

**#16A-7101 State Board of Crane Operators #2850**

**Crane Operators; Initial Rulemaking**

**This regulation includes a revised preamble delivered on 10/29/10. The original regulation was delivered on 9/30/10.**

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency: **Bureau of Professional and Occupational Affairs  
State Board of Crane Operators**

(2) Agency Number: **16A-71**

Identification Number: **16A-7101**

IRRC Number:

**2850**

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(3) Short Title: **State Board of Crane Operators**

(4) PA Code Cite: **49 Pa. Code §§ 6.1 – 6.61.**

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: **Christopher McNally, Assistant Counsel, Department of State; (717)783-7200; P.O. Box 2649, Harrisburg, PA 17105; fax (717)7870251; [chrmcnally@state.pa.us](mailto:chrmcnally@state.pa.us)**

Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State; (717)783-7200; P.O. Box 2649, Harrisburg, PA 17105; fax (717)7870251; [jmckeever@state.pa.us](mailto:jmckeever@state.pa.us)**

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5: **Penny Walker, Board Administrator, Department of State; [penwalker@state.pa.us](mailto:penwalker@state.pa.us)**

**State Board of Crane Operators, P.O. Box 2649, Harrisburg, PA 17105  
(717) 783-3397 (phone)**

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

**This is an initial general rulemaking proposed to implement the Crane Operators Licensure Act. (Act 100 of 2008, 63 P. S. §§2400.101-2400.2103). The rulemaking includes definitions of key terms, and setting fees; procedures and standards for registering trainees and obtaining licenses; standards of conduct; and procedures and standards for certifying organizations.**

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: \_\_\_\_\_
- B. The date or dates on which public meetings or hearings will be held: \_\_\_\_\_
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: 11/30/2010
- D. The expected effective date of the final-form regulation: 11/30/2010
- E. The date by which compliance with the final-form regulation will be required: 11/30/2010
- F. The date by which required permits, licenses or other approvals must be obtained: 11/30/2010

(10) Provide the schedule for continual review of the regulation.

**The regulations will be reviewed no less than annually to determine what additions, deletions, or modifications should be made, according to experience gained through enforcement actions, as well as changes to the statute.**

**SECTION II: STATEMENT OF NEED**

(11) State the statutory authority for the regulation. Include specific statutory citation.

**Section 2102 of the Crane Operator Licensure Act (act) (63 P.S. § 2400.2102) requires the Board to promulgate regulations implementing the act within 18 months.**

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

**No.**

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

**This rulemaking is required by statute and is the first general rulemaking to be adopted by the Board. There are approximately 3,500 individuals who are certified by NCCCO residing in Pennsylvania that will be required to be licensed under the act. There are more than 1,000 individuals certified by Crane Institute Certification and an undetermined number of other individuals who are expected to be certified by three other organizations. There is also an undetermined number of other individuals who are not certified but who may be eligible for licensure under Section 506 and that number is estimated at 250.**

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

**The Board attached OSHA, ASME documents and Sunrise Report to its proposed rulemaking. There are no additional documents.**

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

**There may be an undetermined number of persons who operate cranes who have not been certified and who are unwilling or unable to be certified or meet the requirements for grandfathered licensure.**

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

**Estimated 5,000 individuals who are residents of PA will become licensees.**

### **SECTION III: COST AND IMPACT ANALYSIS**

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

**\$50/5,000 licensees per year = \$250,000**

**\$1,000 per certifying organization x 3 applicants = \$3,000**

**Certifying organization will incur external costs of approximately \$6,000 each to prepare and submit application for review = \$300/hr x 20 hours**

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

**There will be no costs or savings to local government.**

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

**The cost of (\$250,000) will be paid by revenues of \$250,000 derived from licensees.**

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0					
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0					
<b>Total Savings</b>	0					
<b>COSTS:</b>	0					
<b>Regulated Community</b>	\$271,000	0	\$250,000	0	\$250,000	0
<b>Local Government</b>	0					
<b>State Government</b>	0					
<b>Total Costs</b>	\$271,000	0	\$250,000	0	\$250,000	0
<b>REVENUE LOSSES:</b>	0					
<b>Regulated Community</b>	0					
<b>Local Government</b>	0					
<b>State Government</b>	0					
<b>Total Revenue Losses</b>						

(20a) Provide the past three year expenditure history for programs affected by the regulation. N/A

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

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(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

As explained in response to Question 17, the total cost of this regulation will be approximately \$253,000 per biennium. In light of the costs associated with crane accidents, the net impact upon the Commonwealth, businesses and individuals will produce lower costs. A crane operator has a lifetime earning potential in excess of \$2,000,000. A typical mobile crane or tower crane are valued well in excess of \$1,000,000. Therefore, the prevention of one fatal accident every 20 years by raising crane operator standards would produce an overall savings to the Commonwealth and its economy. This would not include savings from prevention of non-fatal accidents, or accidents that only result in property damage.

There were 106 crane accident investigations conducted by the Occupational Safety and Health Administration offices in Pittsburgh, Philadelphia, Erie, Wilkes-Barre, and Harrisburg between 1972 and 2004, an average of 3 per year. At least 63 of these events resulted in a fatality, or an average of about two fatalities per year. In current dollars, based on conservative estimates of the earning power of a crane operator, the replacement cost of a damaged crane, and lost time on construction sites due to accidents, the total cost of these 63 fatalities would exceed \$200,000,000. Therefore, the Board concludes that the implementation of the act through these regulations will produce substantial savings.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Board received and considered 33 written public comments in response to its proposed rulemaking, met with staff of the House and Senate Professional Licensure Committees, and received written comments from the House Professional Licensure Committee and the Independent Regulatory Review Commission. The Board engaged in lengthy conferences in person and by telephone with representatives of Crane Institute Certification (CIC), and on July 28, 2010 conducted a day-long public work session with 14 stakeholders representing CIC, National Commission on Construction Education and Research (NCCER), International Union of Operating Engineers (IUOE), PPL Corporation, and others. The Board reviewed and discussed its final rulemaking in a public meeting on August 10, 2010.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Board considered performing investigations of experience for persons seeking licensure under section 506(c). However, that option was deemed to be too expensive and impractical.



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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

**§§ 6.51 – 6.54 are somewhat more stringent than federal regulations to the extent that compliance with ASME standards for crane operator qualification are required. However, this difference is marginal and also guarantees the statutory requirement that all certifications be equivalent.**

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

- (1) Ohio – no license
- (2) New Jersey - \$250 for 5 years
- (3) New York - \$150 for initial application and \$60 for triennial renewal. New York City also requires its own license which has fees ranging from \$200 to \$250.
- (4) Maryland – no license
- (5) Delaware – no license
- (6) West Virginia - \$75.00 for 5 years

**The regulation will not adversely affect Pennsylvania's ability to compete with other states.**

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**No.**

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

**The Board does not anticipate any new accounting procedures. The consideration and approval of certifying organizations will require new consulting procedures for review and evaluation of applications for approval. Consulting will be performed according to a contract for procurement of professional services.**

(28) Please list any special provisions which have been developed to meet the particular needs of

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affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**None. Minorities, elderly and farmers are not particularly affected by the act or regulation. In general, business entities are not directly affected or regulated at all. The act only regulates individuals. To the extent business entities are affected it is only in so far as they will be required to employ or retain only licensed crane operators.**

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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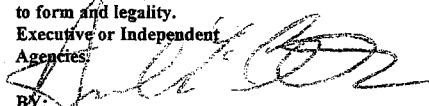
Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Crane Operators  
(AGENCY)

BY:   
Andrew C. Clark

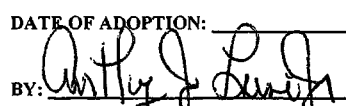
DOCUMENT/FISCAL NOTE NO. 16A-7101

SEP 22 2010

\_\_\_\_\_  
DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

\_\_\_\_\_  
DATE OF APPROVAL

BY:   
Anthony J. Lusi, Jr.

(Executive Deputy General Counsel  
~~Strike-inapplicable title~~)

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Check if applicable  
Copy not approved.  
Objections attached.

Check if applicable. No  
Attorney General approval or  
objection within 30 day after  
submission.

FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF CRANE OPERATORS  
49 PA. CODE, CHAPTER 6

INITIAL GENERAL RULEMAKING

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BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**NOTICE OF FINAL RULEMAKING**

**DEPARTMENT OF STATE**

**STATE BOARD OF CRANE OPERATORS**

**49 Pa. Code Ch. 6**

**49 Pa. Code Ch. 6**

**General Rulemaking for the Administration of the Crane Operators Licensure Act**

The State Board of Crane Operators (Board) hereby adopts its initial general rulemaking, designated as Chapter 6 of Title 49 of the Pennsylvania Code to read as set forth in Annex A.

Effective date

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

Statutory Authority

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

Background and Need for the Regulations

Section 2102 of the act (63 P.S. § 2400.2102) requires the Board to promulgate regulations. Section 302 of the act (63 P. S. § 2400.302) directs the Board to regulate and enforce the act. Accordingly, the Board proposes a comprehensive regulatory scheme intended to implement and effect the General Assembly's intent as manifested by the act.

In its proposed rulemaking published in the *Pennsylvania Bulletin* on June 5, 2010, 40 Pa.B. 3041, the Board provided an extensive discussion of several important background topics to explain the rationale and history of the act. Those subjects included: Legislative History, Historical Background, 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 rulemaking, and the Board incorporates that discussion by reference in its final rulemaking.

One important development occurred after publication of the proposed rulemaking. As the Board predicted and planned, OSHA announced the promulgation of a final rulemaking amending 29 C. F. R. Part 1926 on July 28, 2010. Publication in the *Federal Register* occurred on August 9, 2010. 75 F. R. No. 152, pages 47906 – 48177. Several commentators, including the Independent Regulatory Review Commission, the International Union of Operating Engineers, and the Associated Petroleum Industries of Pennsylvania, urged the Board to defer promulgation of its final 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 commentators suggesting the possibility of a conflict between OSHA and the Board's rulemaking.

In fact, the Board had closely monitored the OSHA regulation during the development of the proposed rulemaking and was confident that its proposed rulemaking would be consistent with OSHA's regulations. Upon review of OSHA's regulation on July 28, 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. 29 C. F. R. § 1926.1427 (a)(1). Furthermore, employer audited certification programs would not be compliant with OSHA regulations in the Commonwealth because Pennsylvania has a licensing program that meets OSHA's construction regulation standards.

Based upon the same federal regulatory authority cited above, 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 such 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. 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 NCCCO, officers of Stephenson Equipment Inc. and North Shore Crane Corporation, supported the proposed rulemaking without modification. A fifth commentator representing ANSI addressed only issues of accreditation related to §§ 6.51 – 6.56, but was neutral as to the content and substance of the rulemaking.

Three commentators addressed a broader range of provisions in the proposed rulemaking that pertained to particular industries. One commentator (Associated Petroleum Industries of Pennsylvania - API) raised several issues relating to the jurisdiction of the Board and the application of the regulations to the petroleum industry, a second commentator (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.

The Independent Regulatory Review Commission submitted written comments on Thursday, 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 Acting Secretary Basil L. Merenda, Board counsel and other staff from the Department of State met with representatives of HPLC and the Senate Consumer Protection and Professional Licensure Committee. At the request of CIC, on June 29 three Board members and Board counsel heard from CIC representatives Mr. Paul Zorich, Mr. Anthony Brown and Mr. John Giannelli. On June 30 two Board members and Board counsel participated in a telephone conference call with Mr. Giannelli, Mr. James Kendzel of the Institute for Credentialing Excellence (ICE) that is the parent organization of NCCA, and Ms. Debbie Dickinson of CIC. Finally, on July 28 three 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. 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 rulemaking. All persons who had submitted written comments were provided with notice of the meeting, provided with a copy of a working draft of the revised rulemaking, and were invited to participate. 14 members of the public attended and participated, including Mr. Brown, Ms. Dickinson, and Mr. Giannelli; Elizabeth Nadeau, Esq., representing IUOE; Mr. Kendzel; Dr. Roy Swift of ANSI; and Mr. 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 to subsection (b) a paragraph identifying another purpose of the regulations as preserving the value of crane operator certification. This provision 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 Institute for Credentialing Excellence (ICE), the parent organization of NCCA, as well as Dr. Roy 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. None of the participants wants 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 B30 for the sake of brevity and to keep the regulations current with industry standards.

One commentator, 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 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 rulemaking ASME receives no remuneration or benefit of any kind. Therefore, no violation of Article II, Section 1 exists, and no impermissible delegation of legislative authority has occurred. Furthermore, the act 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 B30.5 and an agency of the Federal Government.” 63 P. S. § 2400.703(a)(9).

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 no impermissible delegation of legislative authority occurred. “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 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, 49 Pa. Code § 11.27, and Generally Accepted Accounting Principles (GAAP) established by the private Financial Accounting Standards Board (FASB); and 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. 49 Pa. Code § 36.51.

IRRC has previously approved regulations that adopt industry 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. 12 Pa. Code § 145.41. The Department of Labor & Industry already employs the standards of ASME for boilers or unfired pressure vessels, 35 P. S. § 1331.2, and as part of the Uniform Construction Code, 34 Pa. Code § 405.2. Other departments referencing ASME standards include the Departments of Education (school building construction standards), Environmental Protection (aboveground storage tanks), and 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 B30.3, B30.4, and B30.5] 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 has removed B 30.4 from the definition of "crane" in order 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, and which were covered by Volumes B 30.3, 30.4 and 30.5 at the time of enactment of the statute. 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 in 2011 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 statute in order to keep the law current with ASME standards. In addition, each amendment to the statute 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 five out of the next six 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 this state's statutes 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 title of the subchapter on "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 paragraph 2. On this issue the Board has the benefit of receiving the input of the legislative committees in response to the proposed rulemaking. Based upon the expertise provided by the committee staffs, 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 "certifying organization" 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. 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 rulemaking pertaining to accreditation and certifying organizations, the Board discusses those issues more fully below in §§ 6.51 – 6.56.

The Board discussed extensively the comments of PCA recommending that the provisions of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1--1396.31) be used as the basis for defining this exclusion. PCA correctly noted in its comments that SMCRA is an *environmental* regulation. SMCRA’s stated purpose is to provide “... for the conservation and improvement of areas of land affected in the surface mining of bituminous and anthracite coal....” 52 P. S. § 1396.1. Unlike the Federal Mine Safety and Health Act, SMCRA is not a workplace safety regulation.

In addition, the Board also noted that much of the activity that 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 proposed definition, which includes the definition of “coal mining” as “the extraction of bituminous coal, lignite or anthracite....”

It appears from 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 PCA’s rationale at this point. Understandably, the Pennsylvania Department of Environmental Protection (PADEP) would adopt an inclusive definition of coal mining under SCMRA 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, PADEP 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 PCA’s recommendation would be to create an exemption for which there would be no specific standard for the qualification of crane operators when their work is only tangentially related to coal mining. MSHA’s standards for crane operator qualification 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.” 30 C. F. R. § 77.404 (b), *cited by Speed Mining, Inc. v. Secretary of Labor, MSHA*, 2007 WL 2746692 (2007). This language in § 77.404 has remained unchanged since 1971. These standards are incorporated by reference in the Pennsylvania Code, 25 Pa. Code §§ 209a.4,

209a.13.

Another commentator, 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 statute on which such an exemption could be based.

Second, API misconstrued the Board's comments with respect to the definition of the word "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, and 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 at § 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 relating to operator qualifications apply to the use of such machines even when they are not used for lifting service. 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 for "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 the defined terms.

#### § 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). 63 P. S. § 2400.506 (b)(2). Several arguments were offered in support of accepting passing scores from multiple certifying organizations. The Board notes that the statute is explicit on this point. As discussed previously, the acronym NCCCO was used in the enrolled bill only once, and it was in this provision of the statute. For the reasons set forth in the discussion of definitions, the contention that this acronym is meant to apply generically to all certifying organizations has been rejected and the Board has concluded that the statute 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 Board's proposed rulemaking as "single sourcing" as being misinformed and erroneous. In fact, with respect to certifying organizations for licenses issued under section 501, as discussed previously both the statute and the proposed rulemaking had no limitation on the number of organizations that would be approved, provided that the criteria were satisfied. With respect to section 506, the statute establishes a uniform standard, and this particular provision in the statute 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. 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 statute, 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 state has an interest in being certain that the same yardstick has measured each individual who holds such a license. That interest is assured if each licensee must 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 506 (b)(2) 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; 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 Act 100, it was the only accredited crane operator certification program in the nation. Accordingly, the General Assembly properly identified in its statute 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 four 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 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, U. S. 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, *supra*; Anthony D. Brown, July 2, 2010; Paul S. Zorich, July 6, 2010). Notably, nothing in the annex or preamble of Board's 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/acsh/transcripts/ac99610.html>. Mr. 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 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. 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.

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 Pennsylvania. West Virginia is a smaller state with fewer crane operators and does not have any 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 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.

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, the Board received the comments of Dr. Roy 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 this provision of the act. In addition, the 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) and § 6.22 of the regulations, 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.

Mr. 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 does not need to report failing scores.

#### § 6.31. Duration of license.

IRRC recommended that the rulemaking specify the biennial renewal date. The Board has been advised by the Bureau of Professional and Occupational Affairs 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. Certifying organizations; applications for certifying organizations; required and discretionary bases for disapproval of an application for approval as a certifying organization; determination of application for approval as a certifying organization; order granting an application for approval as a certifying organization; and petition to terminate approval as a certifying organization.

As discussed under § 6.2, (relating to definitions), the Board relies upon the staff of the House Professional Licensure Committee and Senate Consumer Protection and Professional Licensure Committees 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 on-site evaluations of its accredited organizations is valuable and that it is an important difference. The Board had an extensive dialogue with Mr. Kendzel of ICE. He confirmed 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 on-site 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 no 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, Mr. 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, and 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 in order 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 has issued an interpretation that in order to be certified on a particular type of crane, the crane operator must 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 all 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, all of the licenses issued by the Board must be of equal value, and so there is no 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 this subchapter 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 in order 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 would require that all certifying organizations apply the same ASME interpretations in developing assessments. This requirement is set forth in § 6.53 (a)(5). A similar requirement has been added for conformity with OSHA's operator qualification requirements at 29 C. F. R. § 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 rule 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 from IRRC a request 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 below.

#### 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 on August 9, 2010, crane operator qualification and certification requirements will not take effect until August 9, 2014. Therefore, there can be no 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 has reviewed the OSHA regulation and has ensured that its own rulemaking is consistent with OSHA. Notably, as discussed above, OSHA provides that where 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. 29 C. F. R. 1926.1427(a)(1). Therefore, in Pennsylvania employer certification would not be a valid form of crane operator certification and qualification under OSHA's final rulemaking.

Where the Board's jurisdiction over cranes operations overlaps with OSHA's construction crane standards as provided in subpart CC, the criteria for crane operator qualification and certification exceeds OSHA standards. The OSHA standards for government licenses are set forth at 29 C. F. R. § 1926.1427 (e) (2), relating to 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 paragraphs (j)(1) and (2) of section 1926.1427; (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 paragraphs (e)(2)(i) and (ii) of this section have been met; (4) The licensing department/office has testing procedures for re-licensing designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of section 1926.1427.

The act requires as a condition of licensure with certification under section 501 that applicants hold certification 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, relating to testing and certification. Those two requirements for certifying organizations ensure that Pennsylvania's licenses with certification under section 501 meet or exceed OSHA standards. Therefore, the Board has, in fact, determined that the requirements in section 1926,1426(e)(2)(i) and (ii) have been met.

The Board has noted in the preamble to its proposed rulemaking and reiterates in this final rulemaking, that licenses without certification under section 506 do not meet the requirements set forth by OSHA. Therefore, individuals licensed under section 506 would not be eligible to operate a crane in construction. Under the original standards set forth for such 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 such 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). 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 of section 1926.1427(e)(2) is valid only within the jurisdiction of the government entity, and that it is valid for a period of time no longer than 5 years. Since licenses in Pennsylvania are only valid in Pennsylvania and for a period of 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 discussed extensively above, the Board has revised its 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 has published its applications for licensure and applications for certifying organizations and has received approximately 200 license applications as of October 28, 2010, and three certifying organization applications. The Board has 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 no final determinations have been made in any of these applications, but upon approval of the final rulemaking by IRRC, the Board would be prepared to meet in November 2010 to take final action on all applications. The administrative staff of the Bureau is prepared to print and issue licenses immediately upon publication of the final rulemaking in the Pennsylvania Bulletin. Any 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 has no 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 Bureau have been prepared and have instituted procedures and plans to assure that any 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 its application is approved, any individual who has been certified by their 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 any 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 rulemaking in the Pennsylvania Bulletin and the Bureau has published its policy on the Board's website. At the time of publication of that notice on the website, it appeared that publication in the Pennsylvania Bulletin would occur no earlier than mid-December. Upon publication of the final 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 Bureau of Professional and Occupational Affairs 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 its 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 all 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 §§6.53 and 6.55 (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) below."

The argument that other organizations could not have the same address, or perform the same examinations, or any 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 any 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 has satisfied the statutory requirement of equivalence to NCCCO in terms that other known certifying organizations regard as acceptable.

### Section 6.53(a)(4) and (5)

These provisions 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* 63 P. S. § 2400.302(5).

As more fully discussed in the preamble to the proposed rulemaking and the original preamble to the final 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 law. Although a clear distinction between training and certification would have eliminated the potential for a conflict of interest, the Board has relied upon the assurance offered by ANSI and NCCA that their standards and requirements can adequately safeguard against such a conflict of interest affecting certification. Based upon those assurances, the Board deleted those requirements from the final rulemaking.

#### Fiscal Impact and Paperwork Requirements

The final rulemaking should have no adverse fiscal impact on the Commonwealth, its political subdivisions, or the private sector. The final 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, no sunset date has been assigned.

#### Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa. B. 3041 (June 5, 2010), to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (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.

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. On November 3, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC approved the final-form rulemaking on November 4, 2010.

#### 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 – 1202), and the

regulations promulgated thereunder, 1 Pa. Code §§ 7.1 – 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 regulation do not expand the scope of the proposed rulemaking published at 40 Pa. B. 3041 (June 5, 2010).
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 at 49 Pa. Code §§ 6.1 – 6.56 are adopted 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.  
Chairman  
State Board of Crane Operators

**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**

**§ 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 Pennsylvania businesses.

(b) The Board promulgates the regulations in this chapter:

(1) To 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) To 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) To protect crane operators and trainees from undue influence to engage in unsafe practices.

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

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

(6) To 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 National Commission for the Certification of Crane Operators, or another organization found by the Board to offer:

(i) A testing and certification program equivalent to National Commission for the Certification of Crane Operators and meeting the applicable requirements of ASME B 30.

(ii) The accreditation requirements of National Commission for Certifying Agencies [and]or ANSI.

*Certifying organization* – The National Commission for the Certification of Crane Operators, 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) “Conviction” 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 B30.3[, B30.4,] and B30.5, 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 B30 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 pursuant to §§ 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.

*[Other intermodal operations or intermodal operations or intermodal services –*

(i) Receiving, handling, holding, consolidation, loading or delivery of an intermodal container, as defined in 29 CFR1917.2, 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.]

*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 such other work of preparing such 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 such 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 such conviction on a form prescribed by the Board, and shall 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 any or 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 shall 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 such authorization will only be valid for a period not to exceed 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 [pursuant to] 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 shall 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]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 [and ]has paid all requisite fees.

(b) A crane operator or an applicant for licensure as a crane operator shall report 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 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 set forth 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 Chapter 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 set forth 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 [5,000]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 Chapter 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 Chapter 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 [2,000] 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 Chapter 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 Chapter 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 Chapter 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 a period of 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 such words or engaging in such 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 B30 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 such criminal proceedings. The written report of criminal proceedings under this subsection shall 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 the 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 the provisions of 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 requirements of 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. A. §§ 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 pursuant to a request of such 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 any such 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 B30 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. A. § 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 paragraphs (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 30.5]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 [for approval] 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 [per se ]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 accredited by NCCA.

(3)] 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.

[(4) The applicant is a parent or subsidiary of an entity that offers a program of training or education in crane operation.

(5) An entity that is affiliated with the applicant as defined in § 6.53(a)(6) (relating to application for approval as a certifying organization) offers a program of training or education in crane operation.

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

[(7)](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 of 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[ for any of the following reasons:

(1) A finding by the Board that the applicant is not independent of an entity that offers a program of education or training in crane operation.

(2) A finding by the Board]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.

[(3) A finding by the Board that the applicant does not offer a program of testing and certification that is equivalent to the program of testing and certification offered by NCCCO.]

(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 of 29 CFR 1926.1427 (relating to operator qualification and certification).

**§ 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 [per se ]not equivalent to NCCCO certification according to the criteria set forth in § 6.53(d) (relating to required and discretionary bases for disapproval of an application for approval 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 [per se ]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 [per se ]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 [will]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) [The independent evaluation and review]If the Board refers the application for an independent evaluation and review, then 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 pursuant to subsections (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 30.5]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 30.5]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 subsections (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 30.5]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 provisions of 29 CFR 1926.1427 (relating to operator qualifications and certification).

(10) A statement that the authorization to issue certifications in the 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 set forth in subsection (a)(6), (7), [or] (8) or (9).

(2) A [~~loss of~~]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 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 material 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.
  - [(iv) The certifying organization offers or has offered a program of training or education in crane operation.
  - (v) The certifying organization has a parent entity or subsidiary entity that offers a program of training or education in crane operation.
  - (vi) An entity affiliated with the certifying organization offers a program of training or education in crane operation.]
- (b) A petition to terminate approval as a certifying organization [will] 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.

# PROPOSED RULEMAKING

## STATE BOARD OF CRANE OPERATORS

[ 49 PA. CODE CH. 6 ]

### Crane Operators; Initial Rulemaking

The State Board of Crane Operators (Board) proposes to add Chapter 6 to read as set forth in Annex A. This is the Board's initial general rulemaking.

#### *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

This proposed rulemaking is authorized under 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 proposes a comprehensive regulatory scheme intended to implement and effect the General Assembly's intent as manifested by the act.

#### *Legislative History*

It appears that legislation to license crane operators was first introduced by Senator Erickson on October 15, 2004, as Senate Bill (SB) 1235, Printer's Number (PN) 1867, and referred to the Senate Committee on Consumer Protection and Professional Licensure. In the following session, Senator Erickson reintroduced the same legislation as SB 140, PN 127 on February 1, 2005. The bill was reported from the Senate Committee for Consumer Protection and Professional Licensure and referred to the Senate Appropriations Committee where it remained for the duration of the session.

During the same legislative session, Representative Mario Civera introduced a substantially similar bill in the House of Representatives on February 16, 2005, as House Bill (HB) 617, PN 690. After a series of amendments, the bill passed the House of Representatives on February 13, 2006, but its progress terminated in the Senate Appropriations Committee after referral on May 1, 2006.

In the 2007-2008 session of the General Assembly, Senator Erickson reintroduced his bill on February 8, 2007, as SB 59, PN 80. Again, the bill was reported from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and referred to the Appropriations Committee where it remained for the duration of the session.

On March 6, 2007, Representative Civera also reintroduced his legislation as HB 647, PN 706. After a series of amendments in both chambers, Governor Rendell signed the bill on October 9, 2008 (P. L. 1363, No. 100) (Act 100). Discussion of the legislation can be found in the *House Journal* of June 27, 2007, page 1474; *Senate Journal*, October 7, 2008, page 2598; *Senate Journal*, October 8, 2008, page 2623; and final passage in the *House Journal*, October 8, 2008, page 2289.

Legislative analyses prepared by staff of the House Democratic, Senate Democratic and Senate Republican

caucuses of the General Assembly were reviewed and considered by the Board in the course of formulating this proposed rulemaking. Copies of those documents are available in the offices of the Board and are available for review upon request.

#### *Historical Background of the Act*

##### *ASME and the Origins of Crane Operation Standards*

The American Society of Mechanical Engineers (ASME) is recognized as the principal authority for developing voluntary industry standards for the construction, installation, operation, inspection, testing, maintenance and use of cranes and other lifting and material-handling related equipment. ASME's activity in developing these standards dates back to 1916 and it has continued to revise its standards for nearly a century.

The first National regulations applied to cranes were issued by the United States Department of Labor under section 107 of the Construction Safety Act (CSA), (40 U.S.C.A. § 333), but only applied to construction employment under government-funded contracts. Following the adoption of the Occupational Safety and Health Act of 1970 (29 U.S.C.A. §§ 651—678), the Secretary of Labor transferred those regulations to the Occupational Safety and Health Administration (OSHA) with the effect of applying the CSA safety standards to construction employees. See 53 FR 29116 (August 2, 1988).

The specific OSHA regulation regarding to crane operations in 29 CFR 1926.550(b)(2) (relating to cranes and derricks), included a requirement that the operation of cranes meet the requirements prescribed in the ASME B 30.5-1968, Safety Code for Crawler, Locomotive and Truck Cranes. In the 1968 standards, there were not requirements for a written examination for crane operators, but there were requirements for a physical exam and a practical test. However, OSHA did not enforce either requirement. (Source: Pennsylvania House of Representatives, House Democratic Bill Analysis, HB 647, PN 706, April 17, 2007.)

In 1982, ASME further revised its standards and took the additional step of reorganizing its standards committee and obtaining accreditation of its procedures by the American National Standards Institute (ANSI). Since at least 2000, ASME standards have included a requirement for a physical examination, written examination and an operational test demonstrating proficiency in handling a specific type of crane. (Source: Pennsylvania House of Representatives, House Democratic Bill Analysis, HB 647, PN 706, April 17, 2007.) Since 1982, it appears that National and state regulations have fallen further behind voluntary standards in the industry.

#### *The Industry Urges Stronger National Regulation*

Against this historical backdrop of the industrial and regulatory standards, the crane industry changed considerably. Within the last decade a number of industry stakeholders asked OSHA to update its cranes and derrick requirements. Experts and practitioners in the construction industry were concerned that accidents involving cranes and derricks continued to be a significant cause of fatal and other serious injuries on construction sites and believed that reform was needed to address the causes of these accidents and to reduce the frequency of personal injury, property damage, and disruption of worksite production. (OSHA proposed rulemaking published at 73 FR 59714 (October 9, 2008).)

The Commonwealth was not an exception to the National experience. Between 1972 and 2004, there were 106 serious crane accidents in this Commonwealth reported to OSHA. Of the 106 accidents, 99 resulted in at least 1 fatality and some cases involved multiple fatalities. (Rep. Civera, *House Journal*, June 27, 2007, page 1477.)

In 1998 OSHA's Advisory Committee for Construction Safety and Health (ACCSH) established a workgroup to develop recommended changes to the requirements for cranes and derricks. The workgroup developed recommendations on some issues and submitted them to the full committee in a draft workgroup report. (OSHA—2007—0066—0020). In December 1999, ACCSH recommended to OSHA that the agency consider using a negotiated rule-making process. (OSHA proposed rulemaking published at 73 FR 59714.)

In July 2002, OSHA announced its intent to use negotiated rulemaking to revise the cranes and derricks standard and established the Cranes and Derricks Negotiated Rulemaking Advisory Committee (Committee) (67 FR 46612 (July 16, 2002)). The Committee members were selected for their knowledge, expertise and experience in the industry and represented a broad cross-section of the industry. The Committee members relied upon their knowledge and experience to identify the most important issues and craft regulations that would solve problems. Due to the extensive practical experience of the Committee, the proposed amendments to the OSHA regulations were called "practical and workable." (OSHA proposed rulemaking published at 73 FR 59718.)

Significantly, the Committee concluded that incorrect operation was a factor in many accidents. Operating a crane is a complex job requiring skill and knowledge. To operate a crane safely requires a thorough knowledge of the equipment and controls and a complete understanding of the factors that can affect the safe operation. The latest OSHA regulations represent an informed judgment that it is essential to have qualified operators in order to reduce accidents resulting from incorrect operation. (OSHA proposed rulemaking published at 73 FR 59718.)

The Committee gave exhaustive consideration to the processes for qualifying equipment operators and determined that it was necessary for crane operators to be certified or qualified through a formal process to ensure that they possessed the degree of knowledge necessary to operate their equipment safely. (OSHA proposed rulemaking published at 73 FR 59718.)

Improper operation, including, for example, the failure to understand and compensate for the effects of factors, such as dynamic loading, may cause employees to be struck by a load. These, and other incidents arising from operator error, will be reduced by compliance with proposed 29 CFR 1926.1427 and 1926.1430 (relating to operator qualification and certification; and training). (OSHA proposed rulemaking published at 73 FR 59720, 59721.)

#### *The Commonwealth Joins the National Trend*

While OSHA pursued a negotiated rulemaking, the General Assembly enacted Act 100. With the act, the Commonwealth becomes the 16th state to advance the prevailing view in the industry that higher standards must be applied to the training and qualification of crane operators and that entry and tenure in the industry must be subject to mandatory oversight by a governmental body backed by the force of law. Experience in the industry has shown that voluntary compliance is an

unsatisfactory practice. Voluntary compliance does not produce the best results for workplace safety; efficient and productive construction practices; or lower costs to employers, contractors and property owners.

Act 100 directed the formation of the Board. The act represents a significant delegation of legislative power to formulate and craft not only procedures but substantive standards as well. This proposed rulemaking is the product of that delegation of legislative power. In addition to considering the intent of the General Assembly, the Board has also taken into consideration existing and anticipated changes to ASME volumes and OSHA regulations. The Board did not think that it would be wise to promulgate regulations based solely upon current or existing standards or regulations when it was aware of changes that are likely to take effect before, or soon after, the effective date of its regulations. Therefore, this proposed rulemaking, when it is appropriate, accounts for what the regulatory environment will be in June 2010, as well as the current state of the law.

#### *General Note on References to ASME B30*

The ASME B30 Standard contains provisions that apply to the construction, installation, operation, inspection, testing, maintenance, and use of cranes and other lifting and material-handling related equipment. For convenience, the ASME Standard has been divided into separate volumes. Each volume has been written under the direction of the ASME B30 Standards Committee and has successfully completed a consensus approval process under the general auspices of the ANSI. As of March 7, 2008, the B30 Standard comprised 26 volumes, with another 3 volumes in development. The volumes are designated as ASME B 30.1, Jacks, ASME B 30.2, Overhead and Gantry Cranes, and so forth.

By its express terms, the act applies only to the types of cranes described in ASME B 30.3, Construction Tower Cranes; ASME B 30.4, Portal, Tower, and Pedestal Cranes; and ASME B 30.5, Mobile and Locomotive Cranes. However, because these volumes are routinely and regularly revised by ASME, the types of cranes currently covered under these volumes 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. Self-erecting tower cranes are currently covered by ASME B 30.3, but will be assigned a new volume designation with the issuance of the new volume.

ASME B 30.3-2004, Construction Tower Cranes was approved by ANSI on January 22, 2004, and issued by ASME on November 15, 2004. Revisions are in process and the next edition was due to be published in 2009. The volume will begin a 3-year publication cycle beginning after the next revision.

ASME B 30.4-2003, Portal, Tower and Pedestal Cranes, was approved by ANSI on February 19, 2003, and issued by ASME on June 16, 2003. It was reaffirmed on February 2, 2009. The subcommittee is preparing a new revision to be in line with ASME B 30.3 to be published in 2010. In the future, the Board anticipates that permanently-mounted tower cranes will be removed from ASME B30. At that point, the Board's jurisdiction over cranes covered by this volume will continue but the applicable standards will be taken from ASME B 30.3. This volume will be on a 5-year publication cycle.

ASME B 30.5-2007, Mobile and Locomotive Cranes, was approved by ANSI on November 20, 2007, and issued on March 7, 2008. It is published on a 3-year cycle and will be published again in 2011.

## Description of the Proposed Rulemaking

### Introduction

The Board considered carefully the National standards adopted by the act and framed its regulations in furtherance of that legislative intent. Additionally, where the act left discretion to the Board, the Board selected options with an eye toward protecting important public interests, yet balanced competing values.

Safety of the public and construction workers were deemed critically important, but the Board also gave careful consideration to the effects that its choices would have on business competitiveness, employee privacy, construction costs, openness of the market, freedom of contract, impacts on interstate commerce and private property rights. The Board adopted a broader, more intrusive option only when it deemed that option to be served by a greater public interest.

When prudent, the Board has preferred to allow the marketplace to act as the principal source of allocation of resources and the proposed rulemaking expresses the Board's desire for an efficient and small governmental presence. Still, recognizing that economic forces do not have unlimited ability to provide public goods in the short term, the Board's proposed rulemaking reflects the Board's determination that the public interest should not go unserved because of a slavish devotion to a narrow economic philosophy.

### General Provisions

#### § 6.1. Findings and purpose.

After considerable discussion, the Board adopted a section setting forth the findings and purpose underlying the final-form adoption of this proposed rulemaking. The Board believed that these findings would aid future boards, staff, courts and the regulated community to understand and interpret the regulations in specific cases.

Of particular importance, the Board wished to express its position that the legislative intent of the act, and therefore, its mission, and the objective of its regulations, is to protect the lives and safety not only of construction workers, but also the general public. As if to highlight the risks to the broader public, during the Board's deliberations an accident occurred in the City of Philadelphia on October 12, 2009. Although the equipment in question would not have been subject to the Board's jurisdiction, the injuries sustained by members of the public and the damage to property outside the construction site illustrates the kinds of risks that may arise from improper operation of cranes.

#### § 6.2. Definitions.

The Board incorporated several definitions from the act and broke those definitions into separate elements represented in paragraph and subparagraph form for easier analysis. Also, the Board's definitions include several acronyms for ease of reference.

Several definitions warrant specific explanation. In the definition of "certification" and throughout the remainder of the regulations, the Board preferred to use phrases such as "applicable requirements," "applicable provisions" or "applicable volumes" of ASME B30, rather than enumerate ASME B 30.3, B 30.4 and B 30.5. There are two reasons for this decision. First, the Board desired brevity. Second, as previously discussed in the General Note on References to ASME B30, the specific designations of volumes may change, or new volumes may be added, that apply to cranes covered by these current volumes. There-

fore, for the sake of anticipating changes, the Board determined that it would be more consistent with the legislative intent to use reference to ASME B30.

The term "certifying organization" has been adopted to encompass the National Commission for the Certification of Crane Operators (NCCCO) and other bodies approved by the Board to issue certification.

The act excludes coal mining and coal mining operations from the Board's jurisdiction. Therefore, the Board deemed it appropriate to define this exclusion. The Board's definition is adapted from section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C.A. § 802). The definition of the phrase "work of preparing the coal" is likewise drawn from the same Federal statute.

In defining the coal mining exclusion, the Board believed that it was necessary to make it clear that construction activities remain covered, regardless of where the construction occurs. The mere fact that a crane is used to construct a building which happens to be located on the premises of a coal mine, for example, would not place the crane operation outside the jurisdiction of the Board. To the contrary, the use of a crane for construction, regardless of the premises where the construction occurs, is a regulated activity under the act. The Board adapted the language used in section 2 of the Tax Reform Code of 1971 (72 P.S. § 7201) to exclude construction from the definitions of "coal mining" and "manufacturing." This construction exclusion was also used in the definitions of "longshore operations," "other intermodal operations" and "manufacturing application."

The Board inserted a definition of "conviction" for the purpose of defining the term as used in § 6.11(d) (relating to general requirements) and to make it clear that a disposition other than a conviction is not a disqualifying or disabling condition. This definition of "conviction" does not limit the grounds on which disciplinary action may be taken under § 6.44(b)(5) (relating to standards of conduct, disciplinary action, suspension and revocation), which permits disciplinary action not only for convictions of a felony or a crime of moral turpitude, but also dispositions of probation without verdict, Accelerated Rehabilitative Disposition, disposition instead of trial, and so forth.

The language used in this definition was extracted from several authorities. *Commonwealth v. Hughes*, 865 A.2d 761 (2004) and *Commonwealth v. Kimmel*, 111, 565 A.2d 426, 428 (1989) are the source of the initial clause defining conviction as an ascertainment of guilt and judgment thereon. Section 9102 of 18 Pa.C.S. (relating to definitions), defines "disposition." "Guilty but mentally ill" is defined in 18 Pa.C.S. § 314 (relating to guilty but mentally ill). Adjudications of delinquency are not to be considered convictions as provided in 42 Pa.C.S. § 6354(a) (relating to effect of adjudication).

The Board broke the statutory definition of "crane" into its constituent elements for ease of reference and analysis. The reference to "applicable ASME B30 volume" in the description of a "tower crane" was chosen for reasons previously stated.

In defining the types of equipment and machinery that are included in the definition of "crane," the Board followed the statutory definition and the list of particular words or phrases has been enumerated in the regulations. However, the use of the word "derrick" requires further explanation.

For the general public, the colloquial use of the word "derrick" is typically associated with oil rigs. Plainly, the

act was not intended to cover the operation of oil rigs. However, ASME promulgated a standard for derricks in ASME B 30.6, as well as a standard for floating derricks in ASME B 30.8. The usage of the term "derrick" in the context of those two ASME standards is also outside of the act's definition of "crane."

"Derrick," when used in the specific, technical usage of ASME B 30.6 applies to guy, stiffer, basket, breast, gin pole, Chicago boom, shearleg, and A-frame derricks. See *Introductory Description of ASME Volume B 30.6*. These derricks, powered by hoists through systems of wire rope reeving, are used for lifting, lowering and horizontal movement of freely suspended unguided loads. Derricks are usually stationary mounted and may be temporarily or permanently installed. Derricks covered by ASME B 30.6 are distinguished from cranes covered by the act in that this class of equipment does not have a boom moving laterally by the rotation of the machine on a carrier or base.

The professional members of the Board, based upon their involvement in the passage of the act, hold the position that the term "derrick" was included in the act principally because the term "derrick" is used in the common title of all of the ASME B30 safety standards, including ASME B 30.3, B 30.4, and B 30.5. The legislative intent was not to include the types of equipment and machinery covered under ASME B 30.6 or B 30.8. Rather, in the context of the act, "derrick" only has a generic, common dictionary definition of the word, meaning "... a hoisting apparatus employing a tackle rigged at the end of a beam" (see *Merriam Webster Dictionary*) and which meets all of the other statutory criteria of a crane. In this general sense of the word, all cranes include a "hoisting apparatus with a tackle rigged at the end of a beam." Therefore, the Board includes "derrick" to make it clear that regardless of the label that one might apply to a particular piece of equipment or machinery, the controlling issue is what components the machine has, what its function is, and how it operates.

The Board thought it advisable to include a definition for "engage in the operation of a crane" or "operate a crane" because, in fact, the operation of a crane involves multiple individuals. Persons who assemble the crane, who rig the load, who signal or who inspect, are integral members of a coordinated team of persons who are required to safely operate a crane. However, it is only the person who actually controls the activation and movement of a crane who is "operating a crane." Within this concept, the Board contemplates that operation of a crane includes an individual who is seated in a cab and who manipulates levers, wheels and other control mechanisms. However, in light of new and future technology, operation of a crane also includes an individual who operates a crane by use of a wireless or other remote device.

The term "lift director" is defined according to the definition used in ASME B 30.5. This term is used in the regulations to define the reporting requirements for a crane operator under § 6.42(b) (relating to impaired operation of a crane and reportable conditions, incidents or events).

The act excludes longshore operations, intermodal operations and manufacturing applications from the definition of "crane." The Board deemed it appropriate to define these terms. The definitions of "longshore operations" and "intermodal operations" are adapted from 29 CFR 1917.2 (relating to definitions). Counsel for the Board contacted the Federal authorities and confirmed that the term

"marine terminal" includes operations at the Port of Philadelphia, which handles ocean-going vessels, the Port of Erie, which handles shipments from lake freighters, and the Port of Pittsburgh, which handles river barges. A terminal on a body of navigable water, whether freshwater or seawater, constitutes a "marine terminal" as defined in 29 CFR 1917.2.

The definition of "manufacturing application" borrows heavily from the definition in section 2 of the Tax Reform Code of 1971.

The definition of "trainee" is taken from the act, but amplified by reference to § 6.13 (relating to qualifications and supervision of trainees). The Board notes that the statutory definition includes individuals who have neither certification nor a license. The Board entertained discussions about the proper status of persons who have obtained certification, but who are awaiting a license. In addition, the Board recognizes the remote possibility that a person may hold a current valid certification, but is disqualified from holding a license. The Board addresses the status of these individuals in § 6.12(e) (relating to certification), and discusses that provision in greater detail as follows.

#### § 6.3. *Applicability of general rules.*

This section makes clear that individuals may avail themselves of applicable remedies and procedures available under 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

#### § 6.4. *Fees.*

Some of these fees are commonplace among licensing boards and require little explanation. The amount of the initial licensing application fee, biennial renewal fee and reactivation fee were determined based upon estimated costs of administering those licensing functions of the Board and an expected licensed population of approximately 2,750 licensees. The estimate of licensees was based upon the number of individuals residing in this Commonwealth who hold a current certification issued by NCCCO, plus an estimate of the additional individuals who would be licensed without certification or hold certification through another certifying organization.

The fees for certified copies of records and addition of specialty were based upon an estimate of the pro rata share of staff expenditures required to perform those functions.

The fee for addition of specialty applies to those persons who are licensed with certification who acquire a certification for an additional type of crane before the biennial licensing period expires. The fee represents the cost of staff time in amending the person's licensure record to reflect their authority to operate an additional type of crane.

The fee for application for certifying organization represents the cost of obtaining a professional review of the application by a qualified outside evaluator who will determine whether the application satisfies the criteria for approval as a certifying organization.

The trainee registration fee applies to those persons who register as trainees under § 6.13 and represents the value of staff expenditures needed to process that registration form.

#### *Licensure*

#### § 6.11. *General requirements.*

As a general rule, applicants for licensure will possess certification. The Board notes that certification requires a

passing score in a written examination and a practical examination, as well as physician's report confirming that the individual is physically capable of safely operating a crane. Because those requirements are already specified as prerequisites to certification, the Board did not repeat those requirements in these regulations. However, the Board does require the applicant for licensure to aver under penalties for perjury that they have been examined by a physician and determined to be physically capable of operating a crane.

There is one requirement for persons obtaining a license under section 502 of the act (63 P. S. § 2400.502) that is not specified in this section that is specifically required under ASME B30 volumes and OSHA's negotiated rulemaking. Under ASME B30 and OSHA's negotiated rulemaking, crane operators shall submit to a physical exam performed by a physician as a prerequisite to obtaining certification. Furthermore, ASME B30 volumes and OSHA's negotiated rulemaking require the physical exam to be repeated every 3 years. The Board considered a requirement that the applicant submit a copy of the physician's report with the license application. However, that requirement was deemed unnecessary because widespread practice in the industry is that crane operators are frequently reviewed by employers for a current physical exam. Therefore, a simple averment that a physical examination has occurred was deemed to be sufficient.

In addition to the statutory qualifications for licensure, the Board also concluded that it would be prudent to enunciate a standard for "progress in personal rehabilitation." The Board believed that it would be prudent because it would provide a fixed point of reference on which to judge each applicant, and thus decrease the likelihood of arbitrary or inconsistent decisions. Also, based upon the experience gained from other licensing boards, an applicant can be confused or uncertain as to what type of information that he should offer to support the application for licensure, as well as the negative information that may be brought up in opposition to licensure.

"Totality of the circumstances" is a familiar term of art in the common law. While it is impossible to create an exhaustive list of the possible circumstances that may be relevant to evaluating any particular case, the Board's proposal does provide a substantial coverage of the most common factors that will bear upon a typical case.

The reference to refraining from "tortious" conduct deserves further explanation. The Board considered that an individual may be involved in conduct which may not rise to the level of criminality, but may evidence instability, lack of judgment or risk-taking behavior. The Board does not purport to offer a comprehensive list of the types of tortious acts that may be relevant to the Board's consideration. However, a person who has a driving record that includes reckless driving, who has been found negligent in one or more automobile accidents or who has a history of domestic abuse may give rise to concern about the individual's judgment and lack of inhibition against dangerous or risky behavior and it would also bear upon the degree of an individual's "progress in personal rehabilitation" from felonious conduct.

Another factor sometimes overlooked by applicants is a history of successful therapy. It is likely that a person with a felony conviction for a violation under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101-780-144) has been engaged in abuse of one or more substances. It is well-established that a

person with a history of substance abuse or dependency has a health problem. The mere fact that the individual has been able to refrain from abusing the substance does not demonstrate that they have entered recovery. The so-called "dry drunk syndrome" describes this phenomenon. In light of that possibility, the Board concluded that an individual's history of therapy bears upon whether that individual would pose a substantial risk of harm to workers and the public.

#### § 6.12. Certification.

The act provides that a crane operator's license obtained by certification is only valid in conjunction with a current certification in the specialty for which the crane operator has been certified. Based upon that language, the Board determined that every crane operator will need to possess two documents as evidence of their authority to operate a crane. First, the crane operator shall possess the license that is issued by the Board. Second, the crane operator shall also possess the certification. NCCCO issues a wallet size card with a photograph of the crane operator. Photo identification is a critical element for verification of the crane operator's identity. Certification through NCCCO offers that means of verification.

NCCCO provides its examinees with copies of written and practical examination scores. A photocopy of those scores must be attached to an application for licensure. In addition, the Board administrative staff is able to submit a list of applicants and obtain independent affirmation from NCCCO that the applicants do, or do not, possess current valid certification from NCCCO.

Because certification is limited to only certain types of cranes the license, too, only constitutes authorization to operate the type of crane for which the applicant possesses certification. (See previous discussion of ASME B 30 volumes.) The Board plans to insert a code or other information on the license and wallet card to indicate which types of cranes the licensee is authorized to operate.

The Board included a regulation that a person who possesses an acceptable certification cannot bypass the licensure with certification requirements and seek licensure without certification. There are three principal reasons for this prohibition.

First, the act demonstrates that licensure by certification is the preferred means of demonstrating an individual's qualification to operate a crane. Section 506 of the act (63 P. S. § 2400.506), regarding license without certification, was added in the late stages of HB 647. The original intent of the bill was for certification to be the exclusive pathway to licensure. This suggests that licensure without certification was added only as a secondary option for persons who were unable to satisfy the written examination requirements of certification, to avoid a harsh result for a few individuals.

Second, an individual shall renew certification on a 5-year cycle, which overlaps the biennial period for licensure. Therefore, certification is evidence of continuing proficiency and understanding of the latest standards and practices. That the legislation requires certified individuals to continue to be recertified as crane operators as a prerequisite to licensure renewal demonstrates the legislative intent to require proof of continued proficiency and skill.

Third, as previously discussed, the Board has taken account the OSHA standards that are the subject of the negotiated rulemaking. Those standards would, if enacted in their current form, disqualify persons without certifica-



tion to operate a crane. In other words, the licenses issued under section 506 of the act may ultimately prove to be invalid under OSHA regulations that are in the course of being promulgated.

This third point warrants further explanation. Under OSHA's proposed 29 CFR 1926.1427, an individual would need to be certified or qualified to operate a crane. This requirement would be fully effective in 4 years from the effective date of the OSHA rulemaking, which will be approximately 2014. Under proposed 29 CFR 1926.1427(j), acceptable qualification and certification programs will need to include both a written and a practical examination. This qualification or certification requirement could be satisfied by one of four options.

First, an accredited crane operator testing organization could certify the individual. Act 100 satisfies this requirement by reference to NCCCO as a statutorily recognized body. Second, OSHA would accept qualification through an audited employer program. However, this option also requires a written and practical examination and an independent audit to verify the authenticity and reliability of the employer's testing program. Furthermore, qualification under this provision is not portable, meaning that it is valid only with that particular employer. Act 100 does not recognize this second option as a basis for granting a license.

Third, OSHA would accept qualification by the United States military. However, military qualification, like the second option, is not portable. Fourth, OSHA would accept licensing by a qualified governmental entity. To qualify as a governmental testing agency, the Board would need to administer its own written and practical examination. However, the Board has neither the statutory authority nor the resources to administer its own written or practical examinations for individuals who are licensed under section 506 of the act. Furthermore, if the Board were to engage a contractor to administer written and practical examinations, it would, in effect, require certification for licensees under section 506 of the act, which the provisions of section 506(b) of the act prohibit.

Accordingly, the Board concluded that unless its standards for licensure without certification under section 506 of the act are rigorous and satisfy the requirements of OSHA regulations, the license without certification will become meaningless in approximately 3 to 4 years from the date the window closes for this licensure option. Therefore, the Board concludes that the only rational policy is to prohibit individuals who hold certification from applying for licensure without certification.

The Board also noted that the definition of "trainee" in the act as an individual who holds neither certification nor a license, would not cover an individual who has recently obtained certification, but who awaits the issuance of a license. The Board determined that it should address the status of this group of individuals in § 6.12(e) for two reasons.

First, the Board contemplated that there will be a lag time between the date on which an individual obtains certification, but either has not filed an application for licensure with the Board or who is awaiting that application to be processed and the license to be issued. The Board deemed it prudent to clarify that this individual would be authorized to continue to operate a crane under supervision as a trainee, even though that individual does not meet the technical definition of a "trainee" in the act.

Second, the Board anticipates that there could be rare instances in which a person has obtained certification,

but may not qualify for a license, especially because of character issues, such as a past felony conviction for a nondrug related offense involving fraud or violence. The Board deemed it prudent to preclude this individual from operating a crane under the fiction of operating as a trainee, for an indefinite period of time.

For these two reasons, the Board concluded that a person who has obtained certification, but who has not obtained a license, may operate a crane for a period of 90 days following the date of certification, with the option of obtaining an additional 90-day period with permission from the Board, to allow time for an application for licensure to be filed, processed and, when a denial occurs, to appeal that denial.

#### § 6.13. *Qualifications and supervision of trainees.*

The qualification and supervision of trainees is addressed in section 501(c) of the act (63 P.S. § 2400.501(c)). The Board evaluated this section in light of the knowledge that an individual who is a trainee on one type of crane may already be certified and licensed to operate another type of crane. In other words, not every trainee is a complete novice to the field of crane operation. Nonetheless, with respect to a type of crane for which the individual is not certified, even a long-tenured crane operator remains a trainee for purposes of operating the crane for which he is not certified. Therefore, § 6.13 should be read together with §§ 6.11 and 6.12 and § 6.14 (relating to specialties).

With respect to this principle, the Board notes that a trainee and supervisor will be required to comply with the requirements of two other standards, the applicable ASME volume for the type of crane being operated and OSHA regulations. The applicability of ASME standards is noted in § 6.13(b)(2). A corollary requirement for the supervising crane operator to comply with applicable ASME and OSHA rules has been set forth in subsection (d).

One point that is not specifically addressed in ASME or OSHA is whether an individual may supervise simultaneously two or more trainees. "Immediate supervision" is defined in § 6.2 (relating to definitions) as "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." Immediate supervision is further explained in subsection (e) as requiring a one-to-one ratio between supervising crane operator and trainee and adds that the supervisor may not perform other functions or have other responsibilities while supervising a trainee.

The Board contemplated certain types of cranes that actually require more than one individual to manipulate the controls. In that case, an employer who assigns a trainee to operate that crane has two options. First, have only one trainee, supervised by a single crane operator, with licensed crane operators in the other positions for that crane. Second, if more than one trainee is involved in the operation of a crane such as this, then each trainee shall have an individual supervising one trainee and only one trainee.

The Board concluded that this one-to-one ratio is not only justified, but necessary, for the safe operation of the crane and the proper supervision and instruction of the trainee. Construction sites are characterized by the presence of many large, loud, diesel engines along with hydraulic and pneumatic tools and machinery. At any given moment, traffic intersects, multiple operations occur and, as a result, there are many causes of distraction and unexpected movement.



Furthermore, because of the small size of a crane cab, the supervising crane operator may not be within arm's reach of the trainee. In many circumstances, the supervising crane operator and trainee may be separated by a considerable distance measured in feet or yards. So long as the supervising crane operator and trainee can communicate effectively, and taking into account other relevant circumstances, that type of physical distance may be appropriate and safe. To permit an individual to supervise multiple trainees, though, creates an unreasonable degree of risk.

In light of the complexity of human activity that occurs on a construction site, in the Board's judgment, there is no room for error as a result of a supervising crane operator trying to supervise multiple trainees, or to perform other functions at the same time. The Board concluded that it is of vital importance that a supervising crane operator devote his undivided attention to observing and instructing the trainee. Because of the momentum of moving loads and similar factors, dangerous conditions can rapidly deteriorate and result in catastrophic accidents if immediate corrective measures are not taken. Because a response to a dangerous condition may be necessary in the span of seconds, or a split second, a supervising crane operator who is distracted only for a moment by the performance of another duty poses an unacceptable degree of risk to proper supervision of a trainee. Therefore, the Board concluded that the one-to-one ratio is a necessary requirement.

Finally, the Board also determined that a crane operator shall evaluate his own ability and competence to supervise a trainee before accepting that responsibility. Therefore, subsection (f) provides that a crane operator may not accept an assignment if supervision of a trainee is beyond the competence and experience of the crane operator, considering the type of crane to be operated, the nature of the task or operation to be performed and the skill and knowledge of the licensed crane operator. The issuance of a license to operate a crane does not grant the individual an unqualified permission to begin supervising trainees. Subsection (f) places a responsibility upon the licensee to assess the licensee's own ability as a supervising crane operator and to refuse an assignment when it would be unsafe to supervise.

#### § 6.14. *Specialties.*

The act requires the Board to issue specialty licenses for the following crane types: tower cranes; lattice boom crawler cranes; lattice boom truck cranes; telescopic boom cranes with a rotating control station; and telescopic boom cranes with a fixed control station.

The Board concluded that the most efficient means of satisfying this requirement was to add a designation or code to each license to specify the type of crane or cranes that a licensee would be authorized to operate. At this time, there are no other types of cranes for which a specialty license is deemed to be appropriate.

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

To facilitate interstate commerce and increase employment and business opportunities for residents of this Commonwealth who are crane operators, the Board provided for licensure for persons licensed by other jurisdictions in a manner consistent with the practice of other licensing boards.

#### *Licensure without Certification*

##### § 6.21. *Licensure without certification generally.*

This section, together with §§ 6.22 and 6.23, (relating to licensure without certification by practical examination; and licensure without certification by experience), implement section 506 of the act. As reflected in the discussion of § 6.12, the Board was obliged to consider the implementation of section 506 of the act in light of the anticipated provisions of OSHA regulations and the requirements of proposed 29 CFR 1926.1427.

There is a limited time frame for submitting applications for licensure without certification. As of the date of the initial discussion and drafting of this proposed rulemaking, on May 29, 2009, HB 1551, PN 1926 passed the House of Representatives and been referred to the SCP/PLC. HB 1551 was introduced at the recommendation of the Bureau of Professional and Occupational Affairs (Bureau) to correct a technical defect in HB 647 regarding when this limited time frame would begin and end.

The Board drafted §§ 6.21, 6.22 and 6.23 on the assumption that HB 1551 would be enacted into law before the effective date of the Board's regulations. Under HB 1551, the window for applications under section 506 of the act would open on the effective date of the Board's regulations, which was estimated to be June 8, 2010. In any event, because the act requires a license beginning on October 9, 2010, regulations needed to be in place before that date. Under this same amendment proposed in HB 1551, the window would close on December 9, 2011, thus allowing individuals pursuing licensure without certification a period of 14 to 18 months to obtain that license. Subsection (a) reflects the date of closure of that window, based upon the expected passage of HB 1551.

In addition to the requirements under the act, subsection (b)(5) is a corollary statement of the principle expressed in § 6.12(d) that an applicant who possesses a valid certification cannot apply for a license without certification.

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

One point that bears highlighting is that section 506(a)(2) of the act specifically requires a passing score on a practical examination administered by NCCCO. The act does not authorize or permit the Board to accept the results of examinations administered by another testing organization, even if that organization has been approved by the Board as a certifying organization.

Under § 6.22, the applicant will be required to produce three pieces of documentation, in addition to the required personal identifying information essential to licensure. First, the applicant shall submit scores for the NCCCO practical examination demonstrating a passing score. As with crane operators certified by the NCCCO, the Board administrative staff can independently confirm that the applicant has a passing score.

Second, the applicant shall make an averment subject to the penalties for perjury that the applicant has passed a physical examination meeting the requirements of ASME B 30.5.

The Board considered whether to use the language of "applicable ASME B30 volume" that is repeated elsewhere in the proposed rulemaking. That language would have meant that the applicant would submit to the relevant physical examination based upon the crane type for which he applied. However, in this particular instance, the Board chose to specify ASME B 30.5 for two important reasons.

First, ASME B 30.5-3.1.2 is the only provision that expressly requires a substance abuse test. ASME B 30.3 and B 30.4 do not include this requirement for their physical exams. In this regard, the Board considered safety of workers and public to be better served by requiring a substance abuse test, as required by ASME B 30.5, of licensed crane operators.

Second, from the standpoint of ease of administration, the Board concluded that it would be more efficient to specify a single physical exam for licensees. Adding to the strength of this reason is that the Board expects ASME to adopt the same substance abuse requirement, in future revisions of ASME B 30.3 and B 30.4.

Third, the physical examination requirements of ASME B 30.5 include language that is more protective of individual crane operators who have a disability that is capable of accommodation without jeopardizing safety.

The third item of documentation that an applicant shall produce with the application is a copy of results from assessments administered in the 2-year period prior to the date of application. The purpose of this requirement is to inform the Board of assessments that resulted in a failing grade or score. The rationale of the Board is that it should be advised of indicators that a particular crane operator may not be qualified.

The Board is concerned about the possibility of testing shopping. That is, an unqualified individual who fails to obtain certification, and who may have failed one or more attempts to become certified, may shop around for the easiest path to licensure. Because there are no residency restrictions in the act, there is the possibility that unqualified, out-of-State residents may attempt to use section 506 of the act as a pathway to entry into the industry. This is clearly not the legislative intent behind the act. (See *House Journal*, June 27, 2007, pages 1475 and 1476.) In light of the legislative intent to assure competence, the Board concludes that a failing grade on an assessment, whether on the written or practical portion of the examination, is a fair indicator of a lack of competence.

The Board considered two basic fact patterns that may give rise to adverse consequences to the applicant. The first scenario occurs when the applicant obtained a passing score on the NCCCO practical exam, but is denied certification due to a failing score on the written examination. The same applicant then takes the practical exam for the same type of crane with another organization, with an audited employer assessment program or an assessment program administered by another jurisdiction, but obtains a failing score on its practical examination.

In this case, the Board believes that the subsequent failing grade on the second practical exam would negate the passing grade on the NCCCO practical examination and may constitute grounds for denial of a license under this section. The failing grade indicates a degradation of the individual's knowledge and skill to an unacceptably unsafe level. Therefore, a license may be denied.

In the second scenario, the applicant obtains a passing score on the NCCCO practical examination for mobile cranes. The same applicant had, prior to the passing score on the NCCCO practical exam and within the 2 years prior to the date of application, failed the written examination for either an audited employer assessment program or an assessment program administered in another state for a mobile crane. Under these circumstances, the Board believes that it could grant a license for mobile cranes, but with restrictions. An appropriate

restriction may be, for example, limiting the licensee to working for the current employer, or the employer with whom the applicant failed the audited employer assessment.

Although the Board would not be able to deny a license to an applicant under this scenario, the Board believes that the failing scores would be appropriate grounds for a license restriction appropriate to the circumstances. For example, if the individual failed an audited employer assessment program, the license may appropriately restrict the licensee to work for that specific employer and none other. If the applicant failed an assessment program administered by another state, then the Board may appropriately restrict the licensee to this Commonwealth and deny the licensee the right to use the license from the Commonwealth to apply for a reciprocal license issued by another jurisdiction.

#### § 6.23. *Licensure without certification by experience.*

As previously discussed, Act 100 was amended in both chambers of the General Assembly. The Civera Amendment was adopted by the House of Representatives and added section 506 of the act, regarding license without certification. The Civera Amendment created one pathway to licensure without certification.

The Waugh Amendment was offered in the Senate and amended section 506 of the act. The effect of the Waugh Amendment was to create two distinct pathways to licensure without certification. The Board grappled with this distinction and the implications both for public safety, as well as consistency with OSHA's negotiated rulemaking.

Licensure without certification by experience is a pathway to licensure as provided in section 506(a)(3) of the act. That paragraph states that an individual is eligible for licensure without certification if they meet the requirements of section 502 of the act, except for certification, plus "... document five or more years' experience immediately preceding the date of application for licensure to operate a crane as defined in this act." Section 506(a)(3) of the act further provides that "Licenses granted under this provision shall be issued only for the operation of cranes where documentation, acceptable to the board, has been provided. Licenses issued pursuant to this section shall only authorize the operation of a crane within the experience documented and accepted by the board."

From the Waugh Amendment arises an issue not contemplated, or at least not discussed, when the Civera Amendment was offered in the House of Representatives. Under the Civera Amendment, as well as under the current pathway for licensure without certification by practical examination in § 6.22, there is a clear, objective standard for determining which type of crane or cranes an individual is qualified to operate. Passing a practical examination that assesses competence and skill in operating a particular type of crane demonstrates to the Board which type of specialty license may be issued to an applicant. For example, if an applicant passed the tower crane practical examination, then the Board knows that the applicant is eligible for a license to operate a tower crane.

However, in the absence of a passing score for a specific examination that demonstrates the type of crane for which an applicant is qualified, the Board will possess documentation that proves an applicant's competence and skill with a particular type of crane. As a result, the extensive debate that occurred in the House of Representen-

tatives between Representatives Fairchild, Sturla and Civera loses some of its value in amplifying legislative intent as to how the Board is to evaluate experience under section 506 of the act.

Under the Civera Amendment, it appeared that the legislative intent was for the Board to credit all experience obtained in operating all types of cranes, so long as a significant amount of the 5 years of experience regarded the specific type of crane for which the applicant sought licensure. The rationale behind this thinking is easy to understand, namely, that instead of passing a written examination for a specific type of crane, the Board could accept overall experience as a substitute.

By detaching the element of experience from the practical examination, then, the Waugh Amendment requires the Board to substitute experience not only for the assessment of a written examination, but also the assessment gained from a practical examination. Thus, the second and third sentences of section 506(a)(3) of the act, which state "Licenses granted under this provision shall be issued only for the operation of cranes where documentation, acceptable to the board, has been provided. Licenses issued pursuant to this section shall only authorize the operation of a crane within the experience documented and accepted by the board," acquire added significance under the Waugh Amendment and the final version of Act 100, as adopted.

Based upon this analysis, the Board determined that it would need to have a procedure of documentation that would allow its staff to analyze each individual applicant's qualifications to operate a specific type of crane. In designing this procedure the Board turned to the established, familiar and time-tested practices employed by other licensing boards within the Bureau. The State Board of Accountancy, the State Board of Certified Real Estate Appraisers and the State Board of Professional Engineers, Land Surveyors and Geologists (Engineering Board) require documentation of experience, to cite three examples.

However, these three boards, as well as nearly all of the other licensing boards that require experience documentation, have one key requirement that a new board like the Board cannot mandate. Boards require a currently licensed individual who has supervised the applicant to attest to the accuracy of the documented experience. It is unusual for a board to allow the applicant to self-verify his own experience without corroborating verification by a supervising licensee.

The reason for this requirement is clear. It is fundamentally unreliable to take the applicant's uncorroborated claims. The Board was aware of evidence to suggest that self-verification is, in fact, unreliable. The only other state known to allow for licensure without certification is West Virginia. Based upon the reports from that state, the Board determined that it could not prudently rely upon an applicant's uncorroborated self-verification. Since there are no licensed crane operators in this Commonwealth, the Board cannot require an applicant to have documented experience verified by a supervisor who is a current licensee.

In addition, the Board recognized that some of the individuals that would apply for licensure by experience would be self-employed and proprietors of their own companies. Therefore, it would not even be possible to allow the applicant to obtain verification from a third-party employer because that would, in effect, also constitute uncorroborated self-verification.

Another factor that the Board considered is the effect of OSHA's negotiated rulemaking. When the negotiated rulemaking is expected to take effect in 2014, it may have the effect of excluding this class of licensees from working in the construction industry. Certification would be required by OSHA to operate a crane in a construction setting 4 years after final promulgation of the negotiated rulemaking. At that point, the grandfathered licensees would continue to be eligible to operate a crane under the Board's jurisdiction in nonconstruction settings that may include, for example, quarrying or general industry.

Accordingly, the Board determined that it is in the interests of licensees as well as public safety to establish a procedure under section 506(a)(3) of the act that is rigorous and reliable. The standard may be a challenge for applicants to meet, but a higher standard will allow the Board and the individuals granted licenses under this section to argue credibly to Federal authorities that licenses issued under this provision are substantially equivalent in quality to a license issued with certification, and thus have a credible basis on which to request relief from OSHA. By no means can the outcome of an appeal be assured, but the Board concluded that it was a more responsible position to assume, and one that was more consistent with legislative intent, than the alternative of adopting a lax standard that may, in the space of a few years, be rendered worthless by National regulations.

Based upon these considerations, the Board looked to the procedure used by the Engineering Board to provide a starting point or template for its regulations. Of the 29 licensing boards in the Bureau, the Engineering Board has the most in common with operation of cranes. Looking to that precedent, the Board developed the criteria of required documentation.

The Board found that several factors were critical to properly evaluate an individual's experience and qualifications to operate a crane. Those criteria include verifiability of information, physical fitness and ability to safely operate a crane, sufficiency of the quantity of experience and crane specialty experience.

#### *The principle of verifiability*

The first principle that the Board seeks to address through its application process is that the information that is supplied by the applicant can be verified as true and correct. To accomplish that objective, the Board discussed the possibility of requiring applicants to produce some type of business records prepared by independent third parties that would supply information regarding crane specialties and amount of experience. The Board believed that documents prepared by third parties at the time that the applicant actually performed the work would provide an inherently high degree of reliability since none of the information could have been created in contemplation of a future application for licensure.

Based upon the combined experience of the four professional members, the Board determined that, unfortunately, there business records in the industry are not routinely created by an independent third party that would supply the information that is required to assess an individual's competence to operate a crane. In fact, there are few business records that would be prepared contemporaneously at the time the work was performed that would identify the crane type and the number of hours worked on a particular type of crane.

In light of these limitations, it became apparent to the Board that it will be necessary for the professional Board members to scrutinize each application to determine if the applicant's documented experience is credible.

The Board identified several types of business records that would make the process more efficient. IRS Form W-2 as required in § 6.23(b)(1) will provide reliable documented evidence of the applicant's employers over a 5-year period. Alternatively, if the crane operator were self-employed during all or part of that 5-year period, IRS Form 1099 would identify the prime contractors who retained the applicant's services. These forms would also tend to supply corroborating evidence of the amount of work that the applicant performed over that same period.

The Board noted, though, that these documents by themselves would not supply evidence whatsoever as to whether the applicant actually worked as a crane operator rather than in some other capacity. The Board took note of the fact that many individuals who work as a crane operator are also qualified to operate other heavy equipment. Therefore, these documents would only identify source of employment and not actual qualifying experience.

For applicants who worked as independent contractors for all or part of the previous 5-year period, certificates of insurance for policies of comprehensive general liability insurance also supply a central source of information. An insurer would be able to supply a comprehensive, independent source of information regarding the type of work that the applicant performed, where the work was performed and whether claims or injuries arose from the applicant's work.

*The principle of physical fitness and ability to safely operate a crane*

The Board recognized that OSHA's negotiated rulemaking and ASME's standards require a physical examination performed by a physician to confirm the individual's physical ability to operate a crane. Based upon those two standards, the Board determined that it is necessary for licensees to demonstrate their physical fitness. Therefore, under § 6.23(e), the Board requires the applicant to aver subject to the penalties for perjury that the applicant passed a physical examination meeting the requirements of ASME B 30.5.

*The principle of sufficiency of quantity of experience*

The act requires 5 years of experience to be documented in a manner acceptable to the Board. However, the act is not more specific. As a general rule, there are 2,000 hours in a standard work year and 10,000 work hours in a 5-year period. On one extreme, the 5 years' experience requirement could be interpreted to mean that an individual could document that he operated a crane for 1 day 5 years before the date of application and 1 more day on the date before the application. The Board viewed that interpretation as unreasonable and unsafe.

At the other extreme, the act could be interpreted to mean that an individual would need to document 10,000 hours of crane operation during the 5-year period. This, too, seemed unreasonable to the Board, especially in light of the experience of the professional members that many people in the profession are qualified to operate other apparatus, as well as the fact that construction is a somewhat seasonal work activity.

Looking to West Virginia, the Board noted that uncertified operators were required to document 2,000 hours in a 4-year period. Viewing that standard as a happy medium between the two extremes, the Board opted for a requirement of 5,000 hours of experience documented over a 5-year period. See § 6.23(b)(2).

To permit inspectors to verify that information, the Board requires information about the particular projects

where the crane operation was performed. The required information includes the name and business address of the general contractor or other person who employed or engaged the services of the applicant, whether the applicant worked as an employee or independent contractor on the project, the location of the project and the number of hours worked on the project. See § 6.23(c)(1), (2), (3) and (6).

The Board also requires an applicant under § 6.23(c)(5) to identify incidents in which an injury 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. The Board would not give credit for hours on a project in which an incident occurred as a result of the applicant's failure to exercise reasonable care in the operation of the crane.

Under § 6.23(f), the Board also requires reporting of past assessment results. The Board will not give credit for experience to an individual who has submitted to an assessment for crane operation within the 2-year period immediately preceding the date of application and failed that assessment. The Board holds the position that it cannot reasonably accept experience as evidence of competence if the individual has objective testing results demonstrating a lack of competence.

*The principle of documented crane specialty experience*

Section 506(a)(3) of the act states that a license based upon experience must only be issued to operate the specialty crane for which the individual has supplied acceptable documentation. Therefore, for each project, the applicant shall identify the type of crane that he operated. The Board cannot give credit for time operating a crane that is not covered by the act.

The Board will not require 5,000 hours for each type of specialty crane, that is, tower, lattice boom crawler, lattice boom truck, telescopic boom fixed control and telescopic boom rotating control cranes. However, the Board will require at least 5,000 hours overall and 1,000 hours of experience in the specialty, free of incidents resulting in injury as described in § 6.23(c)(2).

Because the licensee does not possess certification, the Board determined that it would be necessary to provide the individual with a declaration identifying the specialty type of crane that the licensee is qualified to operate. The provision of this additional declaration will result in the charge of an additional fee in the amount specified in § 6.4 (relating to fees).

An individual licensed under this section shall possess both the license and the declaration to hold himself out as a crane operator. See § 6.23(h).

*Renewal of License*

*§ 6.31. Duration of license.*

Under section 504 of the act (63 P.S. § 2400.504), licenses will be issued for not more than 2 years. To clarify the statutory language, this section states that the license is only valid until the end of the biennial licensure period. In other words, if a person obtains a license midway through the biennial license period, the license will not last for 2 years, but only for the balance of the licensure period. This is consistent with other licensing bodies.

In developing this proposed rulemaking, the Board was advised that the anniversary date for renewal may be adjusted by several months for administrative reasons within the Bureau. Therefore, if inaugural licenses are

issued in October 2010, licensees should be aware that the renewal period may not occur in October 2012. Appropriate measures will be taken to communicate with licensees regarding the renewal date.

§ 6.32. *Renewal of license.*

The procedures for renewal of licenses will vary depending on the initial pathway to licensure. For persons who hold a license through certification, those individuals will be required to attach proof of current, valid certification with the renewal application. Board administrative staff will be able to independently verify that information with the certifying organization. The Bureau encourages the use of online renewal of licenses. Online renewal does not allow for the submission of documentation to accompany the renewal. Therefore, licensees who renew online will be required to answer a question in the online process verifying that they possess current and valid certification. The answers to these online questions are subject to penalties for unsworn falsification to authorities. Administrative staff will have the ability to independently verify the licensee's certification with NCCCO or another certifying organization. NCCCO certification runs on a 5-year cycle.

Under ASME and NCCCO requirements, an individual shall submit to a physical examination by a physician as evidence of the ability to meet the physical demands of operating a crane. The physical examination must be repeated every 3 years. Accordingly, in § 6.32(a)(5), the Board requires a certified crane operator to aver that the physical examination has been performed.

For individuals who have not been certified, whether they obtained licensure through passing the practical examination or by documenting 5 years of experience, the Board requires the individuals seeking renewal to state that physical examinations were performed by physicians that satisfy the requirements of ASME B 30.5 in § 6.32(b)(2) and (c)(2).

With respect to individuals who have been licensed without certification, the question arises as to how continued competency could be determined. The Board considered this question because of a desire to assure that individuals seeking license renewal have maintained proficiency and remain abreast of technical developments in the industry. The continuous critical examination and revision of standards and procedures in the industry has been discussed at length previously in this preamble in reference to OSHA and ASME proceedings. This question is answered with respect to certified crane operators by the OSHA and ASME requirement that crane operators be recertified every 5 years. The process of recertification includes a written examination, plus a practical examination or documentation of 1,000 hours of crane-related experience over the 5-year recertification period.

The answer to this same question required the Board to analyze the problem and extrapolate from the act a satisfactory alternative. The act explicitly prohibits the Board from requiring certification as a condition for renewal of a license obtained under section 506(b) of the act. Still, the fact that the General Assembly subjects licensees to the same biennial renewal requirement demonstrates the legislative intent that licensees prove some degree of continued competency as a prerequisite to renewal of the license.

For individuals who have obtained licensure without certification by practical examination under section 506(a)(2) of the act and § 6.22, the Board requires in § 6.32(b)(1) that the individual demonstrate continued

proficiency by a passing score on the NCCCO practical examination administered during the biennial period immediately preceding the date of application for renewal. The Board also requires that the licensee submit scores for other assessments administered during the biennial period in § 6.32(b)(3). Consistent with of §§ 6.22 and 6.23, the Board views a failing score obtained after a passing score as prima facie evidence of a lack of proficiency or skill that may justify a refusal or restriction of the license.

The Board considered a requirement that licensees under this section obtain a passing score on a practical examination over a 5-year cycle. However, the Board recognized that there would be additional costs, enforcement challenges and administrative complications for this option. If the Board were to adopt this alternative, each licensee under section 506(a)(2) of the act would have his own 5-year anniversary for passing the NCCCO practical examination. Therefore, the Board's administrative staff would have additional responsibility and expense of monitoring each licensee's personal 5-year cycle for passing the practical examination.

Another consideration weighing against the option of a 5-year cycle is that it would terminate during a biennial period. There are two negative consequences arising from this fact. First, the Board would need to decide whether the failure to repeat the practical examination by the 5-year anniversary date constituted grounds for a disciplinary action and lead to a suspension or restriction of a license in midterm. If it would constitute grounds for disciplinary action, as it would for certified crane operators who fail to be recertified, the Board foresees additional expense and demands on administrative resources due to an increased number of disciplinary actions. If not, licensees under this section would, in effect, have as many as 7 years to obtain a passing score on the practical exam, that the 5-year anniversary could end immediately after the license has been renewed and the licensee would not need to pass the practical exam for another 2 years when the next renewal occurred. A 7-year delay in demonstrating continued competency represents an unreasonable risk to public safety.

The second negative consequence of a termination of a 5-year cycle in midterm is that it would effectively create a multiple standards for licensees in this classification. That is, as previously noted, a licensee whose 5-year anniversary date ends just after the renewal of the license could effectively get 7 years until taking the practical examination again. The individual whose anniversary date falls just before the expiration of a biennial period will need to take the practical examination in 5 years. Because each individual will have a different anniversary date, the length of time to complete the practical examination will vary from person to person.

The Board concluded that to avoid additional cost of administration, to better confirm a licensee's continued competency, to avoid multiplicity of enforcement actions and to avoid arbitrary and disparate treatment of licensees within the same class, the only reasonable option would be to require biennial passing scores on the NCCCO practical examination as a condition for renewal.

For individuals who have obtained a license without certification by experience, under section 506(a)(3) of the act and § 6.23, the Board would require the licensee to satisfy conditions that parallel the requirements for licensees without certification by practical examination. Those requirements include that the individual submit documentation in the form described more fully in

§ 6.23(c)(1) that demonstrates that the individual has at least 2,000 hours of experience in operating a crane during the biennial period. The 2,000 hours of experience follows the reasoning employed for initial licensure, that is, that the licensee document experience equivalent to 1/2 of the standard 4,000 work hours for the biennial period in the operation of a crane.

The Board also requires in that the individual submit the results of an assessment administered in the previous 2 years in § 6.32(c)(3). As discussed in regard to § 6.23(f), the Board will consider a failing grade in an assessment to be prima facie evidence of a lack of skill or proficiency that may justify a refusal or restriction of the license.

Section 6.32(c) also expresses that a failing score on an assessment that is not cured with a subsequent passing score constitutes grounds for denying renewal.

§ 6.33. *Initiating and terminating inactive status.*

Section 504(b) of the act allows an individual to apply for inactive status without fee. The act further provides for reinstatement of the license when the license has remained inactive for a period of 5 consecutive calendar years by requiring certification.

In the Board's view, this means that if an individual who obtained a license without certification remains on inactive status for a period of 5 years or more, then that individual cannot reinstate the license. Rather, the individual shall become certified and apply for a new license under section 502 of the act. This is a regulation that is consistently followed by the licensed professions and occupations under the Bureau's jurisdiction.

Based upon this principle, the Board makes this regulation explicit by providing that a license without certification has a maximum inactive term of 5 years less 1 day in § 6.33(b). A license without certification that has been revoked, which remains inactive for 5 years or more, or which has been suspended and not renewed for 5 years or more, would terminate and cease to exist. Re-entry to the licensed profession after one of these three events could only be accomplished by an initial application for licensure under section 502 of the act.

With respect to licenses that are on inactive status when the biennial period expires, the Board interprets the act consistently with the other licensing statutes under the Bureau's jurisdiction. To reinstate a license that was inactive or suspended at the end of a biennial period, other boards require the licensee to have satisfied the continuing education and experience criteria that the licensee would have been required to complete if he had been active and renewed the license on time.

The Board considered the problem of a person who hold a license without certification by experience whose license remains inactive for a period that extends beyond the biennial period when his current license becomes inactive. For purposes of illustration, the Board considered the following hypothetical example: An individual has a license without certification by experience that is issued on October 1, 2010, and is set to expire on October 1, 2012. The licensee applies for inactive status beginning on October 1, 2011, and ending on October 1, 2013.

Under this hypothetical situation, on October 1, 2013, the licensee would need to apply to reactivate the license and also to renew. To renew, the licensee would need to submit documentation of 2,000 hours of experience. However, because the licensee was only lawfully permitted to operate a crane for a 1-year period from October 1, 2010, to September 30, 2011, it would be very difficult for the

individual to satisfy the documented experience requirements for renewal. The individual would have had to accumulate 2,000 hours of experience within the span of a single year when the license was active.

This hypothetical example illustrates that, as a practical matter, the Board expects that an individual who holds a license without certification by experience will find it increasingly difficult to reactivate the license as a period of inactivity lengthens. For all intents and purposes, it would be nearly impossible for a license without certification by experience to be reactivated after a period of inactivity exceeding 2 years. The individual would need to document experience of 4,000 hours (2,000 hours for the first biennial renewal period that was bypassed as a result of inactive status, plus an additional 2,000 hours for the second biennial renewal period). However, the individual in this case would be unable to acquire 4,000 hours of experience, at least in this Commonwealth, because they were not licensed to operate a crane in this Commonwealth. It would only be possible if the individual were able to lawfully operate a crane in another jurisdiction during the period when the license from the Commonwealth was inactive.

The Board considered the type of problem previously outlined. One alternative solution would be to allow individuals who lacked experience to renew their license and operate a crane even after extended periods of inactivity or without documenting continued proficiency by experience. The Board examined the legislative history and did not find evidence to support that view as the legislative intent. The legislative record does not contain evidence that the General Assembly believed that 5 years of experience justifies granting a lifetime license to operate a crane without demonstration of continued proficiency and skill.

On the contrary, for the same reasons discussed in regard to § 6.32 (relating to renewal of license), the Board determined that the General Assembly expressed a preference for crane operators to demonstrate their proficiency through certification. Licensure without certification is the legislative exception to the rule. However, the General Assembly found that exception to be justified because of a period of uninterrupted experience as a substitute for objectively tested proficiency.

In the absence of documented experience, the legislative exception is no longer satisfied. Therefore, to advance legislative intent, the Board will require documented experience for each consecutive biennial period as a condition of renewal for that biennial period. Inactive status runs contrary to the need for continued, uninterrupted experience and obviates the rationale for the legislative exception. Accordingly, the Board has concluded that the license without certification by experience issued under § 6.23 is a license that must continue uninterrupted, but for brief periods of inactivity.

The problem of inactive status for a period of less than 5 years is not the same for a license without certification by practical examination issued under § 6.22. A licensee who goes on inactive status for a period in excess of 2 years but less than 5 years would still be required to take and pass the practical examination administered by NCCCO. Actual experience operating a crane is not a prerequisite to taking the practical examination. Therefore, a licensee returning from inactive status could take the practical examination and obtain a passing grade and have the license reinstated. The practical examination, therefore, is evidence of continued proficiency and justifies the exception to the legislative rule.



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

Section 6.34 formalizes the act regarding the identification of the licensee and the record address at which service can be made. The Board anticipates that nonresidents may apply for licensure in this Commonwealth and therefore the Board wants licensees to have a clear understanding that they shall maintain an accurate address with the Board and that service of process will be attempted at the licensee's address of record.

*Disciplinary Actions*

§ 6.41. *Unlicensed crane operation.*

To define the offense of unlicensed crane operation, the Board rephrased the statutory provision in section 501 of the act in terms of a prohibition in § 6.41(a).

Section 6.41(b) then defines offering services or holding out as a crane operator. There are four general ways in which the Board defines "offering services" or "holding out as" a crane operator.

First, express words or conduct offering services or holding out as a crane operator constitute a violation of this section. Second, a failure to disclose the lack of a license would, by itself, constitute a violation under circumstances that would require one.

The third way in which the violation may occur is through words or conduct that would reasonably cause a third person to believe that the individual is a crane operator, holds a license as a crane operator or possesses the skill, knowledge, authority or expertise to operate a crane. The Board adapted the phrase "... would cause a third person to reasonably believe..." from the *Restatement 2d, Torts*. The Board concludes that this language is a familiar legal formula that effectively states an objective standard by which a fact finder could determine whether an utterance or conduct constitutes a material misrepresentation of fact.

The Board considered an alternative phrase "justifiably believe" that is also used in the *Restatement 2d, Torts*. However, "justifiable" is used in the context of a misrepresentation that actually causes a person to change their position in reliance upon that misrepresentation. The Board does not think that proof of actual reliance should be a required element of proof for this violation. The inquiry should not lead to whether a person, in fact, relied upon the misrepresentation. The violation occurs when the misrepresentation occurs, even if no other person acted upon that misrepresentation. Therefore, the only inquiry should be whether a reasonable and prudent person would have believed the misrepresentation, and not whether someone actually believed the misrepresentation. This section intends to discipline misrepresentations, even if they had no measurable effect.

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

The Board's proposed rulemaking attempts to comprehensively cover forms of impairment that may compromise safety on the worksite. The Board's primary regulation in § 6.42(a) is that an individual may not operate a crane with a physical or mental impairment that may reasonably be expected to affect the operation of a crane. By this section, the Board establishes the principle that it is not whether the licensee subjectively believes that he can safely operate a crane. Rather, the Board would apply an objective standard of whether a reasonable and prudent person, knowing the condition of the licensee, would believe that it would be unsafe for the licensee to operate a crane.

In addition to this general rule, § 6.42(b) also requires that a crane operator disclose an impairment that would reasonably be expected to affect the safe operation of a crane. Plainly, the Board would prefer that an impaired individual refrain from operating a crane. However, in the event that an impaired licensee operated a crane, the individual would be subject to a second violation for failure to disclose the impairment.

Section 6.42(c) applies to a crane operator who is self-employed or a principal of a crane company. When a crane operator is not an employee, the corollary to § 6.42(b) is that the principal, owner or self-employed individual be required to disclose an impairment to a property owner, prime contractor, project manager or project superintendent or another person who is in charge of the premises where the work is performed. These terms are well known and familiar in the crane industry.

The Board also considered other circumstances in which a licensee has a duty to disclose the existence of an impairment that may reasonably be expected to affect the licensee's ability to safely operate a crane. When an individual files a claim for benefits because of a disability, it may be inconsistent to also enjoy a privilege of holding a valid license to operate a crane. For example, a claim for Social Security disability benefits requires the claimant to assert total disability. Under those circumstances, the licensee should contemporaneously request inactive status. If the licensee does not apply to be placed on inactive status, the Board believes it is necessary to have the authority to suspend the individual's license.

When the individual has not claimed total disability, the licensee should not be in the position of making a self-determination of whether the disability would safely affect the operation of a crane. For that reason, when the licensee asserts claim for benefits or compensation for a personal injury, § 6.42(d) requires the licensee to notify the Board so that an independent evaluation can be conducted to determine whether the licensee can safely continue to operate a crane with the alleged impairment. This will require a case-by-case evaluation of reported conditions in order to determine the licensee's continued fitness.

For the same reasons stated with respect to § 6.42(d), the Board also requires in § 6.42(e) that a licensee report a medical diagnosis of a condition that may reasonably be expected to affect the safe operation of a crane. As with § 6.42(d), when a licensee has been diagnosed with a condition that impairs the ability to safely operate a crane, the proper action is to request inactive status while the condition persists. However, where the crane operator has not taken inactive status, the Board should be authorized to take disciplinary action for the failure to disclose an impairment.

The Board also requires that a licensee report the institution of criminal proceedings in § 6.42(f). Not every criminal complaint or information will result in disciplinary action. However, the Board concludes that requiring the reporting of this information will allow the matter to be evaluated on a case-by-case basis to determine whether disciplinary action should be taken, particularly under section 705 of the act (63 P. S. § 2400.705), authorizing temporary and automatic suspensions.

When a trainee has criminal proceedings pending, that individual shall obtain permission from the Board to act as a trainee under § 6.42(g). As with § 6.42(f), the Board will not refuse permission in every case, but the reporting requirement will allow the Board to evaluate the matter

on a case-by-case basis to determine whether the nature of the alleged offenses warrant a restriction on the trainee.

*§ 6.43. Aiding and abetting unlicensed crane operation.*

Section 501(b) of the act provides that an individual, corporation, partnership, firm or other entity may not employ an individual to operate a crane or allow or direct an individual to operate a crane unless the individual is licensed. For this proposed rulemaking, the Board has taken the statutory prohibition and enumerated three specific prohibited acts in § 6.43(a).

First, using the statutory language, this section prohibits a business entity from using its employee as an unlicensed crane operator. Second, this section uses the statutory language prohibiting a business entity from passively permitting an unlicensed individual to operate a crane, or to order or instruct an unlicensed individual to operate a crane.

The Board interpreted this second statutory prohibition to include the situation when a business entity uses a relationship other than the master-servant or employer-employee relationship. The intent behind this broader language was to prohibit attempts to circumvent the prohibition on unlicensed crane operation by using independent contractors. To make its interpretation more explicit, the Board added the third prohibitory clause regarding retention or hiring of an unlicensed crane operator as an independent contractor. This third clause is not redundant, though. Section 6.43(a)(2) is broader than the independent contractor language. In the Board's view, to "allow or direct" an unlicensed individual to operate a crane would also include circumstances in which a business entity uses a third party or intermediary to engage the services of an unlicensed individual, but never enters into a direct relationship with the unlicensed person as an employee or as an independent contractor.

Because business entities are not licensed, the Board foresees a problem of enforcement of unlicensed crane operation against business entities. An unlicensed individual who operates a crane may be subject not only to civil penalties, but the Board may also issue an administrative cease and desist order against an individual to enjoin that person from operating a crane. However, since business entities are not licensed, the Board would not be able to issue cease and desist orders to a business entity to remove the business entity from the crane industry.

In response to this problem, the Board incorporated a regulation restricting individual licensees from working for repeat offender business entities in § 6.43(b). This three strikes rule applies to a business entity that has been found in violation of unlicensed crane operation three times in the space of 4 years. Individual licensees would be barred from operating a crane for these adjudicated chronic violators.

A business entity that cannot employ licensed crane operators would be effectively barred from lawful participation in the crane industry in this Commonwealth for a period of at least 1 year. However, that stiff penalty is reserved for serious offenders. The standard is not three offenses committed in a 4-year period, but three separate findings by the Board in the course of 4 consecutive years. In other words, under this provision a strike is called on the date of an adjudication, and not on the date of an offense.

Given the length of time that disciplinary actions take to investigate and prosecute, in practical terms, the recidivist conduct that would be penalized by this provi-

sion would likely involve the commission of three offenses in less than 36 consecutive months. In light of this type of obstinate and flagrant repetitious misconduct, the Board believes that this type of sanction is appropriate as a means of protecting the public from willful disregard for safe and legal standards of crane operation and to effectively police and enforce the act.

The Board also provided for a procedure and standards for removing the sanction in § 6.43(d) and (e). After 1 year, a business entity may petition for the removal of the sanction and as a protective measure the Board may place restrictions on individual licensees working for the business entity, or require the business entity to post a bond, other security or impose other restrictions on the business entity's activities as a condition of permitting licensees to work for the business entity.

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

With respect to standards of conduct, the Board begins by restating its statutory authority to levy a civil penalty upon a licensee and impose a range of sanctions upon licensees under its jurisdiction.

Subsection (b) enumerates certain acts, errors, conditions or omissions that may provide the basis for disciplinary action. These include negligence and the inability to use reasonable skill due to mental or physical illness or condition.

The Board also distinguishes between two types of impairment due to substance use or abuse. Subsection (b)(3) is intended to cover operation of a crane while actually impaired. Subsection (b)(4) would not necessarily require proof of actual impairment during the operation of a crane, but can be proved by evidence that the individual was dependent or engaged in a pattern of substance abuse during the period of time when he operated a crane.

In subsection (b)(4), the Board tracked the language of the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV) criteria for substance abuse. Subsection (b)(4)(i) fits the DSM-IV definition for "substance abuse" which requires evidence that the individual has had recurrent substance use resulting in a failure to fulfill major role obligations at work, school or home; recurrent use in situations in which it is physically hazardous; recurrent substance-related legal problems; or continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

Subsection (b)(4)(iii) requires the Commonwealth to present evidence of dependence. Applying the DSM-IV criteria, the evidence would include a diagnosis by an qualified health care practitioner or three or more of the following occurring any time in the same 12-month period: (1) tolerance; (2) withdrawal; (3) the substance is often taken in larger amounts or over a longer period than intended; (4) a persistent desire or unsuccessful efforts to cut down or control substance use; (5) a great deal of time is spent to obtain the substance, use the substance or recover from its effects; (6) important social, occupational or recreational activities are given up or reduced because of substance use; or (7) the substance use is continued despite knowledge of having a persistent physical or psychological problem that is likely to have been caused or exacerbated by the substance.

Under the DSM-IV, "full remission" can be early or sustained. Early full remission means that for at least 1 month, but for less than 12 months, criteria for depen-



dence or abuse have not been met. Sustained full remission describes remission of 12 months or longer. Under the final clause of § 6.44(b)(4)(ii), therefore, if an individual has become dependent on a substance, that licensee should immediately refrain from operation of a crane and not return to crane operation until he has been in full remission for at least 1 month.

Licensees would also be subject to disciplinary action for violations of the act, the Board's regulations, fraud or deceit regarding licensure or crane operation, or conviction for a felony or crime of moral turpitude.

Insofar as the Controlled Substances, Drug, Device and Cosmetic Act is concerned, § 6.44(b)(8) provides that a licensee could also be disciplined for a violation that falls short of a conviction. This would include dispositions such as probation without verdict under Commonwealth law or similar provisions of other states.

Disciplinary action also could be based upon failure to adhere to applicable ASME standards, other accepted standards in the industry or with knowledge of conditions or circumstances that operation of the crane posed an unreasonable risk of harm. Normally, a prosecution for a violation of any of these three provisions would require the testimony of an expert to demonstrate the standard to be applied, or if an ASME standard or other industry standard were not applicable to the specific situation in question, expert testimony would be needed to establish why the conditions or circumstances made crane operation unsafe.

A licensee would also be subject to discipline for violation of a lawful order of the Board, or for failure to properly supervise a trainee as covered by the provisions of § 6.13.

Another ground for disciplinary action would be the failure to report an incident, condition or event as defined by § 6.42. The Board would also consider disciplinary sanctions for the failure to follow an OSHA safety standard or other applicable safety standard, regardless of whether the violation involved crane operation. Because crane operators also perform other jobs, including engineering work, construction supervision and operation of other heavy equipment, the possibility exists that a licensee may exhibit unsafe or reckless conduct outside of crane operation that may warrant disciplinary action.

Section 6.44(b)(16) regards convictions or violations for drunk driving and § 6.44(b)(17) regards to convictions or violations for criminal conduct that exhibits intentional or reckless conduct that poses a threat of bodily harm to others. In the Board's view, a person who has a history of unsafe behavior should be accountable for such conduct as a condition for the license to operate a crane.

The Board would also provide for the discipline of licensees for retaliatory conduct against others in § 6.44(b)(18). The language of this paragraph was modeled on Federal motor safety antiretaliation provisions for commercial truck drivers and on the Whistleblower Law (43 P.S. §§ 1421-1428). In addition, the Board notes that it believes that the Whistleblower Law would apply independently to persons who report violations of the act or the Board's regulations.

The Board's licensees may not retaliate against another person for four reasons. First, the Board wishes to protect its own licensees who refuse to operate a crane in violation of applicable standards. This provision would apply, for example, when a project superintendent or foreman is also a licensed crane operator and orders another licensed crane operator to violate applicable

crane standards. Second, the Board would prohibit retaliatory conduct committed by one of its licensees against another licensee who files a complaint or report of a safety violation, or who is a witness in a proceeding for a crane safety violation. Third, the Board would prohibit its licensees from retaliating against persons who are not licensed crane operators, but who work in some other integral role in the operation of cranes, such as a rigger, signalperson, inspector or related jobs. Fourth, the Board would sanction its licensees who retaliate against another person who performs a duty assigned or directed by a licensed crane operator, but who does so under duress or under protest. For this fourth violation to be found, the Board would need to make a determination that an individual performed a job as assigned or directed by a licensed crane operator, that the person had a bona fide belief that the operation was unsafe and that the individual sought corrective or remedial measures from the lift director but the request was denied.

Finally, the Board expressly recognizes affirmative defenses in several enumerated cases. When a licensee is charged with negligence, violation of ASME or industry standards, or general unsafe operations under § 6.44(b)(1), (9), (10) or (11), a licensee may plead and prove as an affirmative defense justifiable reliance upon the professional advice of a lift director or a site supervisor. The Board recognizes that a licensed crane operator shall exercise sound, independent judgment in the operation of a crane. However, both ASME standards and OSHA regulations recognize a hierarchy of responsibility in the field. The crane operator may rely upon the professional expertise of another person who holds a higher position in the hierarchy of responsibility, namely the lift director or the site supervisor.

The Board also recognizes that a crane operator may justifiably rely upon the advice of a licensed health care practitioner in determining one's fitness to work and operate a crane. The Board believes that the recognition of these two affirmative defenses will encourage licensees to consult with professionals and fully disclose their concerns about crane operations or their personal health issues to protect themselves against future disciplinary action. Furthermore, the Board believes that encouraging early disclosure and communication about potential problems will promote safety and resolve problems at an early stage.

#### *Certifying Organizations*

##### *§ 6.51. Certifying organizations.*

Under section 102 of the act (63 P.S. § 2400.102), the Board has been empowered by the General Assembly to designate organizations as certifying organizations. The statutory criteria include a requirement that the organization offer a testing and certification program that is equivalent to NCCCO, that it meet applicable requirements of ASME and that it be accredited by NCCA or ANSI.

Under this section, the Board provides that it will accept applications for approval as a certifying organization, and that the applications will be considered according to 1 Pa. Code Part II.

The Board considered several issues in drafting this proposed rulemaking. First, the Board noted that the General Assembly's legislative intent was expressed in terms of equivalence to NCCCO certification, which is, by statute, required to be recognized under the law. Notably, the General Assembly did not set forth a standard of comparability or similarity or other verbal standards that

might suggest a greater degree of latitude in the Board's approval of certifying organizations. 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.

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).

*§ 6.52. Application for approval as a certifying organization.*

In addition to the basic identifying information, the Board was concerned about the independence and integrity of the certifying process and the organizations that would issue certification. Notably, NCCCO is only a certifying organization. It does not train or educate people to be crane operators.

The Board considered this fact to be of great importance. Among the licensed professions and occupations, it is rare for a single organization to train or educate individuals, and then assume responsibility for determining whether they should be certified or licensed. The Board believes that the combination of those functions constitutes a conflict of interest.

A business entity or other organization that charges substantial fees to provide a course of education or training would have an interest in skewing the testing process to gain higher pass rates. Clearly, there is a marketing advantage to be gained if an entity can advertise that the graduates of its program or course of study have a higher pass rate. The temptation to manipulate or game the system to gain that advantage is too great to be ignored. The Board believes that the obvious existence of a conflict of interest explains why most licensing bodies keep those functions distinct.

For that reason, the Board requires that an applicant for approval as a certifying organization identify its affiliated corporations or organizations. The Board would not approve as a certifying organization a corporation which owns, or is owned by, a company that owns a training program. The Board does not believe that an applicant with a substantial interest in a training or education program should be permitted to circumvent the barriers against a conflict of interest by forming a shell organization to perform certification. Accordingly, in § 6.52(a)(5)–(7), the Board requires detailed information regarding affiliated corporations or organizations so that potential conflicts of interest may be evaluated.

The Board requires the applicant to identify its accreditations with ANSI and NCCA in § 6.52(a)(8). The Board requires the applicant to provide a narrative description of its testing and certification program in § 6.52(a)(9). The Board noted that NCCCO has entered into a voluntary agreement with OSHA recognizing NCCCO as a certifying organization. In light of the importance of OSHA as a regulatory body in this field, the Board considered this factor to be relevant in determining equivalence. See § 6.52(a)(10).

An organization need not be approved to certify crane operators for all types of cranes under the Board's jurisdiction. Therefore, the Board requires that the applicant specify what ASME standards it is requesting ap-

proval to certify in § 6.52(a)(11). The Board also notes that NCCCO certifies other occupations besides crane operators, including signalpersons and riggers. Therefore, in § 6.52(a)(12), the Board requires that the applicant identify other crane-related certifications that it offers.

Finally, the Board requires that the applicant make an unsworn verification of its application and state that it is equivalent to the testing and certification used by NCCCO, and that the applicant report any disciplinary actions, judgments or civil or criminal actions against it or its affiliated organizations in another state. The Board believes that in performing its function to approve certifying organizations, it has a duty to protect prospective licensees from organizations with a history of unfair or deceptive practices or conduct in other states, and that this history would be grounds for disapproval.

The Board also requires the applicant to attach supporting documentation to the application and to pay the requisite fee.

*§ 6.53. Required and discretionary bases for disapproval of an application for approval as a certifying organization.*

The Board distinguished between required and discretionary bases for disapproval of an application to be a certifying organization. In the Board's judgment, there are several criteria that automatically disqualify an applicant asserting equivalence to NCCCO. Those factors include the failure to possess both ANSI and NCCA accreditation, the absence of a voluntary agreement with OSHA, the absence of an affiliation with a program of education or training in crane operation, the failure to verify the averments in the application, or a material statement on the application that the applicant knows or has reason to know is false.

The failure to verify the application or the inclusion of a material false statement require no further justification for inclusion. With respect to accreditation, the Board noted that when the act was introduced in the General Assembly, NCCCO had been accredited by NCCA, but not by ANSI. However, NCCCO earned ANSI accreditation by September 2007, a little more than 1 year before final passage of Act 100.

The Board considered the statutory language of the definition of "certification." The first principle of the definition is equivalency with NCCCO. At the time of the initial drafting of the bill, either form of accreditation would have satisfied the equivalency test because NCCCO only had been accredited by NCCA and ANSI accreditation actually exceeds or is superior to NCCA accreditation.

The Board came to this conclusion after examining the accrediting processes of each organization. NCCA bases its accreditation entirely upon a documentary submission. It does not conduct a site visit to independently verify or confirm the statements made by an organization seeking accreditation. In contrast, ANSI conducts an onsite assessment and is the only personnel accreditation organization that meets nationally accepted practices for accreditation bodies. In addition, the process used by ANSI to accredit certification bodies is based on an international standard (ISO/IEC 17011).

While NCCA is recognized as an accrediting body, the Board concluded that its standards are minimal. In contrast, certification that has been accredited by ANSI can be recognized internationally. The Board determined that the General Assembly intended to provide crane operators licensed in this Commonwealth with a competi-

tive advantage in the global marketplace by assuring that their license would be consistent with international standards of personnel certification.

Based upon this reasoning, the Board concluded that the equivalency test could only be satisfied by possessing both forms of accreditation.

In consideration of the primacy of the anticipated OSHA regulations, the Board concluded that a voluntary OSHA agreement was also an indispensable and objective criterion by which to measure equivalency. Since NCCCO's voluntary agreement with OSHA was expressly predicated in part on the independence of NCCCO from training or education programs, the Board also deemed that factor to be essential. The Board believes that approval of organizations which offer a certification certain to be accepted by OSHA as a valid form of certification protects the public, as well as licensees, by assuring that the certification that the individual acquires will be accepted in the marketplace.

The Board determined that there may be other grounds in which the weight of evidence may need to be considered to make a determination of equivalency. If the Board found evidence that the applicant was not independent of a training or education program, even though it did not have an interlocking corporate organization of the sort described in § 6.52(a)(5)-(7), then the Board would disapprove the application. For example, an applicant that had an exclusive contractual relationship to test and certify candidates from a separate organization that trains and educates crane operators may rise to the level of a conflict of interest that violates the need for independence.

Another example of a lack of independence may arise when a certifying organization and a training organization may not have common ownership or a corporate affiliation, but the principals of the two organizations are members of the same immediate family or have other common enterprises or commercial relationships. In these cases, the Board would need to evaluate evidence to determine whether the organizations do, in fact, act independently and have no conflict of interest.

The Board would also evaluate on a case by case basis each applicant with a history of administrative, civil or criminal actions. Minor or isolated infractions would not be sufficient, in the Board's judgment, to warrant disapproval. However, if the history is serious enough, or if there is a pattern of repeated violations, the Board would rely upon such evidentiary findings to base its disapproval.

Finally, if all of the other factors have been satisfied, but the weight of other evidence supports a finding that the applicant does not offer a program of testing and certification that is equivalent to NCCCO, then the Board may disapprove the application. The Board anticipates that this basis for disapproval would be limited to a small number of cases. These cases might include, for example, those in which the Commonwealth has challenged with expert testimony the validity of the applicant's psychometrics for its assessment instruments or the Commonwealth has challenged the validity of the applicant's disciplinary or complaints processes. If the Commonwealth offered evidence demonstrating that these types of components were not valid or performed in good faith, then the Board may, based upon findings of fact supported by substantial evidence, disapprove those applications.

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

The Board spelled out in § 6.54 the procedures by which an application will be evaluated. The Board anticipates that the initial determination of completeness will be made by administrative staff. When an application is incomplete, the Board, through its staff, will make a preliminary determination as to whether there are factors on the face of the application that would automatically disqualify the applicant from approval as a certifying organization. When the application is incomplete and includes criteria that would disqualify the applicant, the Board would notify the applicant of a disapproval, the grounds for disapproval and provide the applicant with notice of the right to a hearing before the Board and the opportunity to supplement the application and cure defects.

When the application is incomplete, but does not appear to have grounds for automatic disapproval, then the Board, through its staff, would notify the applicant of the deficiencies and advise the applicant of the right to supplement the application within 30 days.

When the application is complete, or the applicant has not elected to supplement the application, the Board, through its staff, will forward the application to a third party professional evaluator, to independently evaluate and review the application for equivalency to NCCCO. The independent evaluation would be completed within 60 days, and the evaluator would provide the Board and the applicant with a written report of the findings. The Board anticipates soliciting a request for proposals for this service and issuing a contract to a private contractor.

Upon receipt and review of the independent evaluation, the Board would then make a determination to approve, schedule a hearing or provisionally deny the application. The provisional denial of an application would trigger a notice to the applicant of a right to request a hearing, and if the applicant exercised that right, the Board would schedule a hearing.

After an evidentiary hearing the Board could grant the application in whole or in part, or sustain the disapproval. The applicant would have the burden of proving by substantial evidence that the program is equivalent to NCCCO. The Commonwealth, consistent with the earlier discussion of discretionary and required grounds for disapproval in § 6.53, would be able to offer evidence contradicting the applicant's case. Upon review of the record, the Board would enter findings of fact based upon the weight of evidence offered by the applicant and the Commonwealth.

When the applicant who has received a provisional denial has not exercised the right to a hearing, a final order will be entered disapproving the application. An applicant is not limited in the frequency or number of applications that it submits.

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

The act does not authorize the Board to license certifying organizations, but only to grant approval. The Board's interpretation of the act is that once approved, a certifying organization remains approved indefinitely until it relinquishes its approval voluntarily or circumstances change and it is no longer equivalent to NCCCO.

For this reason, the Board enumerated in detail the contents of orders granting approval in § 6.55(a)(1)-(5),

including the conditions on which approval of the organization is based, and which, if changed, would trigger disqualification.

These conditions of approval include the organization's accreditation with ANSI and NCCA, a condition of voluntary relinquishment of its authority to certify in the event of a loss of accreditation, a requirement of ongoing submission of future accreditation by ANSI and NCCA and a limitation prohibiting the transfer of the approval to another organization. The proposed rulemaking provides that the approval ceases to be effective by operation of law upon the violation of any of these latter requirements.

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

For the same reasons stated in the preceding section, the Board included a procedure for the Commonwealth to terminate the approval of a certifying organization. The grounds for termination are limited.

The Commonwealth may petition to terminate approval when the Commonwealth has a reasonable basis to assert that the certifying organization no longer satisfies the conditions in § 6.55 or made a material misrepresentation of fact that was not known to the Commonwealth at the time of approval of the application.

When the Commonwealth has reason to believe that the certifying organization is no longer a viable functioning entity because of dissolution, bankruptcy, merger and acquisition, or other similar reasons, the Board does not want the approval of this organization to remain on the record. Therefore, the Commonwealth may seek termination of the approval under those circumstances. Also, the Commonwealth may petition to terminate approval of a certifying organization that is no longer independent of a training and education program, and which holds a conflict of interest as a result of that loss of independence.

Section 6.56(b) provides for procedures to be followed by the Commonwealth in petitioning for termination and specifies that if an immediate suspension is required, then the Commonwealth will set forth facts demonstrating an immediate risk of harm. The proposed rulemaking also provides for an answer to the petition to be filed within 20 days, followed by a hearing, and, if successful, the authority to levy the costs of investigation in support of a petition.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should have no adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The proposed 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, no sunset date has 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 this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the SCP/PLC and the House Professional Licensure Committee (HPLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, RA-CRANEOPERATORS@state.pa.us within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-7101 (Initial General Rulemaking) when submitting comments.

ANTHONY J. LUSI, Jr.,  
*Chairperson*

Fiscal Note: 16A-7101. No fiscal impact; (8) recommends adoption.

**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**

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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 the regulations in 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.

§ 6.2. 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 National Commission for the Certification of Crane Operators, or another organization found by the Board to offer:

(i) A testing and certification program equivalent to National Commission for the Certification of Crane Operators and meeting the applicable requirements of ASME B30.

(ii) The accreditation requirements of the National Commission for Certifying Agencies and ANSL.

*Certifying organization*—The National Commission for the Certification of Crane Operators, 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) "Conviction" 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, B 30.4, 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 B30 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.

*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.

*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 (relating to definitions).

(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.

*Other intermodal operations or intermodal operations or intermodal services*—

(i) Receiving, handling, holding, consolidation, loading or delivery of an intermodal container, as defined in 29 CFR 1917.2, 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.

*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 such 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 such 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 any or 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 pursuant to 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 shall 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 the individual is 18 years of age or older, of good moral character, currently certified by a certifying organization and 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 set forth 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 5,000 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 organizations 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 2,000 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 a period of 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 B30 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 B30 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 B30 volume.

(ii) The other person, or a person acting pursuant to 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 B30 volume, or has testified or is about to testify in any such 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 B30 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 30.5 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 for approval as a certifying organization.

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

- (1) The applicant is not accredited by ANSL.
- (2) The applicant is not accredited by NCCA.
- (3) 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.
- (4) The applicant is a parent or subsidiary of an entity that offers a program of training or education in crane operation.
- (5) An entity that is affiliated with the applicant as defined in § 6.52(a)(6) (relating to application for approval as a certifying organization) offers a program of training or education in crane operation.
- (6) The applicant has failed to verify the statements in the application.
- (7) The applicant has made a material statement on its application that it knows or has reason to know is false.

(b) The Board may deny an application for approval as a certifying organization for any of the following reasons:

- (1) A finding by the Board that the applicant is not independent of an entity that offers a program of education or training in crane operation.
- (2) A finding by the Board 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.

(3) A finding by the Board that the applicant does not offer a program of testing and certification that is equivalent to the program of testing and certification offered by NCCCO.

##### § 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 per se not equivalent to NCCCO certification according to the criteria set forth in § 6.53(a) (relating to required and discretionary bases for disapproval of an application for approval as a certifying organization), 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 per se 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 per se 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 will 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.

(e) The independent evaluation and 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, 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 pursuant to 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 30.5 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 30.5 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.

(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 30.5 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 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 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 set forth in subsection (a)(6), (7) or (8).

(2) A loss 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 material 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.

(iv) The certifying organization offers or has offered a program of training or education in crane operation.

(v) The certifying organization has a parent entity or subsidiary entity that offers a program of training or education in crane operation.

(vi) An entity affiliated with the certifying organization offers a program of training or education in crane operation.

(b) A petition to terminate approval as a certifying organization will 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.

[Pa.B. Doc. No. 10-1064. Filed for public inspection June 4, 2010, 9:00 a.m.]

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF CRANE OPERATORS  
Post Office Box 2649  
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(717) 783-1404

September 30, 2010

The Honorable Arthur Coccodrilli, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harrisstown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
State Board of Crane Operators  
16A-7101: Initial General Rulemaking

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Crane Operators pertaining to Initial General Rulemaking.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Anthony J. Lusi, Jr." in a cursive style.

Anthony J. Lusi, Jr., Chairperson  
State Board of Crane Operators

AJL/CKMc/bac  
Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Steven V. Turner, Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Christopher K. McNally, Counsel  
State Board of Crane Operators  
State Board of Crane Operators

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-7101

SUBJECT: INITIAL GENERAL RULEMAKING

AGENCY: DEPARTMENT OF STATE  
STATE BOARD OF CRANE OPERATORS

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions                      b. Without Revisions

**RECEIVED  
IRRC  
2010 SEP 30 A 10:24**

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
_____	_____	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/30/10	<i>Winnie Nichols</i>	MAJORITY CHAIRMAN <u>Michael McGeehan</u>
9/30/10	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
_____	_____	MAJORITY CHAIRMAN <u>Robert Tomlinson</u>
9/30/10	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF CRANE OPERATORS

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-1404

October 29, 2010

The Honorable Arthur Coccodrilli, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
State Board of Crane Operators  
16A-7101: Initial General Rulemaking

RECEIVED  
IRRC  
2010 OCT 29 P 12:18

Dear Chairman Coccodrilli:

Enclosed is a copy of a revised preamble to the final rulemaking package of the State Board of Crane Operators pertaining to Initial General Rulemaking. At the request of the Independent Regulatory Review Commission, the revised preamble includes an addendum more specifically addressing several comments made by the Independent Regulatory Review Commission in response to the Board's proposed rulemaking.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

Anthony J. Lusi, Jr., Chairperson  
State Board of Crane Operators

AJL/CKMc/bac  
Enclosure

cc: Basil L. Merenda, Secretary of the Commonwealth and Commissioner  
Bureau of Professional and Occupational Affairs  
Steven V. Turner, Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
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Christopher K. McNally, Counsel  
State Board of Crane Operators  
State Board of Crane Operators

