

Regulatory Analysis Form (Completed by Promulgating Agency)		INDEPENDENT REGULATORY RECEIVED APR 28 2021 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			
(2) Agency Number: 16A Identification Number: 7103		IRRC Number: 3273	
(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 type="checkbox"/> Proposed Regulation <input checked="" 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 adopting 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 final-form rulemaking implements 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.

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 a citation retain their due process rights to a hearing prior to the imposition of judgment. The use of 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 citation 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 states in the Northeast region, 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. The proposed rulemaking was published in the *Pennsylvania Bulletin* at 50 Pa.B. 5850 on October 24, 2020. The Commissioner entertained public comment for a period of 30 days, during which time the Commissioner did not receive any public comments. The Board considered and approved a draft of the final-form rulemaking at its meeting on March 24, 2021. Subsequently, the Board directed its counsel to coordinate with the Commissioner's office to promulgate the schedule of civil penalties in final-form.

(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 operate a crane without a license will be affected by this rulemaking. The effect of the rulemaking is only procedural – replacing formal disciplinary proceedings with the streamlined citation process.

The Commissioner has not identified any group of individuals or entities that will be adversely affected by the rulemaking. Generally, citations benefit both licensees and the Department by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive a 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 operate a crane 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.

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 retain their due process right to a hearing prior to the imposition of judgment. The use of 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 final-form 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 because the citation process is streamlined and more cost effective than participating in the full formal disciplinary action. At the same time, licensees who receive a citation retain their due process rights to a hearing prior to the imposition of judgment. It is impossible to estimate the amount of savings that would be realized because it would be entirely dependent upon how many violations are prosecuted through the citation process once this final-form rulemaking is effective.

(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 citation process is less expensive than formal disciplinary action. 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) \$217,649.27	(actual) \$208,331.90	(budgeted) \$268,000.00

(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 discusses all regulatory proposals 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

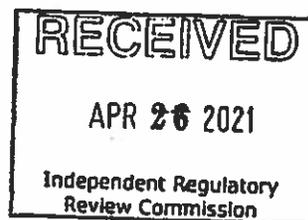
(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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 2021: May 24, July 28, September 22 and November 24. 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			CITATION			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>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.</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										
<p>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.</p> <p>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</p> <p>PLEASE PLACE THE CITATION NUMBER(S) ON YOUR CERTIFIED OR CASHIER'S CHECK OR MONEY ORDER PERSONAL CHECKS WILL NOT BE ACCEPTED</p>										
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>BY _____ (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 here by certified to be a true and correct copy of a document issued prescribed or promulgated by</p> <p>Commissioner of Professional and Occupational Affairs</p> <p>_____ (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO <u>16A-7103</u></p> <p>DATE OF ADOPTION/ _____</p> <p>BY <u>K. Kalonji Johnson</u> K. Kalonji Johnson</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> (Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><u>April 15, 2021</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable No Attorney General approval or objection within 30 days after submission.</p>

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

49 PA. CODE CHAPTER 43b

§ 43b.28 - SCHEDULE OF CIVIL PENALTIES- CRANE OPERATORS

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

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 3108(a)(1) of 63 Pa.C.S. (relating to civil penalties), authorizes the Commissioner, after consultation with licensing boards within the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the respective acts or regulations of the licensing boards.

Background and Purpose

Section 3108(a)(1) 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. These 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 retain their due process right to a hearing prior to the imposition of judgment. The use of 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 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 3108(a)(1)(iii) 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 citation program under 63 Pa.C.S. § 3108(a)(1). The Commissioner and the Board believe that it is necessary to implement the civil penalties contained in this 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.

Proposed rulemaking was published at 50 Pa.B. 5850 on October 24, 2020. The Commissioner entertained public comment for a period of 30 days, during which time the Commissioner did not receive any public comments. Following the close of the public comment period, the Commissioner received comments from the Independent Regulatory Review Commission (IRRC). The Commissioner received no comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protections and Licensure Committee (SCP/PLC). The following represents a summary of the comments received and the Commissioner's response.

Comments from the Independent Regulatory Review Commission

IRRC first questioned whether the Bureau and the Board considered 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 in those instances where the violation for either of these two offenses resulted in bodily harm or substantial property damage, and whether a civil penalty should even be available for consideration in those situations. IRRC further asked for an explanation of their rationale and how violations that result in bodily harm or extensive property damage will be treated, and to describe how the approach protects the public health and safety and deters violations of statutory and regulatory requirements.

The ability for agents of the Bureau to file a citation for violations of these sections does not foreclose the possibility of the filing of formal action if the facts and circumstances warrant a more serious penalty. The option of issuance of a citation for unlicensed operation of a crane, or employing an unlicensed individual to operate a crane, is discretionary, and should be used in those situations where the violation occurs without aggravating circumstances such as bodily injury or property damage. This approach protects the public health and safety by allowing a quick resolution and the establishment of a first violation of these provisions in those matters that do not involve bodily injury or property damage. A subsequent violation requires the filing of formal disciplinary action, the threat of which will promote compliance with the licensing requirements of the Board.

IRRC also noted that 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. Depending on the specialty or the accrediting organization, certifications are valid for 2, 3 or 5 years. As such, there may be times when a crane operator's certification will expire during the biennial licensing renewal period. IRRC further noted that section 502(b) of the act (63 P.S. § 2400.502(b)) and the Board's regulations at § 6.32(a)(2) (relating to renewal of license) require crane operators to have a current valid certification at all times, and that the Board requires licensees to submit evidence of certification renewal before their current certification expires and that a licensee who has failed to maintain certification or submit evidence of re-certification is subject to disciplinary action. Given these statutory and regulatory provisions, IRRC asked whether the Board considered and rejected establishing a civil penalty for failure to maintain certification or provide evidence of certification renewal, and if so, to explain the reason and rationale for excluding these offenses from the schedule of civil penalties.

The Commissioner and the Board did not include the failure to maintain certification or submit evidence of re-certification in the schedule of civil penalties because a licensee may choose not to recertify or maintain their certification for several reasons. A licensee may no longer be employed as a crane operator, or is no longer practicing in the profession, or has retired from the profession at the time the certification expires. In those situations, rather than going through the expense of recertification when a licensee is no longer practicing the profession, the licensee may let their certification expire and not engage in the practice of the profession, even though they have a valid, current license to do so until it subsequently expires. The Commissioner and the Board believe that the ability to discipline a licensee for failure to maintain certification does not arise until the licensee actually operates a crane after the crane operator's certification has expired. As such, a violation of 63 P.S. § 2400.502(b) and § 6.32(a)(2) would more appropriately be the subject of formal disciplinary action.

Finally, IRRC noted that the proposed schedule distinguishes between "operating a crane without a license" and "operating a crane on a lapsed or expired license." For clarity, IRRC 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 Commissioner and Board have agreed with this suggested revision and made the appropriate revision to the final-form rulemaking.

Fiscal Impact and Paperwork Requirements

This final-form 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 continually monitor the cost 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.

No public comments were received, however, in preparing the final-form regulation, the Commissioner and the Board considered comments received from IRRC.

On April 26, 2021, the Commissioner delivered the final-form rulemaking to the HPLC, the SCP/PLC and IRRC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a (j.2)), the final-form rulemaking was (deemed) approved by the HPLC and the SCP/PLC on _____. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on _____ and approved the final-form rulemaking.

Findings

The Commissioner finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law.
- (3) This final-form rulemaking does not include any amendments that would enlarge the scope of proposed rulemaking published at 50 Pa.B. 5850 (October 24, 2020).
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of 63 Pa.C.S. § 3108 and the act.

Order

The Commissioner, acting under the authority of 63 Pa.C.S. § 3108, orders that:

- (a) The regulations of the Commissioner at 49 Pa. Code § 43b.28 are amended to read as set forth in Annex A.
- (b) The Board shall submit this final-form regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall submit this final-form regulation to IRRC, the HPLC and the SCP/PLC as required by law.
- (d) The Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau as required by law.
- (e) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

**K. Kalonji Johnson,
Commissioner**

ANNEX A

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</u>	<u>1st Offense - \$750</u>
<u>2400.501(a)</u>		<u>license</u>	<u>Subsequent offenses – formal action</u>
<u>Section</u>	<u>§ 6.43(a)</u>	<u>Employing, allowing,</u>	<u>1st Offense - \$1,000</u>
<u>2400.501(b)</u>		<u>directing, retaining or</u>	<u>Subsequent offenses – formal action</u>
		<u>hiring an unlicensed</u>	
		<u>individual or independent</u>	
		<u>contractor to operate a</u>	
		<u>crane</u>	

<u>Section</u>	<u>§ 6.41(a)</u>	<u>Holding oneself out as</u>	<u>1st Offense - \$500</u>
<u>2400.501(e)</u>		<u>being able to operate a</u>	<u>2nd Offense - \$750</u>
		<u>crane or using the title</u>	<u>Subsequent offenses – formal action</u>
		<u>“licensed crane operator”</u>	
		<u>or the abbreviation</u>	
		<u>“L.C.O.” without a license</u>	
		OR AFTER A CRANE	
		OPERATOR’S LICENSE	
		HAS LAPSED OR	
		EXPIRED	
	<u>§ 6.31(a)</u>	<u>Operating a crane on a</u>	<u>1st Offense – Up to 24 months, \$50</u>
		<u>lapse or expired</u>	<u>per month not to exceed \$1,000; over</u>
		<u>(unregistered) license</u>	<u>24 months – formal action</u>
			<u>2nd Offense – Up to 12 months, \$100</u>
			<u>per month not to exceed \$1,000; over</u>
			<u>12 months – formal action</u>
			<u>Subsequent offenses – formal action</u>
	<u>§ 6.42(f)</u>	<u>Failing to notify the Board</u>	<u>1st Offense - \$750</u>
		<u>in writing within 10 days of</u>	<u>Subsequent offenses – formal action</u>
		<u>the institution of criminal</u>	
		<u>proceedings in a court case</u>	
		<u>against the crane operator</u>	



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 787-8503

April 26, 2021

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

Re: Final Regulation
Bureau of Professional and Occupational Affairs
16A-7103: Schedule of Civil Penalties - Crane Operators

Dear Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the Commissioner of Professional and Occupational Affairs pertaining to 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
Bureau of Professional and Occupational Affairs

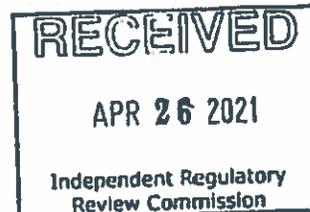
KKJ/DFP:aaw
Enclosure

cc: K. Kalonji Johnson, Commissioner of Professional and Occupational Affairs
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

Worthington, Amber

From: Blauch, Tammy <tblauch@pasen.gov>
Sent: Monday, April 26, 2021 9:52 AM
To: Worthington, Amber; Smeltz, Jennifer
Subject: RE: DELIVERY 16A-6518 & 16A-7103

Good morning,
Yes, we received your email with the rulemakings.



Tammy Blauch
Executive Secretary
Office of Senator Robert M. Tomlinson
Room 286 Main Capitol Building
Harrisburg, PA 17120
(717)-787-5072
Fax: (717)772-2991
tblauch@pasen.gov

From: Worthington, Amber <agontz@pa.gov>
Sent: Monday, April 26, 2021 9:04 AM
To: Smeltz, Jennifer <jmsmeltz@pasen.gov>; Blauch, Tammy <tblauch@pasen.gov>
Subject: DELIVERY 16A-6518 & 16A-7103
Importance: High

● CAUTION : External Email ●

Please provide written (email) confirmation of receipt of the delivery of the attached rulemaking.

Please be advised that the Bureau of Professional and Occupational Affairs (BPOA) and State Board of Physical Therapy is delivering the following rulemakings:

- State Board of Physical Therapy 16A-6518 Child Abuse Reporting Requirements (Final)
- BPOA 16A-7103 Schedule of Civil Penalties Crane Operators (Final)

Amber Worthington, PLS | Legal Assistant Supervisor
(preferred pronouns: they/them/theirs)
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
www.dos.pa.gov

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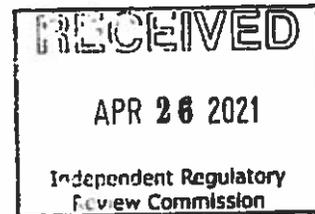
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Worthington, Amber

From: Livingston, Jerry <Jerry.Livingston@pasenate.com>
Sent: Monday, April 26, 2021 9:17 AM
To: Worthington, Amber
Subject: Read: DELIVERY Regulations 16A-6518 & 16A-7103
Attachments: Read: DELIVERY Regulations 16A-6518 & 16A-7103

Importance: High

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Worthington, Amber

From: Emily Epler <Eepler@pahousegop.com>
Sent: Monday, April 26, 2021 9:19 AM
To: Worthington, Amber; Nicole Sidle
Subject: RE: DELIVERY 16A-6518 & 16A-71003

Received.

Emily L. Epler
Administrative Assistant II
David S. Hickernell, Majority Chairman
Professional Licensure Committee
Room 43, East Wing
Harrisburg, PA 17120-2098
717-783-2076



From: Worthington, Amber <agontz@pa.gov>
Sent: Monday, April 26, 2021 9:04 AM
To: Nicole Sidle <Nsidle@pahousegop.com>; Emily Epler <Eepler@pahousegop.com>
Subject: DELIVERY 16A-6518 & 16A-71003
Importance: High

Please provide written (email) confirmation of receipt of the delivery of the attached rulemaking.

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- BPOA 16A-7103 Schedule of Civil Penalties Crane Operators (Final)

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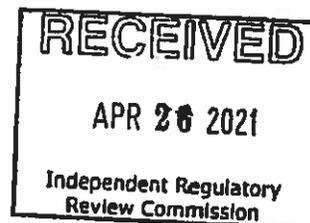
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Worthington, Amber

From: Wilson, Marlene <MWilson@pahouse.net>
Sent: Monday, April 26, 2021 9:05 AM
To: Worthington, Amber
Subject: RE: DELIVERY 16A-6518 & 16A-7103

Received. Thank you.



*Marlene Wilson, Esquire
Senior Committee Executive Director
House Professional Licensure Committee
Rep. Jake Wheatley, Jr., Chairman
Room 36 East Wing
P.O. Box 202019
Harrisburg, PA 17120-2019
Phone: (717) 757-4032
Internal Phone: 6253
Cell: (717) 645-9967
Fax: (717) 772-9862
Email - mwilson@pahouse.net*

From: Worthington, Amber <agontz@pa.gov>
Sent: Monday, April 26, 2021 9:03 AM
To: Wilson, Marlene <MWilson@pahouse.net>
Subject: DELIVERY 16A-6518 & 16A-7103
Importance: High

Please provide written (email) confirmation of receipt of the delivery of the attached rulemaking.

Please be advised that the Bureau of Professional and Occupational Affairs (BPOA) and State Board of Physical Therapy is delivering the following rulemakings:

- State Board of Physical Therapy 16A-6518 Child Abuse Reporting Requirements (Final)
- BPOA 16A-7103 Schedule of Civil Penalties Crane Operators (Final)

Amber Worthington, PLS | Legal Assistant Supervisor
(preferred pronouns: they/them/theirs)

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