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GOVERNOR'S OFFICE OF GENERAL COUNSEL

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Christopher K. McNally  
Assistant Counsel

chrmenally@state.pa.us

July 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: Proposed Regulation  
State Board of Crane Operators  
16A-7101: Initial General Rulemaking

Dear Chairman Coccodrilli:

I am writing to supplement the public comment to the proposed rulemaking in the above-referenced matter.

At a public work session on July 28, 2010 the Board received the enclosed draft of amendments to its proposed rulemaking from Keith Morical of 4ROI to supplement his earlier submission of written comments that were posted on IRRC's website on July 9, 2010. Kindly include the draft amendments in the public comments on this proposed rulemaking.

Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,

Christopher K. McNally, Counsel  
State Board of Crane Operators

CKMc:bac  
Enclosure

cc: Board Administrator  
Members, State Board of Crane Operators

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**Annex A**

**PROFESSIONAL AND VOCATIONAL STANDARDS TITLE 49.**

**DEPARTMENT OF STATE PART I.**

**PROFESSIONAL AND OCCUPATIONAL AFFAIRS Subpart A.**

**STATE BOARD OF CRANE OPERATORS CHAPTER 6.**

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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/or ANSI.~~

*Certifying organization*—An organization with nationally accredited certification for mobile crane operators from NCCA or ANSI ~~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 seeresports 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 seeresstatus 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 carrier trucks.

(4) X-Large Telescoping boom crane

~~(54) Medium Telescoping boom cranes with a rotating control station.~~

~~(65) Small Telescoping 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~~ a certifying organization.

(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 report~~ as provided by ~~NCCCO~~ the certifying organization 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 thea license(s)~~ in the specialty for which the applicant has passed a practical examination administered by a certifying organization ~~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 a certifying organization ~~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 a certifying organization ~~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 operational control of 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, or 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 ANSI.~~

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

(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 accredited by NCCA or ANSI 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. provisionally deny the application until the appropriate documentation is provided.~~

(Note: if unable to simplify this section as indicated above, at minimum change all "equivalent to NCCCO certification" to "accredited by NCCA or ANSI, and has a voluntary agreement with OHSA.")

(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.

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[webmaster@PaBulletin.com](mailto:webmaster@PaBulletin.com)