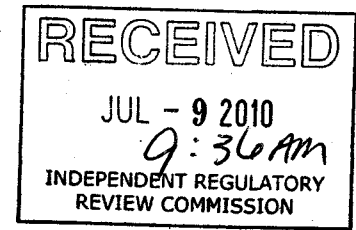


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Christopher K. McNally, Assistant Counsel
Department of State Commonwealth of Pennsylvania
Bureau of Professional and Occupational Affairs
One Penn Center, Third Floor
2601 North Third Street, P. O. Box 2649
Harrisburg, PA 17105-2649



Re: Proposed Rulemaking State Board of Crane Operators
16A-710

Dear Mr. McNally:

I would like to offer the following comments on the proposed regulations for the Pennsylvania Crane Operators Board (Board). Since the approval of Act 100 of 2008, the Board has taken the challenging task of implementing the mandated regulations to ensure the intention of the General Assembly is met.

Our goal is to assist the Board in developing regulations which fully support the law by providing for the safety of workers, residents and to protect property. We look forward to working with the PA State Board of Crane Operators.

We believe the proposed rulemaking provides many key safeguards and agree with the vast majority of the proposal. However, the proposed language does not accurately reflect the current conditions in the crane industry regarding operator certification.

Although we do not dispute the quality and effectiveness of the NCCCO certification process we do certainly dispute the notion that they are the national standard in the field of crane operator certification.

We will provide additional discussion based on the preamble to Annex A but first provide the following specific comments and recommendations:

§6.1 Findings and purpose

b. (1) (5) The proposed regulations will act counter to the stated purpose of the Board by effectively limiting the field of crane operator certification to one and therefore will not promote competitiveness and efficiency in the crane industry.

§6.2 Definitions

(i) The preamble discusses the intention of the Board to define equivalent as a "point-by-point identical." This is both impractical and illogical. There is no way short of duplication of having the exact test or practices in place in an organization. Our practices and testing procedures have been accredited and we have invested significant financial resources in ensuring the security and validity of our processes. We strongly recommend that these regulations define the term equivalent as having the same impact or effect.

(ii) We strongly recommend removing this section. It clearly does not meet the intention of the General Assembly as set out in Section 102 Definitions of Act 100. As discussed in the preamble, in Section 6.53 of these regulations and in staff meetings on these regulations, it is clearly the intent of this Board to limit the approval of certification to a single source in Pennsylvania since only provider that holds dual accreditations by ANSI and NCCA.

§6.22 Licensure without certification by practical examinations

We agree with the description provided in Sections (d) and (e) as they reference widely known and industry standards provided within the United States crane industry. However, limiting the renewal without certification by practical exam as in sections (a, b, c, f) to only those who pass a NCCCO certifying examination eliminates all but one certification provider in Pennsylvania. The overriding intent of the General Assembly is to again have accredited organizations provide certification. Moving forward, most crane operators will choose to renew in this manner.

§6.32 Renewal of license

(b) (1) Same as §6.22

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

(a) (1) and (2) Again, this oversteps legislative intent. Strongly recommend the removal and replacement clearly requiring either ANSI or NCCA accreditation.

(4) (5) We strongly recommend that this section be deleted. The Board defines relationships and ownership, only in terms of the competitors to NCCCO. These competitors went to great lengths and expenses to satisfy the accrediting organizations, ANSI or NCCA, to create secure processes for certification that are in place and maintained. Thus, the Board is outside of its area of expertise and knowledge to make evaluation regarding ownership relationships of entities that are in competition with NCCCO.

(b) (3) Clearly define the term "equivalent" to mean same impact and effect, not point-by-point identical as to do so eliminate competition and significant cost saving benefits offered by competitors.

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

(b, c, d, e) Remove reference to per se equivalence and clearly define equivalent as the legislature intended. Equivalent is vague, in fact, to be equivalent, Crane Institute Certification (CIC) would have to lower its standards, not implement improvements. Who would benefit from that? Require crane operators to achieve and maintain certification from a provider that gives NCCA or ANSI accredited certifications that are recognized by OSHA in a Voluntary Agreement. Do not strangle progress by making providers, who improved the certification process, comply with a single process. Allowing multiple accredited certification providers means competition in the marketplace. Competition is good for the industry and good for the safety of workers and the public.

(3) (j) The burden of proof has been established on many levels to become a certifying organization before the Board except for the NCCCO which has been statutorily identified and through implication and action is being held out as the crane industry standard for certification. This simply does not reflect the current status of the crane industry. However, under the law we understand the only way to provide for openness and transparency in the matter of crane operator certification is to ensure the process is open to accredited organizations and not limited to a field of one certifying agency in the Commonwealth.

Further it appears the Board has placed a lesser value on an accreditation by NCCA than that of ANSI. Therefore the burden of proof is placed on a world leader in accreditation of personnel certification. We do not believe that the Board has either the experience or the expertise to make this determination.

The issues related to crane operation, accreditation of organizations, and a deeper discussion of our recommendations is attached via appendix. We believe this additional discussion will be helpful to legislators and regulators who review our recommendations.

Thank you for your time to review our comments and recommendations that will assist you in developing regulations that continues the efforts of the PA General Assembly to protect workers, the public and to protect property.

We are available to you and the Board to answer any questions you may have about these comments.

Sincerely,

Debbie Dickinson
Executive Director
Crane Institute Certification

cc.

The Honorable Michael P. McGeehan, Chairman
House Professional Licensure Committee

The Honorable Julie Harhart, Republican Chair
House Professional Licensure Committee

The Honorable Robert M. Tomlinson, Chairman
Senate Consumer Protection and Professional Licensure Committee

The Honorable Lisa M. Boscola, Democrat Chair
Senate Consumer Protection and Professional Licensure

Appendix A

Re: Proposed Rulemaking State Board of Crane Operators
16A-710

1. The intent of the General Assembly was to provide for certification of agencies that meet the standards in the attached definition from Chapter 1, Section 101 of the Act. We further believe that the intent of the General Assembly to provide for accredited options for certification is supported by both OSHA and ASME.

As a result we most strongly believe that the proposed rule be changed to allow for either NCCA accredited certification OR ANSI accredited certification as is the intent of the General Assembly. Any discussion that lack of both accreditations is an automatic disqualification for equivalence to NCCCO should be stricken from the regulations.

As a general point, we wish to add that although the Legislature held the NCCCO as the standard there needs to be an explanation. At the time of the original legislative discussions on crane operator certification and licensing in the 2004-05 session, NCCCO was the only accredited certifying entity of which the Legislature was aware. However, as the crane industry has taken greater steps to certify and license its operators, other accredited certifying entities have emerged. NCCCO is a quality accredited organization but it certainly cannot be held as the industry standard. It is one of several.

The decision by the board to require both certifications will have the real effect of eliminating all other accredited certification entities; those ANSI certified and those who have NCCA accreditation of certification will be disqualified which does not add additional benefits for the residents or businesses of the Commonwealth.

2. We do not feel believe the Board has the experience or authority to act on the statement in 6.53 "...*ANSI accreditation actually exceeds or is superior to NCCA accreditation.*" NCCA is the global leader in personnel accreditation with over 30 years of experience. We have no interest in debating the merits of ANSI or NCCA but believe both offer high value service. For the Board to determine one is superior over the other is clearly without merit and beyond the legislative authority and the qualifications of the Board members. On these grounds alone, we respectfully suggest the Board disregard any and all distinctions between these two nationally known and respected organizations.

3. The Board decision to interpret "equivalence" is very limiting. It is virtually impossible, as the Board suggests, to have processes that are "point-by-point identical" to NCCCO or any other entity. The term equivalence is more readily intended to mean having the same impact or effect.

Crane Institute Certification (CIC) has invested over \$750,000 in cash attaining the certifications for our six processes. In addition, the industry experts have volunteered for

many hundreds of hours over several years of the accreditation process. While we dispute the threshold notion that NCCCO is a standard we certainly believe our processes and accreditation provide equivalence in all ways of providing equal effect and impact. Further, CIC has made improvements that thoroughly test the knowledge, skill and ability of crane operators and does so in a manner that saves crane operators and employer's significant time and money. The different approach has been recognized with high praise by the State of WA, New York City Department of Buildings, other states and organizations. Respectfully, we suggest that the State of PA recognize and accept accredited certification programs and providers who are also recognized by Federal OSHA and not limit or constrain the value these providers bring by making them adhere to the way NCCCO conducts business.

The Board has determined both in conversation and writing that having two accreditations makes the PA license more valuable or held to a higher standard. As has been demonstrated, NCCA and ANSI accreditations essentially do the same thing. With the exception of the mandatory, the processes are equivalent in impact and effect. ANSI however requires a site visit. It has never been clearly demonstrated who actually provides the site visit.

NCCA also includes an audit process that has been successfully been implanted and valid for many years. CIC complies with this process and goes the extra step. The CIC Governing Committee approved a process that includes site visits and independent audits that occur on a regular, documented and non-biased basis.

4. We agree with the separation between training and certification. That is why CIC invested over \$750,000 and hundred of voluntary hours to become accredited and implemented the systems and firewalls to protect the integrity of its certification. This is not only the requirement of the Board; it is also inherent in ASME B30.5 and OSHA. To suggest that any one of our organizations has acted otherwise not only brings into question the Board's motivation but clearly helps achieve a single provider of crane operator certification in Commonwealth of PA which we again do not believe is the intent of the legislature.

In its opening discussion, the Board indicates, "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."

Quite simply we would suggest that by the interpretations the Board has done exactly the opposite of its stated intent and is giving limiting choice in the marketplace for businesses which will have a net result of greater cost of compliance with no demonstrable increase in public and worker safety.

5. Under definitions; *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.

While this definition is not germane to our discussion of certification it is relevant to these regulations. Professional members of this Board were involved in the legislative process. Again, we do not dispute the value of NCCCO certification only the contention that they are an industry standard. Other valid, experienced and reputable providers who are accredited and OSHA recognized should be named equally.

6. CIC also provides crane operators who pass written and practical exams with a wallet sized certification card. The card bears the operator's photo, the NCCA seal of accredited certification and states the crane types on which the operated successfully completed certification requirements. It is worth noting here that CIC does not require operator's to test on every possible crane type, when the operator demonstrates knowledge, skill and ability through eligibility, written and practical examination competence at a higher level. Dozens of crane industry experts participated in the design of this methodology, which has been welcomed and adopted nationwide. CIC has the capability of requiring additional requirements set forth by the State of PA but requests the opportunity to explain and demonstrate the value, merit and savings while continuously meeting the most rigorous and exacting Standards for accredited certification of crane operators. The same is also true for the CIC accredited certification of other crane industry personnel such as riggers, signalpersons and advanced riggers.

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.

OSHA does not identify any organization. The Board should do the same.

7. Under licensure without certification, in 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.

In effect, as written, single sourcing and redundant certifications would be required. The State of PA has an opportunity to put a valuable requirement into place and to correct wording, written previously, that limit free trade and prohibits advancements made to the accredited certification of crane operators. A simple, clear explanation could correct past descriptions to say that "Crane operators working in the State of PA will be required to hold a valid certification from an ANSI or NCCA accredited certification program and from a provider that is also recognized by Federal OSHA in a Voluntary Agreement. The accredited certification, by an OSHA recognized provider will fulfill all requirements for crane operator certification for the State of PA." This is a fair, affordable and extremely high standard of compliance, higher in fact than any other state currently requires, as other states do not also require OSHA recognition.