

Regulatory Analysis Form (Completed by Promulgating Agency)		INDEPENDENT REGULATORY REVIEW COMMISSION RECEIVED OCT -8 2020 Independent Regulatory Review Commission	
(All Comments submitted on this regulation will appear on IRRC's website)			
(1) Agency Department of State, Bureau of Professional and Occupational Affairs		IRRC Number: 3273	
(2) Agency Number: 16A Identification Number: 7103			
(3) PA Code Cite: 49 Pa. Code § 43b.28			
(4) Short Title: Schedule of civil penalties – crane operators			
(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Dean F. Picarella, Senior Counsel, Department of State; (717)783-7200; P.O. Box 69523, Harrisburg, PA 17106-9523; (717)787-0251; dpicarella@pa.gov Secondary Contact: Cynthia K. Montgomery, Deputy Chief Counsel, Department of State (717)783-7200; P.O. Box 69523, Harrisburg, PA 17106-9523; (717)787-0251; cymontgome@pa.gov			
(6) Type of Rulemaking (check applicable box):			
<input checked="" type="checkbox"/> PROPOSED REGULATION <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General	
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)			
<p>The Commissioner of Professional and Occupational Affairs (Commissioner), in consultation with the State Board of Crane Operators (Board), is proposing a schedule of civil penalties for various violations of the Crane Operator Licensure Act (act) (63 P.S. §§ 2400.101—2400.2102) and the regulations of the Board. This proposal would implement a schedule of civil penalties for the following five enumerated offenses: operating a crane without a license, employing an unlicensed individual to operate a crane, holding oneself out as a crane operator or using the title licensed crane operator without holding a license, operating a crane on a lapsed or expired (unregistered) license and failing to notify the Board in writing within 10 days of criminal proceedings in a court case against a licensed crane operator.</p>			

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

Section 5(a) of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48), now codified at 63 Pa.C.S. § 3108(a) (relating to civil penalties), authorizes the Commissioner, after consultation with the appropriate licensing boards within the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the applicable licensing board.

(9) 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.

The rulemaking is not mandated by any Federal or State law or court order.

(10) 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.

Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudication and orders, and consent agreements. At the same time, individuals who receive an Act 48 citation retain their due process rights to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and has become an important part of the Bureau's enforcement effort. This regulation will act as a deterrent for violations of the statutory and regulatory requirements listed in the schedule of civil penalties, and it will streamline the disciplinary process to be more efficient and cost effective. It will benefit both the Board and the regulated community by reducing the paperwork requirements and costs related to the violations listed in the schedule. There are currently approximately 3,918 actively licensed crane operators that would be subject to the regulation, but only those that commit the offenses listed in the schedule will benefit from the streamlined Act 48 procedures.

(11) 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.

The rulemaking does not overlap or conflict with any Federal standards.

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

Of the surrounding states, only New Jersey, West Virginia, Connecticut, Massachusetts and Rhode Island license/certify crane operators. (Although New York City does license crane operators.) Other states, such as Maryland and New York, require crane operators to hold a "certificate of competence" prior to operating a crane in those states.

In New Jersey, the first offense of any violation constitutes a monetary penalty of not less than \$100 and not more than \$10,000 for each violation. A second or subsequent offense constitutes a monetary penalty of not less than \$500 and not more than \$100,000 for each violation.

In West Virginia, a person who operates a crane or tower crane without certification is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 for each violation. If a person knowingly or intentionally drives or operates a crane or tower crane while having any measurable alcohol in his or her system; or is under the influence of any controlled substance; or under the combined influence of alcohol and any controlled substance or any other drug, that person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000. In addition to the fine, the Commissioner of Labor shall revoke the person's certification for not less than one year. An employer, who knowingly employs, permits or directs a person to operate a crane or tower crane without proper certification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 for each violation. A person, operating a crane or tower crane, who fails to produce the certification within 24 hours after request of the Commissioner or his or her authorized representative, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$100.

In Connecticut, if a licensed crane operator or an apprentice has either demonstrated incompetence or has been guilty of negligence in the performance of his or her work, the Examining Board for Crane Operators may suspend or revoke that person's license. The Examining Board may also suspend or revoke a crane owner's registration upon a finding that the owner has failed to properly maintain his or her crane, or has permitted the operation of the crane in an unsafe manner. If a crane owner or operator violates any provision of the relevant chapter or any regulations adopted thereunder, the Examining Board may impose a civil penalty of not more than \$3,000. If the licensee has not paid the penalty by the time his or her license renewal is due, the Examining Board shall not renew such license until the penalty is paid in full.

In Massachusetts, any person who permits an unlicensed person to operate hoisting machinery will be subject to a fine of no less than \$1,000 and no more than \$3,000, or by imprisonment for no more than 3 months, or both such fine and imprisonment. Violations of the applicable statutes or any rules or regulations made thereunder, shall be subject to a fine of no less than \$500 and no more than \$3,000, or by imprisonment for no more than 3 months, or both such fine and imprisonment.

In New York, any person who operates a crane without a Certificate of Competence issued by the Commissioner of Labor as required is in violation. The Commissioner may impose a civil penalty upon such person of no more than \$1,000 for the initial violation, no more than \$2,000 for the second violation, and no more than \$3,000 for a third or subsequent violation. Any employer, contractor or agent who willfully permits a person to operate a crane without a Certificate of Competence issued by the Commissioner of Labor as required is also in violation of the law. The Commissioner may impose a civil penalty upon such employer, contractor, or agent of no more than \$5,000 for the initial violation, and no more than \$10,000 for a second or subsequent violation.

In Rhode Island, whoever (i.e. an engineer or user of agent of steam, internal combustion engines, electric, or compressed air hoisting machinery) violates any provision of the relevant chapter shall be fined at least \$1,500, but not more than \$2,000 per offense. Each day in which a violation occurs shall be deemed a separate offense

In Maryland, a person who violates the state's regulations pertaining to crane operation is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding \$1,000.

Based on these laws and regulations, the Commissioner believes the rulemaking will not place Pennsylvania at a competitive disadvantage.

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

The rulemaking will not affect other regulations of the Board, other boards or commissions within the Bureau, or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

At the request of the Commissioner, the Board discussed this schedule of civil penalties at regularly scheduled public meetings beginning in 2015. Each agenda at which the proposal was discussed was released to interested parties prior to those meetings. Representatives of the crane operator profession routinely attend the public meetings of the Board. In accordance with Executive Order 1996-1, the Board sent an "exposure draft" of the proposed schedule of civil penalties to interested parties and stakeholders, and received no comments. Subsequently, the Board directed its counsel to coordinate with the Commissioner's office to promulgate the schedule of civil penalties.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The rulemaking would apply to all licensees of the Board and any unlicensed individuals who operate a crane or hold out as authorized to operate a crane in the Commonwealth. There are approximately 3,918 crane operators with current licenses in the Commonwealth. Section 102 of the act (63 P.S. § 2400.102) specifically exempts from licensure those crane operators in coal mining operations, longshore, aircraft, locomotive cranes and manufacturing applications.

According to the Pennsylvania Department of Labor and Industry (L&I) 2019-2021 Short-Term Forecast, there were an estimated 3,350 crane & tower operators employed in Pennsylvania. Of those crane & tower operators, the majority worked for warehousing and storage (19%), wholesale trade (15%), temporary help services (9%), construction (7%) and food manufacturing (6%).

Based on their experience in the crane industry, professional Board Members estimate that currently approximately 70% of the mobile cranes in Pennsylvania are used in construction applications. About 15% are used for maintenance work at plant operations. These plants could be power generation plants and manufacturing plants. The other 15% are used by natural gas well service companies.

For the business entities listed above, small businesses are defined in Section 3 of Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, the SBA has established these size standards at 13 CFR § 121.201 for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where

crane operators work, these companies are considered small businesses if the average annual receipts are \$39.5 million or less. For all specialty trade contractor categories and other building equipment contractors, small businesses are considered those with \$16.5 million or less in average annual receipts. For iron and steel mills and ferroalloy manufacturing, as well as iron and steel pipe and tube manufacturing from purchased steel, and nonferrous metal (except aluminum) smelting and refining, small businesses are considered those with 1,000 or fewer employees. For companies that provide support activities for rail transport, small businesses are considered those with 1,500 or fewer employees for line-haul railroads and 500 or fewer employees for short line railroads. For nonferrous metal (except copper and aluminum) rolling, drawing and extruding, as well as secondary smelting, refining and alloying of nonferrous metal (except for copper and aluminum), small businesses are considered those with 750 or fewer employees. Small businesses for miscellaneous durable goods merchant wholesalers are those with 100 or fewer employees.

Small businesses for electric power generation plants range from 750 or fewer employees to 250 employees. Fossil fuel electric power generation plants and nuclear electric power generation plants are considered small businesses if they have 750 or fewer employees. Hydroelectric power generation plants are small businesses if they have 500 or fewer employees. All other electric power generation plants are small businesses if they have 250 or fewer employees.

In considering all of these small business thresholds set by NAICS for the businesses in which crane operators work, and based on the Board members' experience in the crane industry, the Commissioner believes that approximately half of the licensed crane operators work in small businesses and the other half work for larger contracting companies, including power plants and manufacturing plants.

The Board's licensees – including those who are employed by small businesses – will not be adversely affected by this rulemaking. Only those licensees and businesses that violate the statutory or regulatory provisions listed in the Annex and unlicensed individuals who practice without a license will be affected by this rulemaking. The effect of the rulemaking is only procedural – replacing formal disciplinary proceedings with the Act 48 citation process.

The Commissioner has not identified any group of individuals or entities that will be adversely affected by the rulemaking. Generally, Act 48 citations benefit both licensees and the Department. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right to a hearing prior to the imposition of judgment.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Only those licensees and businesses that violate the statutory or regulatory provisions listed in the Annex and unlicensed individuals who practice without a license will be subject to the schedule of civil penalties. There are approximately 3,918 crane operators with current licenses in the Commonwealth. There is no way to approximate the number of unlicensed individuals who may practice without a license.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudication and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and has become an important part of the Bureau's enforcement efforts. This regulation will act as a deterrent for violations of the statutory and regulatory requirements listed in the schedule of civil penalties, and it will streamline the disciplinary process to be more efficient and cost effective. There is minimal to no expected financial impact upon the small business and business and labor communities as a result of this regulation.

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

No adverse effects or increased costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits would outweigh any costs.

(19) 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.

Those members of the regulated community who are charged with violations covered by the schedule of civil penalties will save legal costs by accepting the Act 48 civil penalty rather than participating in the full formal disciplinary action. At the same time, licensees who receive an Act 48 citation retain their due process rights to a hearing prior to the imposition of judgment.

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

There are no costs or savings to local governments associated with compliance with the rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the 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 Bureau and the Board will enjoy a savings with this rulemaking because the Act 48 citation process is less expensive than formal disciplinary action. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. Any attempt to specifically quantify these savings would be speculative.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

There are no legal, accounting or consulting procedures or additional recordkeeping or other paperwork required for implementation of the rulemaking.

(22a) Are forms required for implementation of the regulation?

Yes.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

A copy of a blank citation form that will be used to implement this schedule of civil penalties is attached.

(23) 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.

	Current FY (20-21)	FY +1 (21-22)	FY +2 (22-23)	FY +3 (23-24)	FY +4 (24-25)	FY +5 (25-26)
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 (17-18)	FY -2 (18-19)	FY -1 (19-20)	Current FY (20-21)
State Board of Crane Operators	(actual) \$169,974.59	(actual) \$212,938.38	(projected) \$214,000	(budgeted) \$219,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

As stated in the answers to questions 15 – 17 above, this rulemaking will not have an adverse impact on small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Commissioner has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(26) 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 Commissioner has not considered any alternative regulatory provisions.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As stated in the answers to questions 15 – 17 above, this regulation will not have an adverse impact on small businesses. As such, the Commissioner did not conduct a flexibility analysis.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

This rulemaking is not based upon any scientific data, studies, or references.

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

- A. The length of the public comment period: **30 days**
- B. The date or dates on which any public meetings or hearings will be held: **No public hearings are scheduled. The Commissioner will discuss this regulatory proposal with the Board at regularly scheduled public board meetings. See item (30) for dates.**
- C. The expected date of delivery of the final-form regulation: **Spring 2021**
- D. The expected effective date of the final-form regulation: **Upon publication as final**
- E. The expected date by which compliance with the final-form regulation will be required: **Upon publication as final**
- F. The expected date by which required permits, licenses or other approvals must be obtained: **N/A**

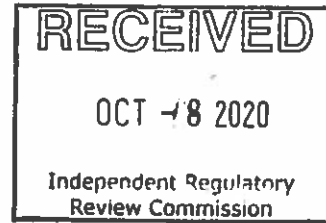
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commissioner and the Board continually review the efficacy of the regulations, including the schedule of civil penalties, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings. The Board will meet on the remaining following dates in 2020: September 23 and November 18. More information can be found on the Board's website (linked under boards commissions from professional licensing on the Department's website at www.dos.pa.gov).

Commonwealth of Pennsylvania DEPARTMENT OF STATE HARRISBURG, PA 17105			<h1>CITATION</h1>			CITATION NO.		
1. RESPONDENT OWNER:				2. FILE NO.		<p><u>NOTICE OF RIGHTS AND OBLIGATIONS</u></p> <p>The original of this citation will be filed with the Professional Compliance Office of the Bureau of Professional and Occupational Affairs at the address listed herein.</p> <p>YOU HAVE THE RIGHT TO HAVE AN INTERPRETER AT YOUR HEARING. YOU MUST NOTIFY US OF THIS REQUEST WHEN YOU RETURN YOUR PLEA.</p> <p>WITHIN TEN (10) DAYS OF THE RECEIPT OF THIS CITATION, YOU MUST:</p> <p>–ADMIT TO THE VIOLATION(S) by signing the appropriate plea below and mailing the entire RESPONDENT'S RETURN copy of this Citation along with an amount equal to the Total Due as specified in Box 11 to the Professional Compliance Office at the address listed in Box 12.</p> <p>–DENY THE VIOLATION(S) by signing the appropriate plea below and mailing the entire RESPONDENT'S RETURN copy of this Citation to the Professional Compliance Office at the address in Box 12. If you deny the violation(s), a formal hearing will be scheduled in Harrisburg at which you may present evidence on your behalf. Failure to appear at the formal hearing will result in the entry of a default judgment against you for the full amount of the Civil Penalty ("Total Due") as specified in Box 11 of this Citation.</p> <p>All payments must be made by certified or cashier's check or money order and made payable to the "Commonwealth of Pennsylvania," and mailed to the address on the reverse side. Please place the Citation Number on your certified or cashier's check or money order.</p> <p><u>PERSONAL CHECKS WILL NOT BE ACCEPTED.</u></p> <p><u>SUBMISSION OF PAYMENT CONSTITUTES AN ADMISSION OF THE VIOLATION</u></p> <p>Failure to respond within the time specified above will result in the entry of a default judgment against you for the full amount of the Civil Penalty ("Total Due") as specified on this Citation. Failure to pay a civil penalty could result in additional fines and the revocation, suspension or other disciplinary action against any license which you may hold.</p> <p style="text-align: center;">PLEA</p> <p><i>Place the RESPONDENT'S RETURN copy of the Citation and your certified or cashier's check or money order in an envelope and mail to the address listed in Box 12.</i></p> <p>I understand this notice of my rights and obligations. Further, I represent that I make this plea knowingly, voluntarily and intelligently. I understand that false statements herein are made subject to the Criminal Penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities. Failure to indicate a plea when forwarding an amount equal to the Total Due as specified on this Citation will result in a plea admitting to all violations being recorded.</p> <p>1. I ADMIT to the violation(s) on this Citation</p> <p>_____ Signature Date</p> <p>2. I DENY the violation(s) on this Citation</p> <p>_____ Signature Date</p>		
3. SEX	4. D.O.B	5. AGE	6. LICENSE NO.					
7. RECORD ADDRESS		CITY	STATE	ZIP CODE				
8. CHARGE								
9. STATUTE OR REGULATION VIOLATED			10. FACILITY ADDRESS					
Violation #1. 49 Pa. Code §	FINE							
Violation #2.	FINE							
11. TOTAL DUE								
12. SEND PAYMENT TO:		PA. DEPARTMENT OF STATE ATTN: PROFESSIONAL COMPLIANCE OFFICE – CITATIONS PO BOX 69522 HARRISBURG PA 17106-9522						
13. RECEIPT OF CITATION ACKNOWLEDGED – SIGNATURE				14. DATE ISSUED				
I Verify That The Facts Set Forth In This Citation Are True And Correct To The Best Of My Knowledge Or Information And Belief. This Verification Is Made Subject To The Penalties Of Section 4804 Of The Crimes Code (18 Pa.C.S. § 4804) Relating To Unsworn Falsification To Authorities.								
15. ISSUER SIGNATURE		16. ID NO.	17. REGION					
18. REMARKS								
READ THE NOTICE OF RIGHTS AND OBLIGATIONS ON THIS CITATION FOR AN EXPLANATION OF YOUR RIGHTS AND OBLIGATIONS FOR SETTLEMENT OF THIS MATTER. YOU <u>MUST</u> ELECT ONE OF THE PLEA OPTIONS AND FOLLOW THE APPROPRIATE DIRECTIONS WITHIN 10 DAYS TO AVOID FURTHER LEGAL ACTION AGAINST YOUR LICENSE.								
SHOULD YOU ELECT TO DEMAND A HEARING ON THIS MATTER, FOLLOW THESE INSTRUCTIONS CAREFULLY. YOUR HEARING DATE WILL BE ON AT 9:00 A.M. ALL HEARINGS ARE HELD IN HARRISBURG IN THE OFFICE OF HEARING EXAMINERS, 2601 NORTH THIRD STREET, HARRISBURG, PA 17105								
PLEASE PLACE THE CITATION NUMBER(S) ON YOUR CERTIFIED OR CASHIER'S CHECK OR MONEY ORDER PERSONAL CHECKS WILL NOT BE ACCEPTED								
RESPONDENT COPY FIRST CLASS								

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p><small>Digitally signed by Lois P. Lara, DN: cn=Lois P. Lara, ou=Attorney General, email=lois.lara@pa.gov, c=US</small></p> <p>BY: <u>Lois P. Lara</u> (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by</p> <p><u>Bureau of Professional and Occupational Affairs</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>16A-7103</u></p> <p>DATE OF ADOPTION _____</p> <p><u>K. Kalonji Johnson</u> BY: _____</p> <p>TITLE <u>Commissioner</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY: <u>Marisa H. Z. Lehr</u></p> <p><u>9/3/2020</u> DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
TITLE 49 PA CODE CHAPTER 43b
§ 43b.28
SCHEDULE OF CIVIL PENALTIES – CRANE OPERATORS

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to adopt § 43b.28 (relating to schedule of civil penalties – crane operators) to read as set forth in Annex A.

Effective Date

The proposed amendments would become effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(a) of the Act of July 2, 1993 (P.L. 345, No. 48) (Act 48), now codified at 63 Pa.C.S. § 3108(a) (relating to civil penalties), authorizes the Commissioner, after consultation with licensing boards within the Bureau of Professional and Occupational Affairs (the Bureau), to promulgate a schedule of civil penalties for violations of the respective acts or regulations of the licensing boards.

Background and Need for the Rulemaking

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudication and orders, and consent agreements. At the same time, licensees who receive a citation under Act 48 retain their due process right to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and has become an important part of the Bureau's enforcement efforts. Section 5(b)(4) of Act 48, now codified at 63 Pa.C.S. § 3108(b)(4), authorizes the Board, as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on any licensee or unlicensed person who violates any provision of the act or Board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation.

Section 702(b) of the Crane Operators Licensure Act (act) (63 P.S. § 2400.702(b)) authorizes the State Board of Crane Operators (Board) to levy a civil penalty of up to \$1,000 on a crane operator who violates a provision of the act, on an individual who operates a crane in violation of the act, or on an individual who holds himself out as a crane operator without being properly licensed. Section 703(a)(3) of the act (63 P.S. § 2400.703(a)(3)) further authorizes the Board to suspend or revoke the license of a crane operator who has willfully or repeatedly violated any of the provisions of the act or the Board's regulations.

This is the first time that the Board will participate in the Act 48 citation program. The Commissioner and the Board believe that it is necessary to implement the civil penalties contained in this proposed rulemaking to act as a deterrent for violations of the statutory and regulatory requirements listed in the schedule of civil penalties and to streamline the disciplinary process to be more efficient and cost effective.

Description of Proposed Amendments

The Commissioner, in consultation with the Board, proposes to add § 43b.28 (relating to schedule of civil penalties – crane operators) to establish a schedule of civil penalties for five enumerated offenses, including: operating a crane without a license, employing an unlicensed individual to operate a crane, holding oneself out as a crane operator or using the title “licensed crane operator” when not licensed to do so, practicing on a lapsed or expired license and failing to notify the Board in writing within 10 days of criminal proceedings in a court case against a licensed crane operator.

Operating a crane without a license is a serious infraction of both section 501(a) of the act (63 P.S. § 2400.501(a)) and the Board’s regulation at § 6.41(a) (relating to unlicensed crane operation). An unlicensed individual who has not been properly trained to operate a crane could cause extensive damage to property as well as cause bodily harm to individuals at a construction site. Therefore, the Commissioner, in consultation with the Board, would propose a civil penalty of \$750 for a first offense of operating a crane without a license. The Board determined that the penalty for a second offense should be higher than the \$1,000 maximum which may be imposed by citation. Therefore, subsequent offenses would require formal disciplinary action.

Just as operating a crane without a license is a serious matter, so is employing, allowing, directing, retaining or hiring an unlicensed individual or independent contractor to operate a crane, which is a violation of section 501(b) of the act and the Board’s regulation at § 6.43(a) (relating to aiding and abetting unlicensed crane operation). Therefore, the proposed civil penalty for a first offense would be \$1,000, the maximum civil penalty that may be imposed by citation. Subsequent offenses would result in formal disciplinary action.

Additionally, persons who are not licensed by the Board may not hold themselves out as being able to operate a crane or use the title “licensed crane operator,” as provided in section 501(e) of the act and the Board’s regulation at § 6.41(a). To do so would trigger a civil penalty of \$500 for the first offense, \$750 for the second offense and formal action for subsequent offenses.

Operating a crane on a lapsed or expired (unregistered) license is a violation of the Board’s regulation at § 6.31(a) (relating to duration of license), which requires all licensed crane operators to register biennially to retain the right to operate a crane. This proposal would progressively increase the civil penalty for continuing violations based on the length of time that the licensee continues to operate cranes while the license has lapsed. For a first offense, the Commissioner would propose a civil penalty of \$50 per month, not to exceed \$1,000, the maximum that may be imposed by citation. Lapses of over 24 months (more than one biennial period) would be met with formal action. For a second offense of up to 12 months, the proposed civil penalty would be \$100 a month, not to exceed \$1,000. Second offenses for a license lapsed over 12 months would result in formal action. Likewise, third or subsequent offenses would require formal action.

Finally, the Commissioner, in consultation with the Board, proposes a civil penalty of \$750 for a first offense of failing to notify the Board in writing within 10 days of criminal proceedings

in a court case against the crane operator, which is a violation of the Board's regulation at § 6.42(f) (relating to impaired operation of a crane and reportable conditions, incidents or events). Second and subsequent offenses would require formal action.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions, and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudication and orders for those violations subject to the Act 48 citation process. The only fiscal impact would be borne by those persons who violate the act or regulations of the Board and are subject to the civil penalties proposed by the new schedule. However, this impact could be avoided by simply complying with the act and regulations of the Board. Additionally, the impact would be incurred whether the Commissioner adopts this schedule of civil penalties or not, as currently all violations require formal disciplinary action.

Sunset Date

The Commissioner and the Board continuously monitor the effectiveness of their 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 October 8, 2020, the Commissioner 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 Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall 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 Commissioner, 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 Counsel, Department of State, at P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail at RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-7103 (Schedule of civil penalties – Crane operators), when submitting comments.

K. Kalonji Johnson
Commissioner of Professional and
Occupational Affairs

ANNEX A

PENNSYLVANIA ADMINISTRATIVE CODE

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL
AFFAIRS**

**Subchapter A. SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION
OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL**

* * * * *

§ 43b.28. Schedule of civil penalties – crane operators.

STATE BOARD OF CRANE OPERATORS

<u>Violation</u>	<u>Violation</u>	<u>Title/Description</u>	<u>Penalties</u>
<u>under 63</u>	<u>under 49 Pa.</u>		
<u>P.S.</u>	<u>Code</u>		
<u>Section</u>	<u>§ 6.41(a)</u>	<u>Operating a crane without a 1st license</u>	<u>Offense - \$750</u>
<u>2400.501(a)</u>			<u>Subsequent offenses – formal action</u>

<u>Section</u> <u>2400.501(b)</u>	<u>§ 6.43(a)</u>	<u>Employing, allowing, directing, retaining or hiring an unlicensed individual or independent contractor to operate a crane</u>	<u>1st Offense - \$1,000</u> <u>Subsequent offenses – formal action</u>
<u>Section</u> <u>2400.501(e)</u>	<u>§ 6.41(a)</u>	<u>Holding oneself out as being able to operate a crane or using the title “licensed crane operator” or the abbreviation “L.C.O.” without a license</u>	<u>1st Offense - \$500</u> <u>2nd Offense - \$750</u> <u>Subsequent offenses – formal action</u>
	<u>§ 6.31(a)</u>	<u>Operating a crane on a lapse or expired (unregistered) license</u>	<u>1st Offense – Up to 24 months, \$50 per month not to exceed \$1,000; over 24 months – formal action</u> <u>2nd Offense – Up to 12 months, \$100 per month not to exceed \$1,000; over 12 months – formal action</u> <u>Subsequent offenses – formal action</u>

§ 6.42(f) Failing to notify the Board 1st Offense - \$750
in writing within 10 days of Subsequent offenses – formal action
the institution of criminal
proceedings in a court case
against the crane operator



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3397

October 8, 2020

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101


Re: Proposed Regulation
Bureau of Professional and Occupational Affairs
16A-7103: SCHEDULE OF CIVIL PENALTIES - CRANE OPERATORS

Dear Chairman Bedwick:

Enclosed is a copy of a proposed rulemaking package of the Commissioner of Professional and Occupational Affairs pertaining to 16A-7103: Schedule of Civil Penalties - Crane Operators.

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

Sincerely,


K. Kalonji Johnson, Commissioner of
Professional and Occupational Affairs

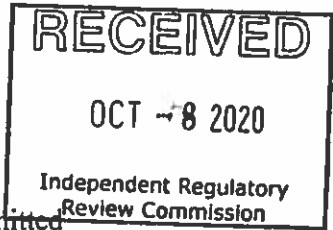
KKJ/DFP:aaw
Enclosure

cc: K. Kalonji Johnson, Acting Commissioner of Professional and Occupational Affairs
Kraig R. Kiehl, Deputy Secretary of Regulatory Programs
Marc Farrell, Deputy Director of Policy, Department of State
Cynthia Montgomery, Deputy Chief Counsel, Department of State
Jacqueline A. Wolfgang, Regulatory Unit Counsel, Department of State
Dean F. Picarella, Board 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-7103
SUBJECT: Schedule of Civil Penalties – Crane Operators
AGENCY: DEPARTMENT OF STATE
 Bureau of Professional and Occupational Affairs

TYPE OF REGULATION



- Proposed Regulation
- 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 Disapproved Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>Senate</i> HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
		MAJORITY CHAIR <u>Robert M. Tomlinson</u>
		MINORITY CHAIR <u>Lisa M. Boscola</u>
		<i>House</i> SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
<u>10/8/20</u>	<u><i>Emily J. Euler</i></u>	MAJORITY CHAIR <u>David Hickernell</u>
<u>10/8/20</u>	<u><i>Susan E. Finger</i></u>	MINORITY CHAIR <u>Harry A. Readshaw</u>
		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

Worthington, Amber

From: Bulletin <bulletin@palrb.us>
Sent: Thursday, October 8, 2020 10:20 AM
To: Tomlinson, Senator Robert; boscola@pasenate.com; jerry.livingston@pasenate.com; jmsmeltz@pasen.gov; Blauch, Tammy
Cc: Martin, Megan; Vincent Deliberato; Duane Searle; A.J. Mendelsohn; Wolfgang, Jacqueline; Worthington, Amber
Subject: [External] Delivery of Proposed Rulemaking – 16A-6712 Education Programs; 16A-5429 Injectables...; 16A-7103 Schedule of Civil Penalties
Attachments: 16A-6712 Boscola.pdf; 16A-6712 Tomlinson.pdf; 16A-5429 Boscola.pdf; 16A-5429 Tomlinson.pdf; 16A-7103 Tomlinson.pdf; 16A-7103 Boscola.pdf

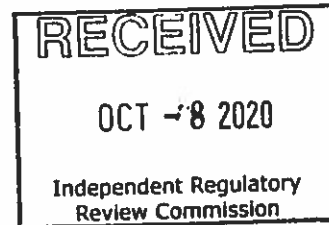
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We have attached Proposed Rulemakings 16A-6712, 16A-5429 & 16A-7103.

Please confirm receipt of this email by replying to all.

Thank you.

The Pennsylvania Code & Bulletin Office



Stephen Hoffman

From: Worthington, Amber <agontz@pa.gov>
Sent: Thursday, October 8, 2020 2:21 PM
To: IRRC
Subject: Fwd: [External] Re: Proposed Rulemaking 16A-7103 Schedule of Civil Penalties – Crane Operator

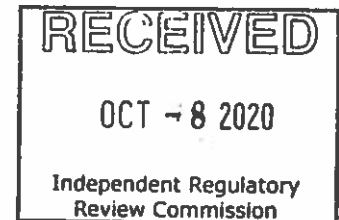
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Please include this with the Proof of delivery for 16A-7103.

Amber Worthington, PLS | Legal Assistant
Department of State | Counsel Division Legal Office
2601 North Third Street, P.O. Box 69523

Harrisburg, PA 17106-9523
Phone: 717.783.7200 | Fax: 717.787-0251

www.dos.pa.gov



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From: Bulletin <bulletin@palrb.us>
Sent: Thursday, October 8, 2020 1:52:07 PM
To: Worthington, Amber <agontz@pa.gov>
Subject: [External] Re: Proposed Rulemaking 16A-7103 Schedule of Civil Penalties – Crane Operator

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Hello Amber!
Yes, 16A-7103 has been received. Sorry for the delay in responding!
Leah

From: Worthington, Amber <agontz@pa.gov>
Sent: Thursday, October 8, 2020 9:32 AM
To: Bulletin <bulletin@palrb.us>
Subject: Proposed Rulemaking 16A-7103 Schedule of Civil Penalties – Crane Operator

We are submitting Proposed Rulemaking – 16A-7103 Schedule of Civil Penalties – Crane Operator to the Legislative Reference Bureau for publication in the PA Bulletin.

Please provide written (email) confirmation that this rulemaking was received.

Amber Worthington, PLS | *Supervising Legal Assistant*
Department of State | Counsel Division Legal Office | Clerical Supervisor 2
2601 North Third Street, P.O. Box 69523
Harrisburg, PA 17106-9523
Phone: 717.783.7200 | Fax: 717.787-0251
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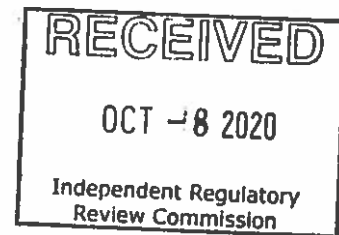
Worthington, Amber

From: Martin, Megan <Mtmartin@os.pasen.gov>
To: Worthington, Amber
Sent: Thursday, October 8, 2020 10:36 AM
Subject: Read: Proposed Rulemaking – 16A-6712 Education Programs; 16A-5429 Injectables...; 16A-7103 Schedule of Civil Penalties

Your message

To:
Subject: Proposed Rulemaking – 16A-6712 Education Programs; 16A-5429 Injectables...; 16A-7103 Schedule of Civil Penalties
Sent: Thursday, October 8, 2020 2:35:46 PM (UTC+00:00) Monrovia, Reykjavik

was read on Thursday, October 8, 2020 2:35:32 PM (UTC+00:00) Monrovia, Reykjavik.



Worthington, Amber

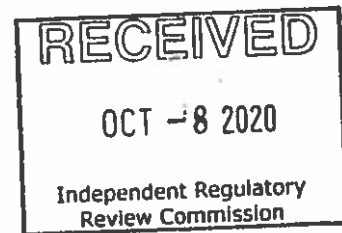
From: Livingston, Jerry <Jerry.Livingston@pasenate.com>
Sent: Thursday, October 8, 2020 9:34 AM
To: Worthington, Amber
Subject: RE: Proposed Rulemaking – 16A-6712 Education Programs; 16A-5429 Injectables...; 16A-7103 Schedule of Civil Penalties

Received, thank you.
-JJ

J.J. Livingston

**Executive Director
Senate Consumer Protection & Professional Licensure Committee**

**Senator Lisa M. Boscola, Democratic Chair
458 Main Capitol Building
Harrisburg, PA 17120
(717) 787-4236
Jerry.Livingston@pasenate.com**



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From: Worthington, Amber <agontz@pa.gov>
Sent: Thursday, October 8, 2020 9:32 AM
To: Bulletin <bulletin@palrb.us>; Livingston, Jerry <Jerry.Livingston@pasenate.com>; Blauch, Tammy <tblauch@pasen.gov>; jmsmeltz@pasen.gov; Martin, Megan <mtmartin@os.pasen.gov>
Cc: Wolfgang, Jacqueline <jawolfgang@pa.gov>
Subject: Proposed Rulemaking – 16A-6712 Education Programs; 16A-5429 Injectables...; 16A-7103 Schedule of Civil Penalties

■ EXTERNAL EMAIL ■

Pursuant to SR 318, authorizing the Legislative Reference Bureau to transmit regulations to the appropriate committees for consideration, we are submitting Proposed Rulemakings – 16A-6712 Education Programs; 16A-5429 Injectable Medications, Biologicals and Immunizations; & 16A-7103 Schedule of Civil Penalties to the Senate Committee on Consumer Protection & Professional Licensure.

Please provide written (email) confirmation that this rulemaking was received by each of Committee chairs office's.

Amber Worthington, PLS | Supervising Legal Assistant
Department of State | Counsel Division Legal Office | Clerical Supervisor 2
2601 North Third Street, P.O. Box 69523
Harrisburg, PA 17106-9523
Phone: 717.783.7200 | Fax: 717.787-0251
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