

EDDIE STEWART, President
DIRK ELSPERMAN, Senior Vice President
ROBERT C. LANHAM, Vice President
JOEL ZINGESER, Treasurer
STEPHEN E. SANDHERR, Chief Executive Officer
JEFFREY D. SHOAF, Chief Operating Officer



Via E-mail

July 5, 2018

OSHA Docket Office
Technical Data Center, Room N-3653
The Occupational Safety and Health Administration
The United States Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Docket ID—OSHA—2007—0066
RIN No. 1218-AC96

Re: Docket ID – OSHA – 2007 – 0066: Cranes and Derricks in Construction: Operator Qualification Notice of Proposed Rulemaking

Dear Docket Officer,

The Associated General Contractors of America (AGC), on behalf of our more than 27,000 firms, including over 6,500 of America's leading general contractors, 9,000 specialty-contracting firms, and more than 11,500 service providers and suppliers, all associated with AGC through a nationwide network of 90 chapters across the nation, appreciates this opportunity to submit comments for the Occupational Safety and Health Administration's (OSHA) proposed rule on Cranes and Derricks in Construction: Operator Qualification.

AGC has been working with the Occupational Safety and Health Administration (OSHA) on developing reasonable crane operator requirements since serving on the Cranes and Derricks Advisory Committee (C-DAC) in 2002. OSHA has posed several solicitations for information and requests for public comment in the preamble of the NPRM. AGC continues to support OSHA's efforts in improving crane safety within the construction industry and provides public comment on some of these requests below.

Proposed Paragraph §1926.1427(a) – Duty to Train, Certify or License, and Evaluate Operators

OSHA is proposing to clarify that the training already required under the existing rule continues to be required even after an operator is certified, including training necessary when an operator requires new knowledge or skills because of a change in equipment or tasks. OSHA further states that the proposal would require that every employer evaluate an employee first as an operator-in-training before permitting him or her to operate equipment without oversight. Additionally, OSHA recognizes in the proposal that the existing standard could be clearer

regarding *ongoing* training requirements for certified operators when operating new equipment or when the operator's experiences expand.

AGC agrees that proper training of crane operators is important and understands the need for additional training when operators are assigned new or different equipment. However, we ask for clarification regarding the ongoing training requirement as the operator experiences expand. During discussions with our membership, the question has been raised as to what type of training would satisfy this ongoing compliance obligation and what topic(s) must be covered to satisfy this ongoing obligation. Several options were presented that we believe could meet the intent of the proposal, such as regularly scheduled tool box talks, pre-lift meetings and discussions, job safety analysis reviews, and activity hazard analysis. Each of these methods can be used to deliver relevant crane safety information and should be considered as compliance options.

In addition to clarifying what constitutes ongoing training, AGC also seeks clarification as to whether, or not, such training must be jobsite-specific. In the preamble to the rule, OSHA states that the proposal would clarify that the employer's training duty is both equipment-specific and *task-specific*, and extends until the employer has satisfactorily evaluated the operator-in-training in accordance with proposed paragraph (f)—*Evaluation*, or if any retraining or subsequent training is required to perform the *assigned tasks*.

As previously stated, AGC clearly understands the need for additional training when crane operators are assigned to operate equipment which they are not familiar with. However, the terms task-specific and assigned tasks, in our opinion, can potentially be interpreted to mean jobsite-specific training. If this is the intent, compliance with this proposed provision would be very onerous as operators may encounter jobsite conditions that are similar but not identical to the conditions for which they have been previously trained. In addition to the jobsite conditions being different, the loads which may be required to be hoisted may also be different. For example, a tower crane operator on a building project may lift materials and loads ranging from bundles of steel to bundles of plywood. In addition to the different materials and loads that may be lifted, operators may find themselves on multiple jobsites in a given week, month, or year. Due to these types of scenarios, AGC members have asked how specific this training must be.

Lastly, in the preamble, OSHA discusses in detail an employer's obligation to provide ongoing training as necessary when an operator's experience expands or is assigned to operate new equipment or perform new tasks. However, this concept is not explicitly stated anywhere in the proposed regulatory text. Only refresher training, required when indicated by deficiencies in the employee's demonstrations of crane knowledge and equipment operation, is present in proposed paragraphs (b)(5) and (f)(5), which do not apply to new equipment or an expansion of experience. If OSHA's intent is to clarify an employer's obligation to provide ongoing training, we believe the proposed regulatory text fails to make this clear. As such, the agency should explore ways to make this requirement clearly stated in the final rule. In addition to making the requirement to provide ongoing training clear, we ask that OSHA provide examples of what constitutes the expansion of an operator's experience. AGC believes the vague nature of the term could be left to interpretation.

Proposed Paragraph §1926.1427(b) – Operator Training

OSHA is proposing to adopt language similar to the requirement in American Society of Mechanical Engineers (ASME) B30.5 that training be performed by a “designated person who, by experience and training, fulfills the requirements of a qualified person.” The proposal leaves open the possibility that the trainer’s experience with the task and equipment used could be sufficient for experienced personnel to provide training even absent a certification.

AGC agrees with the proposal to revise the existing trainer requirements. Under the proposed language, employers would have flexibility in determining the level of knowledge and experience that the trainer must possess based on the skill level of the operator-in-training and the nature of the activity performed. We believe that this performance-based language will provide employers the flexibility to assign an individual who meets the definition of a qualified person even when the individual has not passed the written certification exam, possesses an operator certification, or has prior experience operating a crane. We further believe that this revision does not preclude employers from following the existing trainer requirements if they so choose.

Additionally, some AGC members have expressed concern that they do not currently employ individuals who are qualified to be a trainer of the operator-in-training and to subsequently evaluate the operator-in-training. These members only hire crane operators on an as-needed basis. Without a qualified individual to serve as the trainer and/or evaluator, would they be required to hire additional personnel, or train existing personnel, or use third-party crane services to fill those roles to achieve compliance? If that is the case, we do not believe OSHA has considered the additional cost. Further, if the use of third-party crane services is an acceptable compliance option, what liability will the employer be accepting if the trainer and/or evaluator does not meet OSHA’s expectations?

Proposed Paragraphs §1926.1427(c)(1)(v) and §1926.1427(d)(1)(ii)(B) – Type, or Type and Capacity

The existing rule, §1926.1427(b)(2), states that “an operator will be deemed qualified to operate a particular piece of equipment if the operator is certified under paragraph (b) of this section for that *type and capacity* of equipment.” OSHA is proposing to expand the current requirement to include certification by type only.

AGC agrees with and supports the change from certification by type and capacity only to certification by type, or type and capacity. We participated in the March 31, 2015 meeting of the Advisory Committee for Construction Safety & Health (ACCSH), where it was unanimously agreed to recommend that OSHA clarify the requirement for certification so that certification could be by type, or by type and capacity.

According to previous estimates by OSHA, there are 71,700 operators with certification for type only, 15,000 operators with compliant type and capacity certification, and 30,430 operators possessing no certification. Based on these figures, failure to expand the existing rule to include certifications by type only would result in approximately 83% of those possessing certification

being non-compliant with the existing rule. The invalidation of such a large number of crane operator certifications could significantly disrupt industry operations.

Further, in response to OSHA's request for comments on its proposal to eliminate the requirement that crane operators be certified by capacity in addition to type of crane, AGC encourages OSHA to retain the proposed regulatory text that allows certification by type, or type and capacity. Doing so would continue to recognize those who have obtained certifications of this type and would also treat each certification body fairly and equally.

Proposed Paragraph §1926.1427(f) – Evaluation

Under the existing standard, operator certification becomes *de facto* qualification once the employer duty to ensure operator competence (§1926.1427(k)(2)(i)) ends in November 2018. OSHA is proposing to revise the existing crane rule to add a permanent employer evaluation duty. The key difference between this proposal and the existing standard is that the proposal would permanently maintain the employer's duty to evaluate its operators, and provide greater specificity as to what that duty entails.

Proposed (f)(1)(i) requires employers to evaluate the operator's judgment. AGC does not agree that the term "judgement" should be included as a quality of an operator that should be considered during the training and evaluation process. First, the term is not used in any other OSHA standard or requirement that we are aware of. While this term was used repeatedly during various outreach efforts by OSHA and during the stakeholders' meetings, we do not believe it was the intent of those individuals, or groups, to incorporate "judgement" into the regulatory text. Second, an operator's proper judgement is almost impossible to discern during the evaluation process and there are a variety of factors that could impair an individual's judgement which are unrelated to their assigned work and operational ability. Lastly, this could be a catch-all in the event of an incident as an operator's judgement could always be cited as a factor.

In the preamble, OSHA also states that it would be nearly impossible to specify a definitive list of minimum equipment characteristics that an operator evaluation must cover to ensure operators are competent to safely operate equipment in all its possible configurations. AGC agrees with OSHA's assertion and believes that providing an incomplete list of characteristics only exposes employers to citations during enforcement proceedings if a compliance officer perceives an employer's evaluation criteria to be insufficient, while providing too detailed of a list would significantly increase the amount, and detail, of any documentation requirements. For these reasons, AGC strongly recommends that OSHA simply retain the existing language in paragraphs §1926.1427(k)(2)(i) and §1926.1427(k)(2)(ii), which require employers to ensure an operator's competency to operate the assigned equipment safely and to ensure that each operator is evaluated. Should OSHA disagree with this rationale and proceed with the proposed language in (f)(1), AGC recommends that OSHA, at the very least, combine proposed paragraphs (f)(1)(i) and (f)(1)(ii) and incorporate the language into (f)(1) as follows:

(f) *Evaluation.* (1) Through an evaluation, the employer must ensure that each operator demonstrates the skills, knowledge, and ability necessary to operate the equipment safely for the assigned work or task.

In other parts of the preamble, OSHA discusses proposed paragraph (f)(1)(ii) in terms of covering the specific hoisting activities and the actual equipment that will be used. Due to these discussions, AGC and its members requests clarification as to whether the evaluation must be conducted on the actual crane (i.e. make and model, configuration, boom length, counterweight, etc.) the operator will be assigned or can it be of the same type. Additionally, specific hoisting activities suggests that the evaluation would need to cover any, and all, lifts that the operator would be required to perform. As previously mentioned, during any given work shift, operators can be required to hoist a variety of materials and perform various lifts for the project such as hoisting concrete buckets or formwork, conducting blind picks, or picks below grade. For these reasons, we believe that further clarification is needed as it relates to specific hoisting activities during the evaluation process.

AGC would also like to highlight what we believe to be an inconsistency between the preamble discussion and the proposed regulatory text. In the preamble, OSHA clarified that operators are not required to be evaluated on every crane that their companies might use, or every possible configuration. To further reinforce this clarification in the final rule, AGC recommends that OSHA remove (or make optional) the requirement that employers document the make, model, and configuration of equipment used in operator evaluation as proposed in paragraph (f)(4), which would be very similar to the requirements in 1910.178(1)(6).

Miscellaneous

- AGC strongly encourages OSHA to consider an extension of the November 2018 effective date for crane operator certification by one year to November 2019. We believe that this will provide employers who have not currently certified their operators with sufficient time to do so. AGC also strongly encourages OSHA to align the effective date for successful evaluations of new or existing operators with that of the requested operator certification extension.
- It is not clear from the proposed revisions to the existing crane standard if a trainer can also serve as the evaluator. The process of properly training an operator-in-training should not be drastically different from successfully evaluating that same operator. In fact, OSHA cites in the preamble a success story of an employer that developed one of their operators-in-training through various training classes and a mentoring program to serve as the trainer and evaluator for his company. AGC believes that an individual who meets the qualified person definition could serve as both.

Conclusion

AGC appreciates this opportunity to comment on OSHA's proposed rule on Crane and Derricks in Construction: Operator Qualification. AGC continues to support OSHA's efforts in improving crane safety within the construction industry; however, OSHA must provide greater flexibility and clarification as it relates to the agency's expectations with the proposed training and evaluation requirements.

On behalf of our more than 27,000 firms, including over 6,500 of America's leading general contractors, 9,000 specialty-contracting firms, and more than 11,500 service providers and suppliers, all associated through a nationwide network of 90 chapters across the nation, AGC appreciates this opportunity to submit comments for the OSHA's proposed rule on Cranes and Derricks in Construction: Operator Qualification. AGC remains strongly committed to the safety of workers in the construction industry and our valued relationship with the OSHA.

Sincerely,

A handwritten signature in black ink that reads "Kevin Cannon". The signature is written in a cursive style with a large initial 'K'.

Kevin Cannon
Senior Director, Safety and Health Services
Government Affairs