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## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 5, 2010

Anthony J. Lusi, Jr., Chair  
State Board of Crane Operators  
2601 North Third Street  
Harrisburg, PA 17110

Re: Regulation #16A-7101 (IRRC #2850)  
State Board of Crane Operators  
Crane Operators; Initial Rulemaking

Dear Mr. Lusi:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman  
Executive Director  
wbg  
Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee  
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee  
Honorable Basil L. Merenda, Acting Secretary, Department of State  
Robert A. Mulle, Esq., Office of Attorney General  
Andrew Clark, Esq., Office of General Counsel

# **Comments of the Independent Regulatory Review Commission**



## **State Board of Crane Operators Regulation #16A-7101 (IRRC #2850)**

### **Crane Operators; Initial Rulemaking**

**August 5, 2010**

We submit for your consideration the following comments on the proposed rulemaking published in the June 5, 2010 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Crane Operators (Board) to respond to all comments received from us or any other source.

#### **1. Possible conflict with or duplication of statutes or existing regulations.**

On June 7, 2010, the Board submitted a letter to this Commission that supplemented the proposed rulemaking. The purpose of the letter was to inform the Commission that a Negotiated Rulemaking for Cranes and Derricks in Construction (Negotiated Rulemaking) that has been under consideration by the United States Department of Labor, Occupational Safety and Health Administration (OSHA) “will have become final by the time of adoption of a final rulemaking” by the Board. According to the Board, the rationale for this proposed rulemaking was based upon the anticipated adoption of the Negotiated Rulemaking.

We are aware of the Board’s statutory mandate to have a final regulation in place by October 9, 2010. Commentators are concerned that the final Negotiated Rulemaking could conflict with this final rulemaking. If there are differences between the two regulations, will the Board initiate a new rulemaking to align the federal and state requirements? To the extent possible, we ask the Board to ensure that its final rulemaking is consistent with OSHA’s final Negotiated Rulemaking.

**2. Implementation procedures; Timetables for compliance by the public and private sector.**

On behalf of the House Professional Licensure Committee, Chairman McGeehan and Republican Chair Harhart (Committee) have asked the Board to explain how it will enforce Section 501(a) of the Crane Operator Licensure Act (Act) (63 P.S. § 2400.501(a)) “in the likely circumstance that the final rulemaking does not occur before October 9, 2010.” Section 501(a) of the Act prohibits an individual from operating a crane without a license after October 9, 2010. We share the Committees concern and ask the Board to explain anticipated timetables for compliance if the rulemaking is not published as a final regulation by the required date.

The Committee has also raised concerns about the overlapping time periods involved with maintaining a license, renewing a license and maintaining certification. Has the Board considered aligning the time periods to assist crane operators in complying with the regulation?

**3. Section 6.2. Definitions. – Consistency with intent of the General Assembly; Adverse effects on prices, productivity or competition; Protection of the public health safety and welfare; Reasonableness.**

*Certification*

Section 102 of the Act (63 P.S. § 2400.102) defines the term “Certification” as follows:

Certification from the National Commission for the Certification of Crane Operators or another organization found by the State Board of Crane Operators (NCCCO) to offer an equivalent testing and certification program meeting the applicable requirements of the American Society of Mechanical Engineers ASME B30.5 as relating to mobile cranes, ASME B30.3 or the requirements of ASME B30.4 as relating to tower cranes and the accreditation requirements of the National Commission for Certifying Agencies or the American National Standards Institute.

The proposed rulemaking defines the same term in the following manner:

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 ANSI.

We raise two issues that touch on many of the concerns raised by several commentators. First, we note that the statutory definition refers to requirements of the National Commission for Certifying Agencies (NCCA) *or* the American National Standards Institute (ANSI). However, Paragraph (ii) of the regulatory definition refers to requirements of the NCCA *and* ANSI. Numerous commentators are concerned with the difference between the two definitions. They believe the deviation from “or” to “and” inappropriately narrows the scope of potential organizations that could be certified. This, in turn, could affect the prices crane operators would have to pay to certifying organizations. It could also lead to a shortage of certifying organizations which could negatively affect the public health, safety and welfare of the citizens of the Commonwealth. We suggest that the final-form regulatory definition be aligned with the statutory definition of the term “certification.”

Second, we question the Board’s interpretation of the word “equivalent.” In the Preamble, the Board explains its interpretation as follows: “The use of the term ‘equivalence’ indicates the General Assembly’s intent that the Board limit its approval to those organizations that are point-by-point identical to NCCCO in relevant criteria, except for the fact of a separate corporate existence and control.” It is unlikely that an organization can be “point-by-point” identical to NCCCO. Therefore, in reality, only NCCCO would be considered a certifying organization. Clearly, this is not the intent of the General Assembly. If it was, the statutory definition of “certification” would only reference NCCCO.

We encourage the Board to draft a final regulation that ensures the competence of crane operators, while honoring the intent of the General Assembly by allowing for the possibility of more than one certifying organization to conduct business in this Commonwealth. We believe that amending the regulation would allow the Board to achieve one of its stated goals of promoting “competitiveness and economic efficiency in the crane industry without impairing safety, training or certification.” (See § 6.1(b)(5)).

In addition, two commentators have raised a third issue that relates to the Board’s interpretation of this definition. They note that the OSHA Negotiated Rulemaking will allow for an employer certification program option and ask the Board to provide a similar mechanism for certification. If an organization can demonstrate that its employer certification program is equivalent to NCCCO certification, would the Board recognize that program?

*References to ASME B30 in the definition of “certification” and “crane”*

The statutory definition of “certification” specifically references ASME B30.3, B30.4 and B30.5. However, the regulatory definition under § 6.2 only references “applicable requirements of ASME B30.”

Conversely, the statutory definition of “crane” references ASME B30.5 for cranes with a maximum lifting capacity of 15 tons or more. However, the regulatory definition under § 6.2 references ASME B30.3, B30.4 and B30.5. In addition, the statutory definition references ASME B30.3 and B30.4 for cranes with a maximum lifting capacity of 10 meter tons or more, but the regulatory definition references the “applicable ASME B30 volume.”

We are concerned with the manner in which the rulemaking deviates from the Act, as it pertains to references to ASME B30. We do not believe the Board has the authority to include less specific references in its regulations than those contained in statute. Likewise, we do not believe that adding references is consistent with the intent of the General Assembly. Therefore, we ask the Board to align all regulatory references ASME B30 throughout the regulation with requirements of the Act.

*Coal mining or coal mining operations and Work of preparing the coal*

The Board has explained that both of these definitions are adopted from Section 3 of the Federal Mine Safety and Health Act. The Pennsylvania Coal Association has asked that both definitions be replaced with the definition of coal mining activity as defined in the Pennsylvania Department of Environmental Protection’s (DEP) Surface and Underground Coal Mining regulations (25 Pa. Code § 86.1). Has the Board considered including DEP’s definition in this rulemaking?

**4. Section 6.22. Licensure without certification by practical examination. – Implementation procedures; Clarity.**

Subsections (f) and (g) make reference to a “declaration” that will be issued by the Board in lieu of a license without certification. We are not aware of this terminology being used in any other chapter of Title 49 of the Pennsylvania Code, pertaining to professional and vocational standards. We suggest that this term be defined in the final-form regulation.

**5. Section 6.23. Licensure without certification by experience. – Reasonableness; Need; Clarity.**

Senator Waugh submitted comments that question what is acceptable experience and the number of hours of experience required by Subsection

(b)(2). As noted in the Preamble, West Virginia is the only other known state to allow for licensure without certification. That state requires uncertified operators seeking licensure to document 2,000 hours in a four-year period. We ask the Board to explain the need for and reasonableness of requiring 5,000 hours in a five-year period.

**6. Section 6.31. Duration of license. – Implementation procedures; Clarity.**

Subsection (a) requires biennial renewal of licenses for crane operators. However, the regulation is silent on when a biennial period begins and ends. We recommend that the final-form regulation include appropriate dates pertaining to biennial renewal periods.

**7. Section 6.53. Required and discretionary bases for disapproval of an application for approval as certifying organization. – Consistency with intent of the General Assembly; Possible conflict with or duplication of statutes or existing regulations.**

*Subsections (a)(1) and (2)*

As noted in our comment on the definition of “certification,” members of the regulated community are concerned that the regulation will require potential certifying organizations to be accredited by both ANSI and NCCA. Under these subsections the Board is again deviating from the statutory definition of “certification” by requiring an applicant to possess accreditation from ANSI *and* NCCA instead of from ANSI *or* NCCA. The Board should amend the regulation to mirror the Act.

*Subsections (a)(4) and (5)*

These subsections prohibit an applicant that is a parent or subsidiary of an entity that offers a program of training or education in crane operation from being a certifying organization. We have two concerns. First, how is this prohibition consistent with the Act and the intent of the General Assembly? Second, will this prohibition conflict with OSHA’s Negotiated rulemaking?

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### Facsimile Cover Sheet



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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
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**To:** Tom Blackburn  
Cynthia Montgomery  
**Agency:** Department of State  
Licensing Boards and Commissions  
**Phone:** 3-7200  
3-3394 (Cynthia Montgomery)  
**Fax:** 7-0251  
**Date:** August 5, 2010  
**Pages:** 7

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the State Board of Crane Operators' regulation #16A-7101 (IRRC #2850). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:** Christine Gerety **Date:** 8-5-10  
*Receptionist*