National Commission for the Certification of Crane Operators

OSHA STAKEHOLDERS MEETING APRIL 2013 SUMMARY

44 stakeholders met over the course of three meetings called by OSHA for April 2 and 3, 2013 in Washington, DC to discuss two issues relating to the crane operator qualification requirements of the crane rule, 29 CFR 1926.1427. Approximately 60 other industry representatives observed. This is a summary of the discussions at all three meetings.

1. "Certified Deemed to be Qualified" Issue

Summary

The overwhelming majority of those testifying stated that, in the interests of safety, an employer's responsibility does not—and should not—end with certifying his/her operators; that certification is not, in and of itself, qualification.

Agreeing with this position were:

Contractors:
- LPR, Miller & Long, Black & Veatch, Bay, Boh Bros., Henkels & McCoy

Crane Rental:
- W.O. Grubb, Sims Crane, Cranes Inc., Rent-a-Crane

Steel Erectors:
- Buckner Companies, Lampson

Certification Bodies:
- NCCER, CIC, OECP, NCCCO

Accrediting Agencies:
- ANSI

Federal Agencies:
- US Army Corps of Engineers (USACE)

Associations:
- Associated General Contractors of America
- Steel Erectors Association of America
- Specialized Carriers & Rigging Association
- Association of Equipment Manufacturers/PCSA
- International Association of Foundation Drilling

Insurance:
- NBIS

Manufacturers:
- Manitowoc
- Terex

Labor:
- IUOE
- Teamsters

Training Companies:
- North American Crane Bureau
- California Crane School
- Preferred Safety Consulting
- Industrial Training International

Typical comments on the "Certified Deemed to be Qualified" Issue

"If we really want to be safe we need something above certification." **LPR**

" If certification is the "be all and end all" then the certification bodies would have to completely redo their Job Task Analyses, and they would have to look very different." **ANSI**

"The employer has a mentoring role." **Rent-A-Crane**

"A parallel in medicine (for example) is becoming qualified as a physician and then going on to be Board certified as a cardiologist." **ANSI**

"One size cannot fit all." **Terex**

"Certification cannot guarantee total competency so certification cannot prevent accidents." **ANSI**

"We need to have a two-step process. We need qualification steps on top of certification." **USACE**

"It's the configuration of the crane that is often the root cause of an accident." **USACE**

"The FAA certifies you to fly; American Airlines qualifies you to run a 747." **Cranes Inc**.

"Certification was never intended to be qualification. We have always said that it is a highly valuable tool in the toolbox that an employer uses to determine if an operator is qualified to run a particular crane, in a particular configuration in a particular situation." **NCCCO**

"We have certified operators but we take additional essential steps to qualify them. The employer has the responsibility to ensure operators are qualified." **Boh Bros.**

"Qualification resides with the end user of the product. Certification cannot qualify anyone for a particular lift in a particular situation." **PCSA**

"It's the configuration of the crane that dictates the qualification." **Henkels & McCoy**

"The CCO card doesn't qualify you. Someone other than the certification body should qualify you." **Black & Veatch**

"Certification does not equal qualification. It's minimum level." **NCCER**

"OSHA should just go by types of crane." **PCSA**

"The card in his pocket does not make him a qualified operator." **Sims Crane**

"We have an in-house program. There needs to be a lot more emphasis on an employer qualifying his operators." **Bay**

"The employer is responsible for ensuring his operator is qualified to operate a specific crane in a specific situation." **ITI**

"The certification process tests a basic level of understanding. Just because an operator has an LBC certification does not qualify him to run a 2250. The employer still has to qualify him." **Buckner**

"There are big differences between certifications from different certification bodies. OSHA is assuming that because they're accredited they're all equal. That's another reason why certification cannot equal qualification." **ITI**

"The state of Maryland licenses my 15-year old daughter to drive but it's me who qualifies her if she wants to drive my F-150 truck." **NBIS**

"'Certification' relates to a standards-based testing process. 'Qualification' relates to personnel evaluation. It's an HR issue and should remain with the employer." **IUOE**

"Qualification is what an employer does. You cannot possibly test on everything; we'd spend our lives testing. Every piece of equipment is different; there are just too many types and sizes." **Miller & Long**

"OSHA can say our certification is qualification. But it's our program, and calling a duck an elephant, no matter how many times you say it, doesn't turn it into an elephant. **NCCCO**

"Certification is like a driver's license. Qualification is what comes down to me as an owner." **SEAA**

"An employer has lots he has to do to take certification to qualification. Certification is an important step but holding a certification card doesn't make a man right for a crane." **Preferred Safety**

"Right now we have to qualify our operators in writing for a particular crane in a particular situation." **W.O. Grubb**

"Certification can be a prerequisite for qualification, but it's not qualification. It's completely inappropriate to consider certification as qualification. You can't test for everything. To say so gives an employer an unreasonable assumption." **California Crane School**

2. "Testing/Certifying by Capacity" Issue

Summary

A large majority of those testifying also stated that certifying and/or testing by capacity, in addition to not being part of C-DAC's intent, was not in any case a useful exercise.

Agreeing with this position were:

Contractors:
LPR, Miller & Long, Black & Veatch, Bay, Boh Bros., Henkels & McCoy

Crane Rental:
W.O. Grubb, Sims Crane, Cranes, Inc., Rent-a-Crane

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Association of Equipment Manufacturers/PCSA
International Association of Foundation Drilling

Insurance:
NBIS

Manufacturers:
Manitowoc
Terex

Labor:
IUOE
Teamsters

Training Companies:
North American Crane Bureau
California Crane School
Preferred Safety Consulting

Typical comments on the "Testing/Certifying by Capacity" Issue

"You cannot qualify an operator to run a crane based on capacity and type by virtue of certification." **Sims Crane**

"We put in capacity when this rule was written. We can easily take it out." **NCCER**

"Just because I can run a larger crane doesn't mean I can run a smaller one." **Miller & Long**

"Doesn't matter a bit about size. A 25 ton friction rig is a lot more challenging to operate than a 300 ton hydro." **Preferred Safety**

"What makes a crane complex is not the capacity, it's the configuration." **IUOE**

"NCCCO had capacity bands at one point. We used a 17.5 ton threshold to distinguish "small" telescopic cranes from "large." But the driving element was always control type not capacity, which is why we renamed them "fixed cab" and "swing cab" in 2006. **NCCCO**

"On some of my cranes the capacity of the crane changes depending on how I run the boom out. What capacity are you looking for?" **Sims Crane**

"The larger the crane, very often the shorter the boom. We should be focused on type and characteristic, not capacity." **Manitowoc**

"You don't have any data that says capacity is a factor. You would need to have a national study done to establish that for validation." **ANSI**

"You cannot test skills on a written exam. If you believe that, say, a 100 ton crane has a different skill set than a 50 ton crane, then you have to have two performance exams." **ANSI**

"Capacity can come out." **USACE**

"Accrediting bodies set mandates and prohibit us from arbitrarily adding capacity." **IUOE**

"We can't support banding, nor disenfranchisement of crane operators. 'Capacity' has to be eliminated." **AGC of America**

"Tonnage doesn't imply greater skill; it's the control system that determines skill." **Lampson**

"A 1,000 ton crane becomes a 3.5 ton crane when lifting on one part of line, so what capacity are you talking about?" **Sims Crane**

"If the tasks don't differ according to size then you don't need to test for them on the performance assessment. There needs to be a level of validity for each test. Where's the study that says you need all these different tests?" **IUOE**

"OECP did have capacity bands at one time but we realized it was a façade; it did not discriminate." **IUOE**

POINTS THAT EMERGED FROM DISCUSSIONS

"Certified Deemed Qualified" is not derived from C-DAC. To be clear, the origin of the "Certified Deemed to be Qualified" issue lies within OSHA, *not* C-DAC. This provision is contained in 1926.1427(b)(2) which OSHA inserted in the Final Rule and *after* the Proposed Rule was reviewed and commented on. "Qualified" is not part of the C-DAC language for Option 1.

State Programs and capacity. Contrary to OSHA's repeated statement at the Stakeholders Meeting, the majority of states that have operator requirements do *not* require testing or certification by capacity. Those that do reference capacity do so in terms of a threshold below which licensing is not required. Others (such as Washington which was repeatedly referenced) qualify by capacity through *experience* not testing.

Certification = Qualification is even more problematic using the "most similar" rule. The rule states that if no certification program exists for a particular type and/or capacity of equipment, an operator will be deemed qualified if he has been certified for the type/capacity "that is most similar to that equipment." Therefore, to be qualified to operate a pile driver, for example, an operator could be certified on a lattice boom crane using tests that do not address pile driving operations, without any further testing of his knowledge and skills.

Accidents have decreased without certifying by capacity. Neither California nor the Canadian province of Ontario factor in testing by crane capacity and yet both have seen an 80% or more decrease in crane-related fatalities as a result of their respective programs (mandated in 2005 and 1978, respectively).

The requirement to certify by capacity is only in Option 1, not Options 2, 3 or 4. If capacity is so important, why are employers, the military and states allowed to qualify without testing by capacity? OSHA is already permitting these three groups to qualify crane operators without taking crane capacity into account.

Cost impact study has been undermined by OSHA. In calculating the cost impact to industry, the SBRFA analysis based its estimate on the assumption that 40% of all operators were currently certified. OSHA raised that to 60%. The overwhelming majority of these crane operators hold certifications that OSHA is now saying will be invalid come the 2014 deadline, meaning that the cost to industry has been vastly understated.

Testing by capacity, upon which certification by capacity has to be based if skills are to be evaluated, is a misnomer. None of the certification bodies' performance exams test with anything other than a light load on the hook, and using a single part line which dramatically reduces the "maximum rated capacity" of the crane advertised by the manufacturer.

Other crane elements are more important than capacity. There are many other aspects of a crane that would make more sense to test for before capacity was ever considered. Examples would be: control type (fixed or swing cab), friction vs. hydraulic, use of jibs, tower attachments, heavy lift attachments.

Boom length is not capacity. Testing by boom length, although it may have some merit in determining an operator's skills, is not required by the rule and does not equate to testing by capacity.

Substituting boom length for capacity in performance testing is flawed. Example: A National 600H boom truck with a maximum rated capacity of 40,000lbs has a maximum boom length of 90 ft. A candidate tests on it with 75 ft. of boom and fails. He retests with the boom at 35 ft. and passes. His card states he is certified in the "Telescoping Boom, 20 tons or less" category *with no restriction on boom length,* even though there is now empirical evidence that he is not competent to operate the crane with a longer boom.

What is capacity anyway? Is it the maximum rated capacity of the crane (which a crane in practice never lifts)? Is it the maximum capacity of the crane when used on the practical test (in which case, capacity is limited by the capacity of the single load line that is being used)? Or is it the capacity with heavy lift attachments which may increase the base capacity by 10-30% or more?

Other types of cranes and capacity. If certifying by capacity is problematic for mobile cranes, it's simply irrelevant for tower cranes and knuckleblooms which are both "rated" by load moment, as well as overhead cranes.

"'Type and capacity'" is not of our making," OSHA. True. But OSHA took the one mention of it by C-DAC [1926.1427(b)(1)(ii)(B)] and turned into something the Committee never intended. OSHA inserted para. 1926.1427(b)(2) after the Proposed Rule was published at Final Rule stage and referenced "capacity" two more times. And OSHA doesn't just say that certification on a particular type and capacity of equipment means an operator is qualified for a particular type and capacity of equipment, it says he is qualified to operate a particular *piece* of equipment [emphasis added]. No need, apparently, for the employer ever to check out an operator on the *actual* crane he is planning to designate him to operate.

Written testing as a "make-up" for a practical test. It's true you cannot test skills by a written test, but if there is no discernible difference in the skills required to operate, say a 100 ton crane vs. a 50 ton crane, then, per ANSI, a separate skills test would not be required. If there were a *knowledge* difference, this could be handled on a written test through, say, load chart questions on a crane of higher capacity.

Accredited Testing Organization. Despite the several references to OSHA refers throughout the rule to an "accredited testing organization" there is, in fact, no such thing. It is the *program* that ANSI accredits, not the organization. This is not just semantics. A testing organization may have several certification programs but only one or two of them accredited. This will give OSHA Compliance Officers major issues as they attempt to discern which of the programs offered by any one of the four certification programs are accredited.

Option 2 is unworkable. Since there is no such entity as an Accredited Testing Organization, Option 2 is arguably unworkable. Even if corrected semantically ("an organization whose programs have been accredited by a nationally recognized accrediting agency", for example) neither ANSI nor NCCA review certification bodies to conduct the kind of audit called for in Option 2. ANSI has informed OSHA: "If an employer opts for the employer qualification program, [ANSI will need to] confirm that the employer has applied and been accredited by ANSI after document review and onsite visits by ANSI assessors." In other words, only ANSI can audit certification/qualification programs, not the certification bodies.

Legal status of certification programs. Legal opinion is that a certification program's exposure to liability in the event of a certified operator being found culpable in an accident has *not* increased as a result of OSHA's position on certification = qualification. So now who *is* responsible for ensuring that an operator *really* is qualified to operate a particular machine, in a given configuration, in a particular construction environment? Not the testing organization, and apparently not the employer, either.