

Comments of the Independent Regulatory Review Commission



Bureau of Professional and Occupational Affairs Regulation #16A-7103 (IRRC #3273)

Schedule of Civil Penalties - Crane Operators

December 23, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the October 24, 2020 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Bureau of Professional and Occupational Affairs (Bureau) to respond to all comments received from us or any other source.

Section 43b.28. Schedule of civil penalties--crane operators. --Clarity; and the Protection of the public health, safety and welfare.

In the Preamble to the proposed regulation, the Bureau and the State Board of Crane Operators (Board) write:

"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."

We concur with the Bureau and the Board on the importance of properly trained crane operators in protecting the public health and safety and avoiding costly damage to property. With this in mind, we ask the Bureau and Board to address the following issues when the final version of this rulemaking is submitted.

First, did the Bureau and Board consider qualifying the use of this civil penalty section for the offenses of operating a crane without a license or employing an unlicensed individual to operate a crane? If the violation for either of these two offenses mentioned results in bodily harm or substantial property damage, we question whether a civil penalty should even be available for consideration. We ask the Bureau and Board to explain their rationale and how violations that result in bodily harm or extensive property damage will be treated. The explanation should describe how the approach protects the public health and safety and deters violations of statutory and regulatory requirements.

Second, a license to operate a crane is valid only in conjunction with certification if the licensee maintains a current certification in the specialty for which the crane operator is certified. 63 P.S. § 2400.501(f). Depending on the specialty or the accrediting organization, certifications are valid for two, three or five years. As such, there may be times when a crane operator's certification will expire during the biennial licensing renewal period.

The act and the Board's regulations require crane operators to have a current valid certification at all times. To assure that crane operators maintain their certification, the Board requires licensees to submit evidence of certification renewal before their current certification expires. Under both the act and the Board's regulations, a licensee who has failed to maintain certification or submit evidence of re-certification is subject to disciplinary action. 63 P.S. 2400.502(b) and 49 Pa. Code 6.32(a)(2). Since certification is integral to licensure, did the Board consider and reject establishing a civil penalty for failure to maintain certification or provide evidence of certification renewal? If so, the Bureau and Board should include a revised Preamble to the final-form regulation that explains the reason and rationale for excluding these offenses from the schedule of civil penalties.

Finally, the proposed schedule distinguishes between "operating a crane without a license" and "operating a crane on a lapsed or expired license." For clarity, we recommend the *Title/Description* of the offense for "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" be revised to cover an individual with a lapsed or expired license who holds themselves out as authorized to operate a crane. The Bureau and Board should revise the *Title/Description* accordingly or explain why it is unnecessary to do so.