appraisers are bound by the Uniform Standards of Professional Appraisal Practice, as promulgated by the private Appraisal Standards Board of the Appraisal Foundation, in § 36.51 (relating to compliance with USPAP).

IRRC previously approved regulations that adopt industry standards. In 12 Pa. Code § 145.41 (relating to adoption of standards), the Department of Community and Economic Development has adopted as its standards for industrial housing components the ICC International Building Code, ICC International Mechanical Code, ICC International Plumbing Code, International Energy Conservation Code, National Electric Code (NFPA No. 70) and ICC International Residential Code. The Department of Labor and Industry already employs the standards of ASME for boilers or unfired pressure vessels (see section 2 of the Boiler and Unfired Pressure Vessel Law (35 P. S. § 1331.2)) and as part of the Uniform Construction Code in 34 Pa. Code § 405.2 (relating to standards). Other departments referencing ASME standards include the Department of Education (school building construction

standards), the Department of Environmental Protection (aboveground storage tanks) and the Department of Transportation (compressed and liquefied gas fuel systems). Based upon the foregoing precedents, the Board concludes that the General Assembly's reference to ASME standards is lawful and, therefore, the Board correctly uses that language.

Furthermore, the Board would argue that reference to ASME is sound as a matter of policy. Alternatively, the Board would need to replicate comprehensive standards of crane operation that cover the same subject matter for which ASME has existing standards. ASME is able to bring much more expertise and experience to these issues than the Board. In addition, ASME standards are already familiar to practitioners in the industry.

IRRC offered a related comment on the Board's reference to "applicable requirements of ASME B 30" in the definition of "certification." IRRC incorrectly describes this as a deviation from the act. As the Board explained in the preamble to the proposed rulemaking, "...the types of cranes currently covered under [ASME B 30.3, B 30.4, and B 30.5] may be, and, in fact, are expected to be, covered by other volumes in the future. In particular, ASME B 30.29, Self-Erecting Tower Cranes, is expected to be published in 2011."

Since the Board's adoption of the proposed rulemaking, an additional change occurred to ASME Volume B 30.4, which formerly covered portal cranes, pedestal cranes and some types of construction tower cranes. In 2010, ASME revised B 30.4 to exclude construction tower cranes. As a result, the two types of cranes that remain in B 30.4, portal cranes and pedestal cranes, are not covered under the Board's jurisdiction under the act. Portal and pedestal cranes are not included in the act's definition of "crane." All tower cranes that are subject to the Board's jurisdiction are now covered in ASME Volume B 30.3. For this reason, the Board deleted B 30.4 from the definition of "crane" to avoid confusion in the industry that the Board is issuing licenses for pedestal cranes or portal cranes.

The clear legislative intent was to cover the mobile cranes and construction tower cranes that are described in the act, which were covered by Volumes B 30.3, 30.4 and 30.5 at the time of enactment. IRRC's position appears to be that the Board's statutory jurisdiction over those types of cranes can be eliminated if ASME changes the numerical designation of its standards or reorganizes its codes and standards. To be more specific, it appears that IRRC has taken the position that the Board would no longer have jurisdiction over self-erecting tower cranes in 2011 unless the General Assembly amends the act to specifically include self-erecting tower cranes and that the act requires licensure of pedestal cranes and portal cranes in Volume B 30.4.

If the Board were to adopt this position, it would mean that the General Assembly would be required to amend the act each time ASME changes its standards. This has implications not only for the Board's jurisdiction, but also for the standards of practice. The Board previously noted in its preamble to the proposed rulemaking that ASME has publication cycles. The Board expects that there will be revisions to at least one of these three volumes in 2010, 2011, 2012, 2014 and 2015. Adoption of IRRC's position would require nearly annual revisions of the act to keep the law current with ASME standards. In addition, each amendment to the act would result in another amendment to the regulations, which would mean a perpetual rulemaking process. The Board respectfully disagrees with the notion that the General Assembly's

intent was to amend this act in 5 out of the next 6 years, or alternatively, to lose currency with standards in the industry.

Finally, to follow this suggestion would unreasonably inhibit commerce by establishing a Pennsylvania standard that is unpredictable. Instead of following Nationally established standards that are revised on a predictable schedule through an open, well-established process of experts in the field, contractors and crane operators would need to follow frequent changes in the act and regulations, which may or may not occur on a predictable timetable, and which may or may not occur contemporaneously with the revisions to ASME standards. The Board's approach is better because it references applicable ASME standards, which have been the standard in the industry since 1916. The Board's approach places licensees on notice to remain current with accepted National standards of practice in crane operations that occur on a predictable basis, are well-publicized in the industry and known to prime contractors and professional engineers and sustain the subject matter jurisdiction intended by the General Assembly. IRRC's position does not.

The term "certifying organization" was adopted to encompass NCCCO and any other body approved by the Board to issue certification. Contrary to the comments that the Board's proposed rulemaking was a "single source" regulation, it was the intent of the Board to have a "multiple source" regulation as demonstrated by the definition. The Board's expectation that multiple certifying organizations would meet the Board's standards and be approved was implicitly recognized by the heading of §§ 6.51—6.56, "Certifying Organizations," which reflects the Board's conscious adoption of the plural.

The most frequent comment received by the Board was objection to the requirement of dual accreditation by ANSI and NCCA as set forth in subparagraph (ii) of the definition of "certification." On this issue, the Board has the benefit of receiving the input of the HPLC and the SCP/PLC in response to the proposed rulemaking. Based upon the expertise provided by the staffs of the HPLC and the SCP/PLC, the Board has been advised and accepts as authoritative the statutory construction that the legislative intent was to require only one form of accreditation for a certifying organization. Accordingly, the Board revised the definition of "certification" by replacing "and" with "or." A prospective certifying organization will only be required to hold accreditation from either ANSI or NCCA.

API also suggested that the acronym "NCCCO" did not apply uniquely to the National Commission for the Certification of Crane Operators, but to all certifying organizations. That point appears to be based upon the erroneous insertion of the acronym into the pamphlet law edition after the words "State Board of Crane Operators" in the definition of "certification." The Board's research reveals that the enrolled bill enacted into law by the General Assembly only uses the acronym "NCCCO" on one occasion in section 506 of the act (63 P. S. § 2400.506). The insertion of the acronym into the pamphlet law appears to be an erroneous editorial addition. The Board's position is that "NCCCO" applies only to the National Commission for the Certification of Crane Operators and to no other organization or entity.

With respect to other aspects of the regulations pertaining to accreditation and certifying organizations, the Board discusses those issues more fully in response to §§ 6.51—6.56.

The Board discussed extensively the comments of the PCA recommending that the provisions of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. §§ 1396.1—1396.19a) be used as the basis for defining this exclusion. The PCA correctly noted in its comments that the SMCRA is an environmental regulation. In section 1 of the SMCRA (52 P. S. § 1396.1), the stated purpose is to provide “. . . for the conservation and improvement of areas of land affected in the surface mining of bituminous and anthracite coal. . . .” Unlike the Federal Mine Safety and Health Act of 1977 (30 U.S.C.A. §§ 801—965), the SMCRA is not a workplace safety statute.

In addition, the Board also noted that much of the activity that the PCA wants to exempt is already excluded by the Board’s proposed rulemaking. In particular, “activities whereby coal is extracted” would be covered by the Board’s definitions, which includes the definition of “coal mining” as “the extraction of bituminous coal, lignite or anthracite. . . .”

It appears from the PCA’s comments that it seeks an exclusion for activity and work that is not, strictly speaking, the mining or extraction of coal, but which is incidental to coal mining, or which happens to occur on the premises of a coal mine. The Board parts company with the PCA’s rationale at this point. Understandably, the Department of Environmental Protection would adopt an inclusive definition of “coal mining” under the SMCRA so that it could comprehensively regulate environmental harms such as runoff, drainage, erosion or subsidence that may not arise from actual coal mining operations, but from ancillary work surrounding the coal mine. For purposes of protecting the environment, the Department of Environmental Protection would clearly have reason to regulate the environmental effects of crane operation that occur at a coal mine.

The rationale for a broad definition of “coal mining” does not apply when the subject matter is safety of work activities that are not involved directly in the extraction or preparation of coal. Whether intended or not, the effect of the PCA’s recommendation would be to create an exemption for which there would not be specific standard for the qualification of crane operators when their work is only tangentially related to coal mining. The standards for crane operator qualification in 30 CFR 77.404(b) (relating to machinery and equipment; operation and maintenance) represent a bare minimum: “Machinery and equipment shall be operated only by persons trained in the use of and authorized to operate such machinery or equipment,” cited by *Speed Mining, Inc. v. Secretary of Labor, MSHA*, 2007 WL 2746692 (2007). The language in 30 CFR 77.404 has remained unchanged since 1971. These standards are incorporated by reference in 25 Pa. Code §§ 209a.4 and 209a.13 (relating to safeguards for mechanical equipment; and competent person).

API argued for a broad exemption of the petroleum industry. The Board considered that position but rejected it for several reasons. First, there is nothing in the act on which an exemption could be based.

Second, API misconstrued the Board’s comments with respect to the definition of “derrick.” The act expressly includes “derricks.” The aim of the Board was to make the act’s use of “derrick” consistent with ASME standards, not to recognize an exemption for the petroleum industry. The preamble to the proposed rulemaking makes that point clear. The Board’s position is consistent with ASME B

30.5, which expressly states that it does not apply to well-drilling derricks. See ASME B 30.5, Section II, page ix.

Third, API misconstrues the act and the Board’s reference to OSHA’s new regulations in 29 CFR 1926.1427. In contrast to OSHA’s construction industry standards governing the use of cranes in construction, the act is quite explicit in its reliance upon ASME B 30 as the standard for determining which types of cranes are subject to the Board’s jurisdiction. ASME B 30 applies to cranes regardless of the industry or particular purpose for which the crane is used. ASME B 30 is not a construction industry standard. It is a crane standard and the provisions regarding operator qualifications apply to the use of these machines even when they are not used for lifting service. See ASME B 30.5, Section 5-0.1, page 1.

For these reasons, the Board rejected a definition of “crane” or “engage in the operation of a crane” that would exempt the petroleum industry.

At the request of IRRC, the Board included a definition of “declaration.” The Board must have a means of designating which type of crane may be operated with a license that is granted without certification. The declaration is a written designation identifying the type of crane (tower, lattice boom crawler, lattice boom truck, telescopic boom with rotating control station or telescopic boom with fixed control station) that the licensee is authorized to operate.

The Board also revised the definition of “intermodal operations.” The Board revised the phrase “other intermodal operations” to simply “intermodal operations” in the definition of “crane.” Since the phrase “other intermodal operations” does not appear elsewhere in the regulations, it has been deleted from § 6.2.

§ 6.22. *Licensure without certification by practical examination.*

Several commentators objected to the limitation that only the practical examination administered by NCCCO would be accepted for obtaining a license under section 506(b)(2) of the act. Several arguments were offered in support of accepting passing scores from multiple certifying organizations. The Board notes that the act is explicit on this point. As discussed previously, “NCCCO” was used in the enrolled bill only once and it was in this provision of the act. For the reasons in the discussion of § 6.2, the contention that this acronym is meant to apply generically to all certifying organizations has been rejected and the Board has concluded that the act only allows NCCCO’s practical examination to be accepted for licensure under this provision.

Beyond this clear statutory directive contradicting the commentators’ position, the Board also considered the merits of other arguments advanced by the commentators. One common argument is that “single sourcing” or “sole sourcing” is unfair, irrational or unusual (Debbie Dickinson, June 17, 2010; Keith Morical, July 6, 2010; Cliff Dickinson, July 1, 2010.) First, the Board rejects the description of the proposed rulemaking as “single sourcing” as being misinformed and erroneous. In fact, with respect to certifying organizations for licenses issued under section 501 of the act (63 P. S. § 2400.501), as discussed previously, both the act and the proposed rulemaking did not have a limitation on the number of organizations that would be approved, provided that the criteria were satisfied. With respect to section 506 of the act, the act establishes a uniform standard, and this particular provision in the act is quite typical of licensing statutes and not unfair, irrational or unusual.

The Board reviewed the licensing statutes for the other 28 licensing boards in the Bureau of Professional and Occupational Affairs (BPOA). A single testing and certifying body is the norm. Multiple testing and certifying organizations are rare. With a few notable exceptions, such as massage therapists, which identifies two certifying organizations by act, and professional counselors who may take examinations offered in different disciplines, virtually every other license, from barbers to physicians, is granted subject to passing a test administered by one recognized National body. Even licenses such as clinical nurse specialist, professional counselor and certified registered nurse practitioner typically allow only one examination for each specialty. In most cases, that testing body is a private, nonprofit corporation whose members consist of state licensing boards. In one case, accountancy, the test is developed and administered by a private professional membership organization, the American Institute of Certified Public Accountants. Several nursing specialties are based upon a single private organization that is the selected testing body. This norm is reflected in other professions, notably attorneys, and it is also the generally accepted practice among licensing bodies in the other 49 states and the District of Columbia.

The rationale for this policy is straightforward. In licensing individuals to practice a profession or occupation, the Commonwealth has an interest in being certain that the same yardstick has measured each individual who holds a license. That interest is assured if each licensee shall pass the same entrance examination. When there are multiple tests, there are multiple yardsticks and comparing the relative difficulty of examinations becomes a matter of debate and opinion. One test eliminates that problem. Therefore, the provisions of section 50(b)(2) of the act are rational.

Other commentators argued that identifying a single organization by name was evidence of bias, favoritism or support for a monopoly (Victor Stutzman, June 17, 2010; Debbie Dickinson). The objective evidence flatly contradicts that argument. NCCCO is the first crane operator certification organization in the United States. Until September 1, 2008, only 40 days prior to passage of the act of October 9, 2008 (P. L. 1363, No. 100), it was the only accredited crane operator certification program in the Nation. Accordingly, the General Assembly properly identified in the act the only crane operator certification offered in the United States from the time that Senator Erickson introduced the first bill in 2004 until the time that Representative Civera's bill approached final passage 4 years later.

NCCCO's status as the original source of crane operator certification is well-documented by OSHA. As early as March 13, 1997, OSHA was presented with a report on NCCCO's activities and standards. It was during that report that the recommissioning of the working group to revise and update construction crane regulations was announced. A byproduct of that study and discussion was the creation of the Crane and Derrick Negotiated Rule-making Advisory Committee (C-DAC) and the negotiation and promulgation of OSHA's most recent crane regulations on July 28, 2010. See Testimony of William Smith to the Advisory Committee on Construction Safety and Health (ACCSH), OSHA, United States Department of Labor, Thursday, March 13, 1997.

Some commentators have argued that the Board's proposed rulemaking implies that NCCCO is a "benchmark" (Debbie Dickinson, June 10, 2010) and that NCCCO is not an "industry standard" (Dickinson, June

10, 2010; Anthony D. Brown, July 2, 2010; Paul S. Zorich, July 6, 2010). Notably, nothing in the annex or preamble of proposed rulemaking stated that NCCCO was an industry standard or benchmark. The Board only stated that NCCCO is a certifying organization that is recognized by statute. As has been explained, that is commonplace in the legislative and administrative process. The Board has never suggested that NCCCO certification is mandated by OSHA regulations or that it is the only certification that will be accepted under the act or this Board's regulations. However, the history of crane operator certification shows that NCCCO served as an archetype and that OSHA and the General Assembly knew of NCCCO's standards when criteria for certification were determined. One commentator, Anthony Brown, was the author of the OSHA voluntary agreement with NCCCO in 1999. As an official of OSHA, he addressed ACCSH and informed the group that "[NCCCO] developed testing criteria both written and practical, qualification criteria for crane operators." See Testimony of Anthony D. Brown, "Special Presentation by the National Commission for Certification of Crane Operators to ACCSH," June 10, 1999, <http://www.osha.gov/doc/acssh/transcripts/ac99610.html>. Anthony Brown's presentation described the history of crane operator certification beginning with an OSHA review of crane accidents in 1990, followed by the creation of crane operator certification criteria by the Specialized Carriers and Riggers Association, which formed NCCCO.

The General Assembly's requirement of the NCCCO practical examination under section 506 of the act is reasonable and sound in light of the legislative history and background of the act. Accordingly, the Board will follow that clear directive.

§ 6.23. License without certification by experience.

The Board considered carefully Senator Waugh's comments regarding the comparison with West Virginia's requirement of 2,000 hours in a 4-year period. On the same issue, PPL took the position that the requirement was too stringent. Another commentator, Ronald G. Havlick of OECP, appeared to take the contrary position that the Board should prohibit licensure without certification. Ronald G. Havlick also appears to have misunderstood the Board's comments with respect to reporting of failing scores for persons who apply for licensure under § 6.22 or § 6.23 (relating to licensure without certification by practical examination; and licensure without certification by experience).

The Board struggled with the number of hours to be required under § 6.23. While the Board was aware of West Virginia's requirements, the Board does not believe that West Virginia's requirements are adequate. The Board also took into consideration the difference between West Virginia and this Commonwealth. West Virginia is a smaller state with fewer crane operators and does not have large metropolitan areas with concentrated buildings and population. Therefore, the risk of harm that could occur is less in West Virginia. Also, the reason for certification is that experience has proved to be an unreliable indicator of competence, because reading and math skills are critical to safe crane operation, as Ronald G. Havlick observed and as C-DAC found in its study of crane operations that led to the adoption of OSHA's crane standards. In addition, the Board realized that documentation to support experience is limited, an opinion confirmed by PPL at the public work session on July 28, 2010.

The Board also considered the legislative history. The purpose of this provision was to provide for individuals who are highly experienced and who have made a career as a crane operator and not to license part-time or itinerant crane operators. Therefore, the 5,000-hour threshold was already a compromise. Furthermore, at the public meeting on August 10, 2010, the Board received the comments of Dr. Swift of ANSI. Dr. Swift advised the Board that “skill atrophy” occurs rather quickly in all occupations and professions, including crane operation. He said that even a person who has many years of experience will begin to experience a degradation of skill after a relatively brief period away from daily practice. Therefore, even a quantity of 5,000 hours of crane operating experience during a 5-year period may be insufficient to maintain skills at a safe level. There was a consensus expressed by the public participants on this point.

In light of the inadequacy of experience as evidence of competence, the lack of documentation to support claims of experience, the greater risk of harm in population centers and the need to have a sufficient amount of experience for each type of crane for which a license is issued, the Board is cautious in a move to lower the threshold below 5,000 hours. The West Virginia standard, which amounts to 500 hours of crane operation per year, essentially licenses a person who is not a full-time crane operator, which runs contrary to the legislative intent behind the act. In addition, professional members have had the opportunity to observe first-hand the performance of workers who only operate cranes on a part-time basis and based upon their collective experience concluded that there is reason to be concerned about the skill level and safety of part-time crane operators.

On this point, the Board had a lengthy dialogue with PPL at its public work session and explored a variety of alternatives. That discussion confirmed the Board’s concerns. There is a mindset in general industry that a “go-slow” approach to operating a crane is a substitute for skill. That point arose when commentators argued that the timed practical examination does not test their skills. That is incorrect. The experience of professional crane operators and the psychometric outcomes of certification tests validate the principle that timed practical tests require a higher level of skill and control over the crane’s functions. Timed practical tests are not measuring efficiency or speed, but control. Therefore, while it is prudent to take as much time as necessary to perform an operation safely, it is not a substitute for skill and ability. In light of these factors, but also considering the valuable input from Senator Waugh and not wishing to create undue hardship on individuals, the Board reluctantly lowered the number of required hours to 4,000 over a 5-year period with the understanding that the only experience that would be counted would be time spent “in the seat,” that is, actually operating a crane and not to include crane-related activities. The Board believes that a truly experienced crane operator will be able to demonstrate that level of experience. Alternatively, persons who are not certified will be able to pursue licensure under section 506(b)(2) of the act and § 6.22 by passing a practical examination.

PPL and the Board also discussed several other questions that were raised in the public comments. The term “immediately preceding” was explained to the satisfaction of the commentators as a period that begins 5 years prior to the date on which the application is filed. Regarding the request for reporting to employers, the Board explained that it does not have the authority to require

licensees to report criminal proceedings to their employers, but reporting may be a condition of employment for a crane operator. Also, the Board pointed out that one possible requirement in an adjudication of disciplinary actions is a requirement that the licensee inform an employer of disciplinary sanctions.

Ronald G. Havlick disputed the requirement for reporting failures on certification examinations. The Board wants to make it clear that this requirement only applies to persons who apply for a license under § 6.22 or § 6.23. The Board agrees that a person who has been successfully certified and who applies for a license under § 6.11 (relating to general requirements) does not need to report failing scores.

§ 6.31. *Duration of license.*

IRRC recommended that the final-form rulemaking specify the biennial renewal date. The Board has been advised by the BPOA that the renewal date will be determined administratively and that the date will be published on the license application forms and on the licenses. Renewal notices are mailed to licensees prior to the expiration dates of licenses. IRRC has previously approved regulations that do not specify a renewal date.

Certifying Organizations

§§ 6.51—6.56

As discussed under § 6.2, the Board relies upon the staff of the HPLC and the SCP/PLC for the authoritative interpretation that the legislative intent was to require accreditation from no more than one organization, either ANSI or NCCA. The Board notes, however, that while some commentators argued that the two forms of accreditation are the same, both ANSI and NCCA reported that there are important differences. The Board agrees.

The Board acknowledges that both organizations require a job analysis and psychometric validation of assessments that measure a person’s ability to perform certain tasks within that job analysis. In that respect, the two organizations are similar. Likewise, both organizations recognize that there is a conflict of interest between training and certification, but allow for training programs to be affiliated with certification programs if there are firewalls or safeguards to protect the integrity of the certification process. On these important points the Board acknowledges that ANSI and NCCA satisfy the legislative intent to accredit certifying organizations.

Nonetheless, the two organizations do not overlap in all respects that the Board believes are important to protecting the public interest. NCCA pointed out that it requires that accredited organizations must include on the governing board persons who are not consumers of the certification that the organization offers. The Board believes that public representation on governing bodies is very important to making certifying organizations accountable and transparent. The Board believes that certifying organizations would benefit from input of people outside the crane industry. Based upon their experience in this rulemaking process, the professional members of the Board believe that public members of the Board have contributed thoughtful and important perspectives and ideas to the Board’s rulemaking process that professional members would not have been able to offer. Public participation in crane safety is valuable.

The Board believes that ANSI’s practice of onsite evaluations of its accredited organizations is valuable and that it is an important difference. The Board had an extensive dialogue with James Kendzel of ICE. He con-

firmed that NCCA's procedures cannot independently discover a discrepancy between written policies and actual practices prior to the occurrence of a violation or a problem. Based upon that information, the Board concludes that in the absence of onsite evaluations, there is a greater risk that a certifying organization will not conform to its written policies and that nonconformities will not be discovered by an accrediting body until after a problem arises. Contrary to the claims of some commentators, there is not a comparable alternative to first-hand examination by a certifying organization. The Board agrees that alternative methods of auditing are accepted by NCCA to confirm a certifying organization's practices, but they are not the same. The Board agrees that ANSI's additional requirements are more costly and they are more difficult to attain, but the Board believes that they serve a legitimate purpose and they provide an additional degree of quality and protection.

Also, James Kendzel acknowledged that ANSI accreditation is more widely recognized and accepted internationally. ANSI is the only organization that itself is accredited under ISO Standard 17011 and it is the only organization that accredits other organizations according to ISO Standard 17024. The Board also notes that NCCA has applied for and has received accreditation from ANSI. Some commentators took exception to the Board's comment in the preamble that NCCA's standards are minimal. The Board did not intend its preamble to be interpreted negatively toward NCCA or to mean that NCCA is not a quality organization, but the Board continues to believe that ANSI is a more rigorous and demanding accreditation standard, not simply a more costly standard.

The Board found one problem in both organizations after receiving lengthy input from ANSI and NCCA. Both organizations require a certifying body to perform a job analysis or practice analysis to determine what types of skills or competencies must be measured. That analysis is based principally upon a survey of experts in the field, in this case, the crane industry. In a simplified version, in a job analysis industry the experts describe how the job is performed in real life. This is important because both ANSI and NCCA must rely upon the job analysis to judge the validity of the tests. Ordinarily, if two certifying bodies in the same field perform the job analysis correctly, they may develop slightly different assessment instruments, but each assessment instrument will still be psychometrically valid. The Board accepts that principle.

A problem arises, however, if one job analysis does not conform to a specifically prescribed requirement or standard in the industry. Because neither NCCA nor ANSI are experts in the fields that they accredit, they have no means to confirm independently that the industry experts have conformed their views to prescribed standards if the experts depart from those standards. As a result, the differences in certification examinations can be significant. That appears to have happened in crane operator certification. The Board notes that although ANSI does explicitly require its accredited organizations to comply with standards such as ASME B 30, the evidence demonstrates that ANSI's lack of expertise in the crane industry may have led to an oversight with respect to the interpretation of ASME standards. NCCA does not explicitly require adherence to ASME standards if the job analysis does not insist upon it.

Specifically, ASME issued two interpretations of its standards that expressly prohibit the use of calculators in certification tests. These are authoritative statements

from ASME on the requirements under its standards. See ASME Interpretation 5-61, issued July 15, 1997: Does the use of a computer, calculator, or other device satisfy the requirement to "exhibit arithmetic skills" (under Paragraph 5-3.1.2(b)(3))? Reply: No. Also, see ASME Interpretation 5-75 confirming Interpretation 5-61. While the Board does not dispute that in real life crane operators normally use calculators to perform their load chart calculations, the ASME requirement is clear and unequivocal.

Second, ASME issued an interpretation that to be certified on a particular type of crane, the crane operator shall have passed a practical exam for that type of crane. See ASME Interpretation 5-58, issued October 12, 2004: Does the operator being tested need to successfully complete an operations test on any one crane in any of the groupings (1 through 10) to qualify him/her to operate any crane in that particular grouping, or must they demonstrate proficiency on every crane (make, model, capacity) to be operated? Reply: The operator only needs to complete an operation test on a specific type crane. The operator does not need to complete an operation test on each specific crane.

The Board believes that certifying organizations should conform to ASME interpretations of its standards. "Interpretations shall not revise existing requirements or establish new requirements." See ASME Codes and Standards Policy 33(c)(3). Thus, the correct reading of ASME Volume B 30.5 is that the use of calculators is prohibited and certification should only be issued by passing a practical examination for the specific type of crane that has been tested—lattice boom crawler, lattice boom truck, hydraulic boom with fixed station, hydraulic boom with rotating station, tower crane, and so forth.

Clearly, a certifying organization can reduce costs of certification if it requires only one practical test and certifying for many types of cranes. It would also be easier to pass a mathematics problem if the candidate can use a calculator. But if one certifying examination follows ASME standards and its interpretations but another does not, then the Board does not believe that the assessments offered by different organizations can be considered equivalent or comparable, even though from a psychometric standpoint those assessments may be considered valid based upon a job analysis. If one test is premised upon a job analysis that applies an industry standard, while another test is based upon a job analysis that does not, then the tests and the certifications are no longer equivalent. Although the Board may concede that calculator use may be a relatively minor issue, the reliance upon a single practical examination is not.

Some commentators argue that this is competition and that it leads to improvements in certification. In fact, it does the opposite. It has long been recognized as a principle in economics, known as Gresham's Law, that bad money drives out good money. This principle has been found to apply to government regulations too: lax standards drive out higher standards. Lax standards cost less in the short run. Businesses that follow stricter standards are at a competitive disadvantage with businesses that follow lax standards. See "The Market for Lemons: Quality Uncertainty and the Market Mechanism" by George Akerlof, 1970. This principle has been demonstrated with respect to environmental regulations ("Interstate Competition and Environmental Regulation: A Test of the Race-to-the-Bottom Thesis," Woods, N. D., *Social Science Quarterly*, Volume 87, Issue 1 (2006)) and workplace safety regulation ("State Enforcement of Federal Regulatory

Policy: The Lessons of OSHA,” Thompson, F. J., Scicchitano, M. J., *Policy Studies Journal*, Volume 13, Issue 3), among others.

Crane operator license regulations establish a form of exchange. A crane operator submits a certification and receives a license. By law, licenses issued by the Board must be of equal value and there is not an incentive in the licensing system to obtain the most stringent form of certification. A crane operator who does not use a calculator or who takes multiple practical examinations for each type of crane is no better off than the crane operator who uses a calculator or who takes a single practical examination and qualifies for multiple certification specialties. If it is easier to obtain one type of certification than another, then crane operators will take the shortest route to obtain a license.

In the end, if some sources of certification are easier to obtain than others, certification will not result in raising crane operator qualifications, but lowering them because crane operators will get the same benefit of licensure whether they obtain an easier certification or a harder one. From the beginning, the Board has tried to develop regulations to anticipate problems that do not exist today, but may develop in the future. The three certifying organizations that have submitted comments on Chapter 6 are known to the professional members of the Board and regarded as reputable members of the crane industry. However, in light of the vulnerabilities of NCCA and ANSI accreditation that the Board has described, the Board has always believed that it must establish clear standards that fill the gaps left by accreditation by a National accrediting body.

Without solid standards, future prospective certifying organizations may have an incentive to attract more candidates for certification by trying to develop a job analysis to change the tests and so the certification standards go lower. This is the race to the bottom and it would defeat the purpose of the act, as well as OSHA regulations.

Several commentators argued that crane operators should be given choices and options in certification. While the Board agreed with that principle from the beginning, the Board also believes that the public’s right to choose trumps the crane operator’s choice. The real question, from the Board’s perspective, is what kind of certification would each citizen choose to protect public safety? Would members of the public choose certification testing that relaxes standards for the crane operator, or certification testing that maintains and raises standards? Would they choose the shortest route to certification, or the best one?

The Board believes that to prevent the race to the bottom, all certifications must be equivalent. Therefore, in addition to accreditation by ANSI or NCCA, plus the OSHA voluntary agreement, the Board requires that all certifying organizations apply the same ASME interpretations in developing assessments. This requirement is set forth in § 6.53(a)(5) (relating to required and discretionary bases for disapproval of an application as a certifying organization; bases for approval; and terms of equivalence to NCCCO). A similar requirement has been added for conformity with OSHA’s operator qualification requirements in 29 CFR 1926.1427. After discussion with CIC, NCCER, OECP and NCCCO, the Board is satisfied that these requirements are consensus standards and that they will be met by all four organizations. Moreover, the Board argues that this regulation benefits all four organizations because no present or future certifying organization will gain an advantage in the future by starting the

race to the bottom. The Board has resolved the equivalence issue by specifying the four criteria that define equivalence to NCCCO: (1) accreditation by NCCA or ANSI; (2) OSHA voluntary agreement; (3) conformity to ASME B 30 standards and ASME interpretations of those standards; and (4) conformity with OSHA’s regulations.

The Board incorporates these same criteria into its order granting approval to certifying organizations and as grounds for terminating approval.

Addendum

On October 26, 2010, the Board received a request from IRRC to more specifically respond to several comments that IRRC had submitted in response to its proposed rulemaking. The Board’s responses to that request for more specific responses follows.

A request to ensure consistency with OSHA regulations

IRRC did not articulate any specific issues or areas of potential inconsistency with OSHA regulations, but cited other commentators’ concerns. The two areas of potential or alleged inconsistency raised by other commentators applied to employer certifications and accreditation of certifying organizations.

With respect to the former issue, the Board has ensured from the beginning of drafting its proposed rulemaking that it was consistent with OSHA’s regulations. It should also be noted that under the OSHA final rulemaking published at 75 FR 47906, crane operator qualification and certification requirements will not take effect until August 9, 2014. Therefore, there cannot be actual inconsistency between the Board’s regulations and OSHA’s regulations until that time.

Beyond the 2014 effective date for OSHA’s final rulemaking, the Board reviewed the OSHA regulations and ensured that its own final-form rulemaking is consistent with OSHA. Notably, as previously discussed, OSHA provides in 29 CFR 1926.1427(a)(1) that when a state or local government requires licensure and the state or local licensure meets or exceeds OSHA’s regulations, that the government license would be required under OSHA’s regulation. Therefore, in this Commonwealth, employer certification would not be a valid form of crane operator certification and qualification under OSHA’s final rulemaking.

When the Board’s jurisdiction over cranes operations overlaps with OSHA’s construction crane standards as provided in 29 CFR Part 1926, Subpart CC (relating to cranes and derricks in construction), the criteria for crane operator qualification and certification exceeds OSHA standards. The OSHA standards for government licenses are in 29 CFR 1926.1427(e)(2), regarding licensing criteria. Those criteria include that: (1) the requirements for obtaining the license include an assessment, by written and practical tests, of the operator applicant regarding, at a minimum, the knowledge and skills listed in 29 CFR 1926.1427(j)(1) and (2); (2) the testing meets industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel; (3) the government authority that oversees the licensing department/office has determined that the requirements in 29 CFR 1926.1427(e)(2)(i) and (ii) have been met; (4) the licensing department/office has testing procedures for relicensing designed to ensure that the operator continues to meet the technical knowledge and skills requirements in 40 CFR 1926.1427(j)(1) and (2).

Section 501 of the act requires as a condition of licensure with certification that applicants hold certifica-

tion issued by NCCCO or organizations that are equivalent to NCCCO. The Board's regulations require that those organizations have a voluntary agreement with OSHA and that those organizations apply industry standards, including ASME interpretations, regarding testing and certification. Those two requirements for certifying organizations ensure that the Commonwealth's licenses with certification under section 501 of the act meet or exceed OSHA standards. Therefore, the Board has, in fact, determined that the requirements in 29 CFR 1926.1427(e)(2)(i) and (ii) have been met.

The Board noted in the preamble to its proposed rulemaking and reiterates in this final-form rulemaking that licenses without certification under section 506 of the act do not meet the requirements set forth by OSHA. Therefore, individuals licensed under section 506 of the act would not be eligible to operate a crane in construction. Under the original standards for these licenses in the proposed rulemaking, the Board believed that it could make a reasonable argument to OSHA that given the rigorous experience requirements and documentation required by the Board, that OSHA should grant a waiver for these licenses. However, principally at IRRC's direction, the Board relaxed the experience requirement substantially and a request for a waiver no longer appears to be a viable option for licenses granted under section 506(a)(3) of the act. The Board will evaluate the merits of a request for a waiver in 2011.

OSHA's regulation also provides that a license issued by a government accredited crane operator testing organization that meets the requirements in 29 CFR 1926.1427(e)(2) is valid only within the jurisdiction of the government entity and that it is valid for no longer than 5 years. Since Pennsylvania licenses are only valid in this Commonwealth for 2 years, these requirements are satisfied too.

With respect to the second concern regarding accreditation of certifying organizations, the Board's proposed rulemaking ensured that it was in compliance with OSHA's rulemaking. The requirement in the proposed rulemaking for dual accreditation exceeded the OSHA requirements. OSHA did not forbid dual accreditation; therefore, dual accreditation was not inconsistent. Notwithstanding the merits of dual accreditation, as previously discussed, the Board revised this final-form rulemaking to require only a single accreditation by ANSI or NCCA, which continues to be consistent with OSHA's requirements.

Implementation procedures and timetables for compliance

The act will not be enforced until licenses have been issued. The Board published its applications for licensure and applications for certifying organizations and received approximately 200 license applications as of October 28, 2010, and three certifying organization applications. The Board reviewed all three certifying organization applications and conducted a dialogue with representatives of all three organizations at its meeting on October 27, 2010, to obtain clarification on several points.

The Board would stress that final determinations have not been made in any of these applications, but upon approval of the final-form rulemaking by IRRC, the Board would be prepared to meet in November 2010 to take final action on the applications. The administrative staff of the BPOA is prepared to print and issue licenses immediately upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. A license application that has been received as of October 28, 2010, will be

able to be processed and, if the individual qualifies for a license and does not have a disabling criminal history, the applicant will be able to receive an active license no later than the date of publication in the *Pennsylvania Bulletin*. In fact, the Board and the BPOA have been prepared and have instituted procedures and plans to assure that a qualified applicant that files an application before the Board's next business meeting will have an active license on the date of publication in the *Pennsylvania Bulletin*.

The Board has also advised the three applicants for certifying organizations that if the applications are approved, an individual who has been certified by the organizations and who submits an application to the Board will be processed simultaneously with applicants who have been certified by NCCCO. Therefore, individuals certified by NCCCO will have no advantage over an individual who has been certified by another approved certifying organization. Each of the three certifying organizations has expressed satisfaction with the Board's announced plans.

With respect to enforcement of the act, the Board is not enforcing the act until the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin* and the BPOA has published its policy on the Board's web site. At the time of publication of that notice on the web site, it appeared that publication in the *Pennsylvania Bulletin* would not occur earlier than mid-December. Upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*, the Board will enforce the requirement of licensure for crane operators. The Prosecution Division of the Legal Office for the BPOA retains discretion on the appropriate enforcement measures to apply. Historically, when a new license classification has been implemented, persons who are otherwise qualified for licensure, but who are found to have overlooked or been unaware of licensure requirements and have no other violations, are given the opportunity to cure the violation by submitting an application and obtaining a license in the period of several months following implementation of the license classification.

Equivalence to NCCCO

In the preamble to the proposed rulemaking, the Board wrote "The use of the term 'equivalence' indicates the General Assembly's intent that the Board limit its approval to those other organizations that are point-by-point identical to NCCCO in relevant criteria, except for the fact of a separate corporate existence and control." Commentators, including IRRC, ignored the next paragraph, "Accordingly, the Board examined carefully the criteria that apply to NCCCO and that would be relevant to setting an objective standard of equivalence. Those criteria are more fully discussed in §§ 6.52 and 6.53 (relating to application for approval as a certifying organization; and required and discretionary bases for disapproval of an application for approval as a certifying organization)."

The argument that other organizations could not have the same address, or perform the same examination, or other irrelevant criteria and therefore would not be equivalent to NCCCO never appeared in the Board's regulations. The relevant criteria were specified in the proposed rulemaking and each and every relevant criterion was attainable by an organization that wanted to be approved. Contrary to IRRC's conclusion, in reality, NCCCO would not have been the only possible certifying organization. However, the Board has modified those relevant criteria and, to the satisfaction of the prospective certifying organizations and the General Assembly, the

Board satisfied the statutory requirement of equivalence to NCCCO in terms that other known certifying organizations regard as acceptable.

§ 6.53(a)(4) and (5)

These paragraphs did not conflict with OSHA's negotiated rulemaking, which established minimum standards that a government licensing body could exceed. Whether the prohibition was or was not consistent with the act is a moot point since those provisions have been deleted. In response to the hypothetical question of whether those provisions would have been inconsistent with the act and legislative intent, the Board was charged with promulgating and enforcing regulations, not inconsistent with the act, as necessary only to carry into effect the provisions of the act. See section 2400.302(5) of the act.

As more fully discussed in the preamble to the proposed rulemaking and the original preamble to the final-form rulemaking, the Board's mission to maintain a rigorous program of certification and qualification that is untainted by conflict of interest is a critical element of licensure. Far from being inconsistent with the act and legislative intent, regulations that advance that interest are essential to the proper administration of the act. Although a clear distinction between training and certification would have eliminated the potential for a conflict of interest, the Board relied upon the assurance offered by ANSI and NCCA that their standards and requirements can adequately safeguard against a conflict of interest affecting certification. Based upon those assurances, the Board deleted those requirements from the final-form rulemaking.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking should not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The final-form rulemaking does impose additional paperwork requirements upon the Commonwealth and the private sector, but those costs are consistent with and in furtherance of the act.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 25, 2010, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 3041, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 3, 2010, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 4, 2010, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments made to the final-form rulemaking do not expand the scope of the proposed rulemaking published at 40 Pa.B. 3041.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code, are amended by adding §§ 6.1—6.4, 6.11—6.15, 6.21—6.23, 6.31—6.34, 6.41—6.44 and 6.51—6.56 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ANTHONY J. LUSI, Jr.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6752 (November 20, 2010).)

Fiscal Note: Fiscal Note 16A-7101 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 6. STATE BOARD OF CRANE OPERATORS

GENERAL PROVISIONS

Sec. 6.1.	Findings and purpose.
6.2.	Definitions.
6.3.	Applicability of general rules.
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LICENSURE

6.11.	General requirements.
6.12.	Certification.
6.13.	Qualifications and supervision of trainees.
6.14.	Specialties.
6.15.	Licensure of a crane operator from another jurisdiction.

LICENSURE WITHOUT CERTIFICATION

6.21.	Licensure without certification generally.
6.22.	Licensure without certification by practical examination.
6.23.	Licensure without certification by experience.

RENEWAL OF LICENSE

- 6.31. Duration of license.
- 6.32. Renewal of license.
- 6.33. Initiating and terminating inactive status.
- 6.34. Licensee's change of name or address; service of process and legal papers.

DISCIPLINARY ACTIONS

- 6.41. Unlicensed crane operation.
- 6.42. Impaired operation of a crane and reportable conditions, incidents or events.
- 6.43. Aiding and abetting unlicensed crane operation.
- 6.44. Standards of conduct, disciplinary action, suspension and revocation.

CERTIFYING ORGANIZATIONS

- 6.51. Certifying organizations.
- 6.52. Application for approval as a certifying organization.
- 6.53. Required and discretionary bases for disapproval of an application as a certifying organization; bases for approval; and terms of equivalence to NCCCO.
- 6.54. Determination of application for approval as a certifying organization.
- 6.55. Order granting an application for approval as a certifying organization.
- 6.56. Petition to terminate approval as a certifying organization.

GENERAL PROVISIONS

§ 6.1. Findings and purpose.

(a) The Board finds that:

(1) The improper operation of a crane may cause a catastrophic event on a work site, resulting in fatality, other bodily harm and property damage.

(2) Although any machine or man-made activity may cause fatality, other bodily harm or property damage, the magnitude of the loads borne by cranes, the associated tension and stress on structural elements of cranes, the motor power required to operate winches, the mobility of cranes and other factors that are peculiar to cranes, lead to exceptional hazards and risk of harm arising from crane operation that warrant additional regulation by the Commonwealth.

(3) Operator error is a significant cause of bodily harm and property damage arising from the use of cranes.

(4) A uniform standard of testing, certification and licensure as a prerequisite to admission to the occupation of crane operator is necessary to reduce the incidence of error and promote a higher degree of conformity to safe crane operation.

(5) Reduction of crane-related incidents will save lives, reduce bodily injury to the public and construction workers, reduce property damage, increase efficiency and raise productivity of businesses in this Commonwealth.

(b) The Board promulgates this chapter to:

(1) Protect people from bodily harm by reducing the incidence of operator error through a process of objectively measured testing, certification and licensure as a prerequisite to admission to the occupation of crane operator.

(2) Protect people from bodily harm by establishing standards of conduct applied to crane operators in order to restrict or remove from the occupation of crane operation those persons proved to have engaged in conduct, habits, behavior or judgment that has caused bodily harm or is reasonably likely to create an unreasonable risk of harm in the future.

(3) Protect crane operators and trainees from undue influence to engage in unsafe practices.

(4) Protect crane operators and trainees from unfair practices in the process of certification or recertification.

(5) Promote competitiveness and economic efficiency in the crane industry without impairing safety, training or certification.

(6) Preserve the value of crane operator certification for the benefit of licensees, their employers and consumers of crane services.

§ 6.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ANSI—The American National Standards Institute.

ASME—The American Society of Mechanical Engineers.

Act—The Crane Operator Licensure Act (63 P. S. §§ 2400.101—2400.2103).

Board—The State Board of Crane Operators.

Certification—Certification from the NCCCO, or another organization found by the Board to offer:

(i) A testing and certification program equivalent to NCCCO and meeting the applicable requirements of ASME B 30.

(ii) The accreditation requirements of the NCCA or ANSI.

Certifying organization—The NCCCO, or another organization approved by the Board to issue certification.

Coal mining or coal mining operations—The extraction of bituminous coal, lignite or anthracite from natural deposits in nonliquid form, or if in liquid form, with workers underground, by any means or method, and the work of preparing coal so extracted.

Commissioner—The Commissioner of Professional and Occupational Affairs within the Department.

Conviction—

(i) An ascertainment of guilt of the accused and judgment thereon by a court, and includes a disposition of a criminal proceeding under Pennsylvania law, or any similar disposition under the laws of another jurisdiction, by a plea of guilty, guilty but mentally ill, or nolo contendere; or a verdict of guilty, or guilty but mentally ill.

(ii) The term does not include an adjudication of delinquency under 42 Pa.C.S. Chapter 63 (relating to Juvenile Act).

Crane—A power-operated hoisting machine that has a power-operated winch, load line and boom moving laterally by the rotation of the machine on a carrier or base which has a manufacturer's rated maximum lifting capacity of 15 tons or more as specified in ASME Volumes B 30.3 and B 30.5, and any successor volumes.

(i) The term includes:

(A) A derrick.

(B) A crawler crane.

(C) A wheel-mounted crane of both truck and self-propelled wheel type.

(D) A tower crane, which has a manufacturer's rated maximum lifting capacity of 10 meter tons or more, as specified in the applicable ASME B 30 volume.

(ii) The term does not include:

(A) A crane or drag line used in coal mining operations.

(B) A forklift.

- (C) A digger derrick truck.
- (D) An aircraft.
- (E) A bucket truck.
- (F) A vehicle or machine not having a power-operated winch.
- (G) A tow truck or wrecking crane when used for towing or vehicle recovery.
- (H) A locomotive crane.
- (I) A crane used in longshore operations or other intermodal operations.
- (J) A crane used in manufacturing applications.

Crane operator—An individual licensed by the Board to operate a crane.

Declaration—A written designation for a license issued under § 6.22 or § 6.23 (relating to licensure without certification by practical examination; and licensure without certification by experience) specifying the type of crane that a licensee is authorized to operate.

Department—The Department of State of the Commonwealth.

Engage in the operation of a crane or operate a crane—To perform a physical function related to the activation or movement of a crane, and encompassing the use and manipulation of the control mechanisms that direct the movement and hoisting functions of a crane.

Immediate supervision—Circumstances in which the crane operator is in the immediate area of the trainee, within visual sighting distance and able to effectively communicate with the trainee.

Intermodal operations or intermodal services—

(i) Receiving, handling, holding, consolidation, loading or delivery of an intermodal container, as defined in 29 CFR 1917.2 (relating to definitions), at a facility other than a marine terminal.

(ii) The term does not include:

(A) The construction, alteration, service, repair or improvement of real estate appurtenant to a railroad or trucking terminal.

(B) The repair, service or installation of tangible personal property appurtenant to a railroad or trucking terminal.

(C) The assembly, fabrication, installation or arrangement of parts or components of a machine, fixture, transportation improvement to real estate or building, whether for the purpose of a fitting, adjustment, refinement or test as a temporary or preliminary condition; or as a final, permanent or completed work or product.

Lift director—An individual who directly oversees the work being performed by a crane.

Longshore operations—

(i) Receiving, handling, holding, consolidation, loading or delivery of waterborne shipments at a marine terminal as that term is defined in 29 CFR 1917.2.

(ii) The term does not include:

(A) The construction, alteration, service, repair or improvement of real estate appurtenant to a marine terminal.

(B) The repair, service or installation of tangible personal property appurtenant to a marine terminal.

(C) The assembly, fabrication, installation or arrangement of parts or components of a machine, fixture, transportation improvement to real estate, or building, whether for the purpose of a fitting, adjustment, refinement or test as a temporary or preliminary condition; or as a final, permanent or completed work or product.

Manufacturing application or manufacturing or manufacture—

(i) The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any tangible personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer.

(ii) The term includes every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities (including packaging, if any, passing to the ultimate consumer) which it has when transferred by the manufacturer to another.

(iii) The terms “manufacturing application,” “manufacturing” or “manufacture” do not include:

(A) The construction, alteration, service, repair or improvement of real estate.

(B) The repair, service or installation of tangible personal property.

(C) The assembly, fabrication, installation or arrangement of parts or components of a machine, fixture, transportation improvement to real estate or building, whether for the purpose of a fitting, adjustment, refinement or test as a temporary or preliminary condition; or as a final, permanent or completed work or product.

NCCA—National Commission for Certifying Agencies.

NCCCO—National Commission for the Certification of Crane Operators.

OSHA—The United States Occupational Safety and Health Administration.

Trainee—An individual who has not been issued a license under this act or obtained certification but who is authorized to operate a crane as set forth in section 501(c) of the act (63 P.S. § 2400.501(c)), and § 6.13 (relating to qualifications and supervision of trainees) when under the immediate supervision of a crane operator.

Work of preparing the coal—

(i) The breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and other work of preparing the coal as is usually done by the operator of a coal mine.

(ii) The term does not include:

(A) The construction, alteration, service, repair or improvement of real estate appurtenant to a coal mine.

(B) The repair, service or installation of tangible personal property appurtenant to a coal mine.

(C) The assembly, fabrication, installation or arrangement of parts or components of a machine, fixture, transportation improvement to a coal mine or building, whether for the purpose of a fitting, adjustment, refinement or test as a temporary or preliminary condition; or as final, permanent or completed work or product.

§ 6.3. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), is applicable to the activities of and proceedings before the Board, and the Board may exercise the powers, remedies, or procedures prescribed therein.

§ 6.4. Fees.

(a) The schedule of fees charged by the Board is as follows:

Initial licensing application fee	\$100
Biennial renewal fee	\$100
Verification of Licensure	\$15
Addition of crane specialty	\$70
Application for certifying organization	\$1,000
Trainee registration fee	\$100

(b) Fees must accompany applications and be made payable to "Commonwealth of Pennsylvania."

LICENSURE

§ 6.11. General requirements.

(a) An individual who engages in the operation of a crane in this Commonwealth shall be licensed by the Board, or shall be authorized to operate a crane as a trainee.

(b) An individual who holds a license as a crane operator shall have the right to use the title "Licensed Crane Operator" and the abbreviation "L.C.O."

(c) To qualify as a candidate for licensure, the applicant shall:

- (1) Be 18 years of age or older.
- (2) Be of good moral character.

(3) Present satisfactory evidence to the Board that the applicant possesses a current certification, or qualifies for licensure without certification under section 506 of the act (63 P. S. § 2400.506).

(4) Aver subject to penalties for unsworn falsification to authorities under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), that the applicant has been examined by a physician and determined to be physically capable of operating a crane.

(5) Pay all requisite fees.

(d) Felony convictions under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or an offense under the laws of another jurisdiction which if committed in this Commonwealth would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, will preclude an applicant from obtaining or maintaining a license to operate a crane unless:

(1) At least 10 years have elapsed from the date of conviction.

(2) The individual satisfactorily demonstrates to the Board that the individual has made significant progress in personal rehabilitation since the conviction so that licensure of the individual should not be expected to create a substantial risk of harm to the health and safety of crane operators, trainees or the public or a substantial risk of further criminal violations.

(3) The individual otherwise satisfies the qualifications provided in the act and this chapter.

(4) The Board will evaluate an individual's progress in personal rehabilitation from the totality of the circumstances, including, but not limited to, the individual's entire criminal history, employment history, the severity and frequency of past criminal history, whether and for how long the individual has abstained from substance abuse, refrained from tortious or criminal conduct, made restitution or compensation, followed a course of treatment and therapy, completed a program of education, offers testimony from other persons of the individual's good character, and practices an ongoing commitment to recovery.

(e) An applicant who has a conviction described in subsection (d) shall report the conviction on a form prescribed by the Board, and attach documentary evidence in support of the factors identified in subsection (d)(1), (2) and (4).

§ 6.12. Certification.

(a) A crane operator's license obtained by certification will be valid only in conjunction with a current certification in the specialty for which the crane operator has been certified.

(b) Proof of certification must include a copy of written and practical examination scores as provided to the applicant by a certifying organization, and a waiver for the certifying organization to release the licensee's certification status and recertification scores to the Board.

(c) A license shall authorize the licensee to operate only the type of crane for which the individual holds a valid certification, and will not be construed as a general license to operate any crane type or to perform all activities related to crane operation.

(d) A person who possesses a certification may not apply for licensure without certification under §§ 6.21—6.23 (relating to licensure without certification).

(e) An individual who acquires certification after October 9, 2010, may not operate a crane as a trainee for a period of more than 90 days from the date of certification, unless granted leave by the Board to operate a crane as a trainee for an additional period of 90 days while an application for licensure is pending before the Board.

§ 6.13. Qualifications and supervision of trainees.

(a) A trainee may operate a crane in this Commonwealth for purposes of acquiring the experience necessary to obtain certification subject to the act and this chapter.

(b) A trainee may only operate a crane, or engage in crane operations, if:

(1) The trainee is under the immediate supervision of a crane operator.

(2) The trainee has satisfied applicable ASME standards for trainee qualification requirements as more fully set forth in the applicable ASME volumes for the type of crane for which the trainee is being trained and supervised, and trainee requirements prescribed by OSHA regulations.

(c) A trainee must be 18 years of age or older and demonstrate to the satisfaction of the crane operator providing immediate supervision and the person employing the crane operator providing immediate supervision, that the trainee is physically capable of operating a crane.

(d) A trainee shall register on a form prescribed by the Board, and attach documentary evidence of a passing score on a written examination administered by a certifying organization.

(e) A trainee may only be authorized to act as a trainee when in possession of written authorization issued in a form prescribed by the Board, and the authorization will only be valid for 1 year from the date of passing the written examination.

(f) A crane operator who immediately supervises a trainee shall perform the duties for supervision of trainees set forth in the ASME volume applicable to the type of crane that is the subject of operation by the trainee, and requirements prescribed by OSHA regulations.

(g) When providing immediate supervision of a trainee under this section, a crane operator may not have other duties, and shall supervise only one trainee at any time.

(h) A crane operator may not accept a duty to supervise a trainee unless the crane operator possesses sufficient competence and experience to safely supervise the trainee for the specific operation or task to be undertaken by the trainee.

§ 6.14. Specialties.

(a) The following types of cranes require specialty licenses from the Board:

- (1) Tower cranes.
- (2) Lattice boom crawlers.
- (3) Lattice boom trucks.
- (4) Telescopic boom cranes with a rotating control station.
- (5) Telescopic boom cranes with a fixed control station.

(b) A license to operate a crane shall be valid only in conjunction with certification if the licensee maintains a current certification in the specialty for which the crane operator is certified.

§ 6.15. Licensure of a crane operator from another jurisdiction.

(a) The Board may issue a license to an individual who has licensure or its equivalent as a crane operator in any other state or territory of the United States or the Dominion of Canada if:

- (1) The individual is 18 years of age or older.
- (2) The individual is of good moral character.
- (3) The individual is currently certified by a certifying organization that:
 - (i) Has been accredited by ANSI or NCCA.
 - (ii) Is a party to a voluntary agreement with OSHA for the purpose of recognizing its program as a validation of the competency and certification of qualifications of crane operators.
 - (iii) Satisfies the requirements of ASME Volume B 30 for operator qualification and certification, and interpretations issued by ASME.
- (4) The individual has paid all requisite fees.

(b) A crane operator or an applicant for licensure as a crane operator shall report the following to the Board:

(1) Any license held by the individual to operate a crane in another jurisdiction on the original application and on the biennial renewal application.

(2) Any disciplinary action in another jurisdiction on the biennial registration, or within 30 days of the final disposition, whichever is sooner. For purposes of this section, final disposition means a disposition by a governmental agency levying a monetary penalty, reprimanding

the individual, restricting the individual's license, or otherwise adversely affecting the individual's property interest in the license, and which is appealable under the laws of the jurisdiction where the disposition has been entered.

(c) The Board will note an individual's licensure held in other jurisdictions in the crane operator's record.

(d) The Board will issue written notice to other jurisdictions of the final disposition of any disciplinary action commenced in this Commonwealth.

LICENSURE WITHOUT CERTIFICATION

§ 6.21. Licensure without certification generally.

(a) The Board will accept applications to grant to individuals a license without certification until December 9, 2011, subject to the provisions of this section and §§ 6.22 and 6.23 (relating to licensure without certification by practical examination; and licensure without certification by experience).

(b) To qualify for a license without certification the applicant shall:

- (1) Be at least 18 years old.
- (2) Be of good moral character.
- (3) Pay all requisite fees.
- (4) Satisfy the requirements of § 6.22 or § 6.23.
- (5) Be without any valid certification.

(c) A crane operator's license obtained without certification will be valid only in conjunction with a current and valid photo identification issued by a governmental agency.

§ 6.22. Licensure without certification by practical examination.

(a) An individual who applies for a license without certification under section 506 of the act (63 P. S. § 2400.506) and who satisfies the requirements of § 6.21(b)(1), (2) and (3) (relating to licensure without certification generally) may elect to qualify for a license without certification by a practical examination administered by NCCCO.

(b) An applicant seeking to qualify for a license without certification under this section shall submit with the application for licensure a copy of the practical examination score as provided by NCCCO and shall pay the declaration fee in § 6.4 (relating to fees).

(c) An applicant for a license without certification under this section may be eligible only for a license in the specialty for which the applicant has passed a practical examination administered by NCCCO.

(d) An applicant for a license without certification under this section shall submit with the application an averment that the applicant has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(e) An applicant for a license without certification under this section shall submit with the application documentation of the results of any assessment administered within the 2 years prior to the date of application by a program of operator qualification and certification satisfying the requirements of 29 CFR Part 1926 (relating to safety and health regulations for construction).

(f) In lieu of certification, with a license without certification the Board will issue a declaration specifying the specialty crane for which the licensee has qualified and

for which the applicant has passed a practical examination administered by NCCCO, and limiting the types of cranes that the holder of a license without certification by practical examination may operate.

(g) A license without certification under this section will only be valid in conjunction with the declaration in subsection (f).

§ 6.23. Licensure without certification by experience.

(a) An individual who applies for a license without certification under section 506 of the act (63 P.S. § 2400.506) and who satisfies the requirements of § 6.21(b)(1), (2) and (3) (relating to licensure without certification generally) may elect to qualify for a license without certification by submitting acceptable documentation of 5 or more years of experience immediately preceding the date of application for licensure demonstrating to the Board's satisfaction the applicant's competency to safely operate the type of crane for which the applicant seeks a license, and payment of the requisite declaration fee.

(b) Acceptable documentation consists of:

(1) Each Internal Revenue Service Form W-2 (Wage and Tax Statement) and Internal Revenue Service Form 1099 issued to the applicant for the 5 calendar years prior to the year of application for which the applicant received compensation as a crane operator.

(2) A record of the applicant's experience on a form prescribed by the Board, listing each project in which the applicant operated a crane, or engaged in the operation of a crane including no less than 4,000 hours of work during a period of 5 years immediately preceding the date of application for licensure.

(c) The record of the applicant's experience must identify:

(1) The name and business address of the prime contractor or other person who employed or engaged the services of the applicant.

(2) Whether the applicant worked as an employee or independent contractor on the project.

(3) The location of the project.

(4) The type of crane operated.

(5) Whether an incident occurred in the operation of the crane resulting in disability to an individual in excess of the working shift or turn in which the injury was received.

(6) The number of hours worked on the project engaged in the operation of a crane.

(7) If the applicant worked as an independent contractor in the operation of a crane at any time during the 5 years prior to the date of application, a certificate of insurance for each insurer who issued a policy of comprehensive general liability insurance to the applicant.

(d) An applicant for a license without certification under this section may be eligible only for a license in the specialty for which the applicant has submitted acceptable documentation.

(e) An applicant for a license without certification under this section shall submit with the application an averment that the applicant has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(f) An applicant for a license without certification under this section shall submit with the application documentation of the results of any assessment administered within the 2 years prior to the date of application by a program of operator qualification and certification satisfying the requirements of 29 CFR Part 1926 (relating to safety and health regulations for construction).

(g) In lieu of certification, with a license without certification under this section the Board will issue a declaration specifying the specialty crane for which the licensee has qualified with at least 1,000 hours and for which the applicant has submitted acceptable documentation, and limiting the types of cranes that the holder of a license without certification by experience may operate.

(h) A license without certification under this section shall only be valid in conjunction with the declaration in subsection (g).

RENEWAL OF LICENSE

§ 6.31. Duration of license.

(a) A licensee shall register each biennial period to retain the right to operate a crane.

(b) Licensure is valid throughout this Commonwealth, is not assignable or transferable, and is valid until the last date of the biennial licensure period.

§ 6.32. Renewal of license.

(a) Application for renewal of a license with certification must be made on forms provided by the Board, and include:

(1) Proof of current, valid certification issued by a certifying organization.

(2) An indication whether certification will expire before the biennial renewal cycle will expire. In the case of a licensee applying for renewal of license where certification will expire before the biennial renewal cycle will expire, the licensee shall submit to the Board before the expiration of the certification, evidence that the licensee has renewed certification consisting of proof of recertification. Failure to maintain certification, or to submit evidence of renewal of certification before the expiration date of certification will subject the licensee to disciplinary action.

(3) A waiver for the certifying organization to release the licensee's certification status and recertification scores to the Board.

(4) An averment that the licensee has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(b) Application for renewal of a license without certification by practical examination issued originally under § 6.22 (relating to licensure without certification by practical examination) must be made on forms provided by the Board, and include:

(1) Proof of a passing score on a practical examination administered by NCCCO during the 2-year period immediately preceding the date of the application for renewal.

(2) An averment that the applicant has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(3) The results of any assessment administered after the commencement of the previous biennial period of licensure by a program of operator qualification and

certification satisfying the requirements of 29 CFR Part 1926 (relating to safety and health regulations for construction).

(c) Application for renewal of a license without certification by experience issued originally under § 6.23 (relating to licensure without certification by experience) must be made on forms provided by the Board, and include:

(1) A record of the applicant's work experience in the form provided under § 6.23(c) demonstrating 1,600 hours of experience during the 2-year period immediately preceding the date of application for renewal.

(2) An averment that the applicant has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(3) The results of any assessment administered after the commencement of the previous biennial period of licensure by a program of operator qualification and certification satisfying the requirements of 29 CFR Part 1926.

(d) The application for renewal must be received by the Board with the required biennial renewal fee before the expiration of the previous biennial registration period.

(e) Renewal of a license without certification under § 6.22 or § 6.23 may be denied for any individual who has been administered an assessment by a program of operator qualification and certification satisfying the requirements of 29 CFR Part 1926, and who has failed the assessment and who has not subsequently obtained a passing score in the same assessment or another assessment that meets the requirements of 29 CFR Part 1926.

§ 6.33. Initiating and terminating inactive status.

(a) An individual holding a license with certification may request an application for inactive status from the Board.

(b) An individual holding a license without certification issued originally under § 6.22 or § 6.23 (relating to licensure without certification by practical examination; and licensure without certification by experience) may request inactive status for a period not to exceed 5 years less 1 day.

(c) The license will be maintained on inactive status without fee and the individual shall be entitled to apply for a license reactivation at any time.

(d) An individual who applies to reactivate a license that has been placed on inactive status for 5 consecutive years or more shall, prior to receiving an active license, submit satisfactory evidence of current certification and remit the required fee.

§ 6.34. Licensee's change of name or address; service of process and legal papers.

(a) A licensee's name on file with the Board shall be the name that appears on the license unless that name is legally changed, in which case the licensee shall report the change and the reason for the change to the Board in writing within 10 days.

(b) A licensee who changes an address on file with the Board shall notify the Board in writing within 10 days. Licensees who do not comply with this subsection shall bear full responsibility for failure to receive correspondence from the Board, including biennial renewal notifications.

(c) A licensee's most recent name and address on file with the Board shall be deemed the licensee's official name and address for the purposes of service of process and other legal papers.

DISCIPLINARY ACTIONS

§ 6.41. Unlicensed crane operation.

(a) An individual may not operate a crane, offer one's services as a crane operator, or hold oneself out as a crane operator unless licensed by the Board.

(b) A person who is not licensed by the Board offers services as a crane operator, or holds oneself out as a crane operator by:

(1) Express words or conduct that the individual is a licensed crane operator.

(2) A failure to disclose that the individual does not possess a license to operate a crane, under circumstances which would require a license.

(3) Words or conduct that the person offering services as a crane operator or holding out as a crane operator has reason to know would cause a third person to reasonably believe that the individual uttering the words or engaging in the conduct is a crane operator, holds a license as a crane operator, or possesses the skill, knowledge, authority or expertise to operate a crane.

§ 6.42. Impaired operation of a crane and reportable conditions, incidents or events.

(a) A crane operator or trainee may not operate a crane if, by reason of physical or mental impairment, the crane operator or trainee cannot reasonably be expected to operate a crane safely or engage in the operation of a crane safely.

(b) A crane operator or trainee shall report to the lift director of the crane which the crane operator or trainee has been employed to operate, or has been retained to operate as an independent contractor, any physical or mental impairment that may reasonably be expected to affect the operation of a crane.

(c) If, in addition to acting as the crane operator, the licensee fulfills the function of a lift director, or another role required under applicable ASME B 30 volumes, the crane operator shall report to a responsible person, such as the property owner, prime contractor, project manager, project superintendent or other person in charge of the premises on which the crane shall be operated, any physical or mental impairment that may reasonably be expected to affect the operation of a crane.

(d) If a crane operator or trainee files a claim for workers' compensation, Social Security Disability, or for disability benefits under any other policy or program, or commences an action seeking compensation for personal injuries, the crane operator or trainee shall, contemporaneously with the commencement of the claim or action, provide the Board with a copy of the document commencing the claim or action.

(e) If a crane operator or trainee obtains a diagnosis or opinion from a licensed health care practitioner that the crane operator or trainee is subject to a physical, mental or other condition lasting more than 30 days and that may reasonably be expected to affect the operation of a crane, the crane operator or trainee shall notify the Board, in writing within 10 days, of the name of the licensed health care practitioner who provided the opinion, the condition or impairment that has been diagnosed or the opinion that has been rendered, and the prognosis for the condition.

(f) A crane operator shall report in writing to the Board criminal proceedings in a court case against the crane operator within 10 days of the institution of the criminal proceedings. The written report of criminal proceedings

under this subsection must include the jurisdiction in which the proceedings have been instituted, the docket number, offense tracking number or other number identifying the criminal proceeding, and the offense or offenses with which the crane operator has been charged. A court case means a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.

(g) An individual will not be authorized to operate a crane as a trainee if criminal proceedings in a court case have been instituted against that person, unless the individual has petitioned the Board for leave to be authorized to act as a trainee, and the Board has granted the person's petition.

§ 6.43. Aiding and abetting unlicensed crane operation.

(a) Except as provided in § 6.13 (relating to qualifications and supervision of trainees), an individual, corporation, partnership, firm or other entity may not:

- (1) Employ an unlicensed individual to operate a crane.
- (2) Allow or direct an unlicensed individual to operate a crane.
- (3) Retain or hire an unlicensed individual as an independent contractor to operate a crane.

(b) If an individual, corporation, partnership, firm or other entity has been found by the Board on three or more occasions during a 4-year period to have violated subsection (a), the Board may declare the individual, corporation, partnership, firm or other entity to be a chronic aider and abettor of unlicensed crane operation.

(c) The Board may bar all crane operators from accepting employment, or accepting retention as an independent contractor with a chronic aider and abettor of unlicensed crane operation.

(d) An entity which has been declared a chronic aider and abettor of unlicensed crane operation may petition the Board 1 year after being barred to request that the bar be removed.

(e) The Board may impose restrictions on licensees, demand posting of a bond or other security by the petitioner, or place other restrictions on the petitioner to assure future compliance.

§ 6.44. Standards of conduct, disciplinary action, suspension and revocation.

(a) The Board may levy a civil penalty, impose costs of investigation, or refuse, restrict, suspend or revoke a license if the Board finds that an individual subject to its jurisdiction violated the act or this chapter.

(b) The following acts, errors or omissions constitute a violation of the standards of conduct of a crane operator:

- (1) Negligent operation of a crane.
- (2) Operation of a crane without the ability to use reasonable skill and safety by reason of mental or physical illness or condition.
- (3) Operation of a crane while impaired by alcohol, hallucinogenic or narcotic drugs, or another substance that impairs judgment or coordination.
- (4) Operation of a crane during a period of time when:

(i) The individual abuses alcohol, hallucinogenic or narcotic drugs, or other substances that impair judgment or coordination.

(ii) The individual is dependent upon alcohol, hallucinogenic or narcotic drugs, or other substances that impair judgment or coordination, and dependence is not in full remission.

(5) Violation of any of the provisions of the act or this chapter.

(6) Commission of fraud or deceit in:

- (i) The operation of a crane.
- (ii) Securing licensure or certification.
- (iii) Securing renewal of licensure or certification.

(7) Conviction of a felony or a crime of moral turpitude, or disposition by probation without verdict, disposition in lieu of trial or Accelerated Rehabilitative Disposition in the disposition of a felony or a crime of moral turpitude in the courts of this Commonwealth, the United States or any other state, territory, possession of the United States or any other country.

(8) Violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) or an equivalent offense under the laws of another jurisdiction.

(9) Failure to operate a crane consistent with the applicable ASME B 30 standard.

(10) Failure to operate a crane in a manner consistent with accepted standards in the industry.

(11) Operation of a crane, engaging in the operation of a crane or continuing to operate a crane, when the crane operator had reason to know of conditions or circumstances under which the crane could not be operated without exposing persons or property to an unreasonable risk of harm.

(12) Violation of a lawful order of the Board.

(13) Failure to properly supervise a trainee.

(14) Failure to report an event, occurrence, injury, property damage, claim, condition, diagnosis, civil action, criminal proceeding or other matter subject to the duty to report in § 6.42 (relating to impaired operation of a crane and reportable conditions, incidents or events).

(15) Failure to follow applicable workplace safety standards of OSHA, or other applicable safety standards of the Commonwealth or another jurisdiction, regardless of whether the violation arose from the operation of a crane.

(16) Conviction or disposition by Accelerated Rehabilitative Disposition or any disposition other than a nonconviction, for a violation of 75 Pa.C.S. §§ 3801—3817 (relating to driving after imbibing alcohol or utilizing drugs).

(17) Conviction or disposition by Accelerated Rehabilitative Disposition, or any disposition other than a nonconviction for an offense that involves intentional or reckless conduct that poses an unreasonable risk of bodily harm to others.

(18) Whether or not acting in the capacity of a crane operator, to discharge, discipline or in any manner discriminate against another person with respect to that

person's compensation, terms, conditions or privileges of employment or independent contract, for any of the following reasons:

(i) The other person has refused to operate a crane, or participate in the operation of a crane in a manner which is not in compliance with the act, this chapter, a Federal rule, regulation, standard or order applicable to crane operation, or the applicable ASME B 30 volume.

(ii) The other person, or a person acting under a request of the other person, has filed a complaint or instituted or caused to be instituted any proceeding relating to a violation of the act, this chapter, a Federal rule, regulation, standard or order applicable to crane operation, or the applicable ASME B 30 volume, or has testified or is about to testify in the proceeding.

(iii) The other person refused to participate in the operation of a crane as a rigger, signal person, or in another function related to the operation of a crane when the operation constitutes a violation of the act, this chapter, an applicable ASME B 30 volume, or Federal rules, regulations, standards or orders applicable to crane operation.

(iv) The other person had a reasonable apprehension of serious injury to himself, or to another person due to the unsafe condition of the crane or the unsafe manner in which the crane was to be operated. For purposes of this paragraph, the other person has a reasonable apprehension of serious injury due to the unsafe condition of a crane or the unsafe manner in which a crane is to be operated if:

(A) The condition of the crane or manner of operation is of a nature that a reasonable person, under the circumstances then confronting the other person, would conclude that there is a bona fide danger of an accident, injury or serious impairment of health resulting from the unsafe condition or unsafe manner of operation.

(B) The other person sought from the lift director and was unable to obtain correction of the unsafe condition or unsafe manner of operation.

(c) It shall be an affirmative defense to an allegation of a violation of subsection (b)(1), (9), (10) or (11) that the crane operator acted, or refrained from acting, in justifiable reliance upon the advice, instruction or direction of the site supervisor or the lift director.

(d) It shall be an affirmative defense to an allegation of a violation of subsection (b)(2), (3), (4) or (14) that the crane operator acted, or refrained from acting, in justifiable reliance upon the advice of a licensed health care practitioner.

CERTIFYING ORGANIZATIONS

§ 6.51. Certifying organizations.

An organization may apply to the Board in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) for approval to issue certification under the act.

§ 6.52. Application for approval as a certifying organization.

(a) An entity seeking to issue certification under the act shall submit, in writing, an application in a form prescribed by the Board that avers, under penalty for unsworn falsification to authorities at 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), the following:

(1) The name and business address of the applicant.

(2) The name and title of the individual authorized to act as the applicant's agent.

(3) The name, title and principal business address of each individual who is an officer of the applicant.

(4) The type of corporate organization and the state in which the applicant is incorporated or organized.

(5) The names and addresses of any parent or subsidiary entities of the applicant.

(6) The names and addresses of each entity that is affiliated with the applicant. For purposes of this section, "entity which is affiliated with the applicant" means an entity having common or interlocking ownership with the applicant, or with a parent or subsidiary of the applicant.

(7) Whether the applicant or any of the entities identified in paragraph (5) or (6) offer a program of training or education in crane operation.

(8) Whether the applicant is accredited by ANSI, NCCA, or both.

(9) A description of the testing and certification program administered by the applicant.

(10) Whether the applicant has entered into a voluntary agreement with OSHA for the purpose of recognizing its program as a validation of the competency and certification of the qualifications of crane operators.

(11) Each crane type described in ASME Volume B 30 for which the applicant requests approval to issue certification.

(12) Each function or occupation other than crane operator and which is related to the operation of a crane, for which the applicant issues certification.

(13) An averment that the applicant's testing and certification program is equivalent to the testing and certification program used by NCCCO.

(14) Whether the applicant, a parent entity, subsidiary entity or an entity affiliated with the applicant has been subject to disciplinary action in another jurisdiction, or has been the subject of civil or criminal proceedings in this Commonwealth or another jurisdiction, and if so, the jurisdiction, the nature of the claims or charges, the disposition and the docket or case number of the disciplinary action, civil proceedings or criminal proceedings.

(b) The organization shall attach to its application as an exhibit, and incorporate by reference, a copy of any documents upon which the applicant's accreditation has been based, and the applicant's agreement with OSHA.

(c) The application must be accompanied by the application fee set forth in § 6.4 (relating to fees).

§ 6.53. Required and discretionary bases for disapproval of an application as a certifying organization; bases for approval; and terms of equivalence to NCCCO.

(a) The Board will deny an application for approval as a certifying organization on the basis that it is not equivalent to certification issued by NCCCO for any one or more of the following reasons:

(1) The applicant is not accredited by ANSI or NCCA.

(2) The applicant is not a party to a voluntary agreement with OSHA for the purpose of recognizing its program as a validation of the competency and certification of the qualifications of crane operators.

(3) The applicant has failed to verify the statements in the application.

(4) The applicant has made a material statement on its application that it knows or has reason to know is false.

(5) The applicant's program of testing and certification does not satisfy the requirements in ASME Volume B 30 for operator qualification and certification, and interpretations issued by ASME.

(6) The applicant's program of testing and certification does not satisfy the requirements of 29 CFR 1926.1427 (relating to operator qualification and certification).

(b) The Board may deny an application for approval as a certifying organization if the Board finds that the applicant, its parent, its subsidiary, or an entity affiliated with the applicant has been the subject of disciplinary action in another jurisdiction, or has been found in a civil proceeding or criminal proceeding to have been engaged in fraudulent conduct, misrepresentation, unfair commercial or consumer practices, breach of contract or negligence.

(c) The Board will grant approval to a certifying organization that:

(1) Offers a program of testing and certification that is equivalent to the program of testing and certification offered by NCCCO, as defined in subsection (d).

(2) Has not been the subject of disciplinary action in another jurisdiction, or has been found in a civil proceeding or criminal proceeding to have been engaged in fraudulent conduct, misrepresentation, unfair commercial or consumer practices, breach of contract or negligence.

(d) A program of testing and certification is equivalent to the program of testing and certification offered by NCCCO if:

(1) It is accredited by ANSI or NCCA.

(2) It has entered into a voluntary agreement with OSHA for the purpose of recognizing its program as a validation of the competency and certification of the qualifications of crane operators.

(3) It satisfies the requirements of ASME Volume B 30 for operator qualification and certification, and interpretations issued by ASME.

(4) It satisfies the requirements in 29 CFR 1926.1427.

§ 6.54. Determination of application for approval as a certifying organization.

(a) Upon receipt of an application for approval, the Board will make a determination of completeness of the application.

(b) If the Board has made a determination that the application is incomplete, but the completed portion of the application demonstrates on its face that the applicant's program is not equivalent to NCCCO certification according to the criteria in § 6.53(d) (relating to required and discretionary bases for disapproval of an application as a certifying organization; bases for approval; and terms of equivalence to NCCCO), the Board will deny the application, advise the applicant in writing of the deficiencies or incompleteness, and the specific grounds on which a determination that the program is not equivalent to NCCCO certification, and advise the applicant of its right to file within 30 days a request for a hearing before the Board, together with supplementation to complete the application.

(c) If the application is incomplete, and the completed portion of the application does not demonstrate that the applicant's program is not equivalent to NCCCO certification, the Board will advise the applicant in writing of the

deficiencies or incompleteness, and advise the applicant of its right to supplement the application within 30 days.

(d) If the application is complete, or if the application is incomplete but the applicant has not supplemented the application within 30 days, or if the applicant entity has not requested a continuance of the Board's consideration, the Board may refer the application for review to an appropriate and qualified individual or firm to independently evaluate and review the application for equivalence to NCCCO certification as defined in § 6.53(d) or the Board may issue an order approving or provisionally denying the application.

(e) If the Board refers the application for an independent evaluation and review, the review will be completed within 60 days with a written opinion provided to the Board by the evaluator expressing an opinion as to the applicant entity's equivalence to NCCCO certification, and a copy of the opinion to the applicant entity.

(f) Upon consideration of the written opinion of the independent evaluation and review, or if the Board has not referred the application for an independent evaluation and review, the Board will enter an appropriate order to approve, schedule a hearing, or provisionally deny the application.

(g) If the Board provisionally denies the application, the Board will advise the applicant of its right to file within 30 days a request for a hearing.

(h) Upon filing of a request for a hearing under subsection (b) or (g), the Board will schedule the matter for a hearing.

(i) After a hearing the Board may:

(1) Grant approval to issue certification for all crane types described in ASME Volume B 30 as requested in the application.

(2) Grant approval to issue one or more, but less than all certifications for crane types described in ASME Volume B 30 as requested in the application.

(3) Deny approval to issue any certifications requested in the application.

(j) The applicant shall have the burden of proving that its testing and certification program is equivalent to NCCCO as provided in § 6.53(d).

(k) If the applicant does not request a hearing within 30 days as provided in subsection (b) or (g), the Board will issue a final order denying the application.

(l) An applicant that has been denied approval may re-apply for approval as a certifying organization.

§ 6.55. Order granting an application for approval as a certifying organization.

(a) An order granting an application for approval as a certifying organization will include:

(1) The legal name of the certifying organization.

(2) The date on which the application was approved.

(3) The date on which the order was entered.

(4) Each crane type described in ASME Volume B 30 for which the Board has granted approval.

(5) A statement of authorization that the certifying organization may hold itself out as a certifying organization in this Commonwealth.

(6) A statement that the certifying organization shall notify within 10 days, in writing, the Board and to each

individual holding its certification, any change to its accreditation by NCCA or ANSI.

(7) A statement that the certifying organization shall immediately and voluntarily cease and desist from issuing certifications, or holding itself out as a certifying organization in this Commonwealth upon a determination suspending, withdrawing or terminating its accreditation by NCCA or ANSI.

(8) A statement that the certifying organization shall submit to the Board within 30 days of receipt from NCCA or ANSI a copy of each certificate of renewal of accreditation.

(9) A statement that the certifying organization shall comply with all revisions to applicable ASME B 30 standards and 29 CFR 1926.1427 (relating to operator qualification and certification).

(10) A statement that the authorization to issue certifications in this Commonwealth granted by the order to approve the application is not transferable.

(b) An order granting approval of a certifying organization will cease to be effective by operation of law upon either of the following conditions:

(1) The failure of the certifying organization to comply with the obligations in subsection (a)(6), (7), (8) or (9).

(2) A suspension, withdrawal or termination of accreditation by NCCA or ANSI.

§ 6.56. Petition to terminate approval as a certifying organization.

(a) The Commonwealth may file a petition to terminate approval as a certifying organization for any one of the following reasons:

(1) Upon information and belief that the certifying organization has failed to satisfy the conditions of § 6.55(b) (relating to order granting an application for approval as a certifying organization).

(2) Upon information and belief that the order granting the application for approval as a certifying organization was granted based upon a misrepresentation of a mate-

rial fact by the applicant which neither the Board nor the Commonwealth knew or had reason to know at the time the order was issued.

(3) Upon information and belief that:

(i) The certifying organization has terminated its existence.

(ii) The certifying organization has ceased to be qualified to do business in this Commonwealth.

(iii) The certifying organization has ceased to offer its certification to residents of this Commonwealth.

(b) A petition to terminate approval as a certifying organization must include:

(1) A copy of any writing upon which the petition is based.

(2) A notice to plead demanding an answer to the allegations of the petition, and advising the certifying organization of its rights under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(3) If the Commonwealth requests immediate suspension of the certifying organization's approval, the petition must include allegations demonstrating an immediate risk of harm to the public or persons holding certification from the respondent certifying organization.

(c) Within 20 days of service of the petition to terminate approval as a certifying organization, the certifying organization shall file a written answer to the petition admitting or denying each allegation and setting forth any affirmative defenses.

(d) Upon close of the pleadings, the Board will issue an order scheduling the matter for a hearing at the next available regularly scheduled board meeting, or delegate the matter to a hearing examiner.

(e) If the Board grants the petition to terminate approval as a certifying organization, the Board may, if otherwise authorized by statute, levy the costs of investigation upon the certifying organization.

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