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AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.



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OSHA Docket Office
Technical Data Center, Room N-2625
The Occupational Safety and Health Administration
The United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20001

Docket ID—OSHA—2007—0066
RIN No. 1218-AC01

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

Dear Docket Officer,

The Associated General Contractors of America (AGC), the largest and oldest national construction trade association in the United States, places safety in the construction industry as a priority. AGC appreciates this opportunity to submit comments for the Occupational Safety and Health Administration's (OSHA) proposed rule on Cranes and Derricks in Construction.

AGC has actively monitored and participated in the Crane and Derricks Negotiated Rulemaking process and the Small Business Regulatory Enforcement Fairness Act (SBREFA) review process. AGC nominated members for both panels (C-DAC and SBREFA). They actively participated and provided input to OSHA during the development of the Crane and Derricks in Construction standard. During the negotiated rulemaking, AGC, via our representative Brian Murphy, agreed with all issues during C-DAC with the exception of Section 1422 Operator Qualifications. We continue to be concerned about Section 1422, specifically the cost of certification and training required, the availability of the certification and the adaptability of the requirement and certification process to those who do not read and write English well.

OSHA has posed several solicitations for information and requests for public comment in the preamble of the NPRM, many in reference to clarifications and questions posed by AGC members on the SBREFA panel. AGC solicited information from crane experts and appreciates this opportunity to provide public comment on some of these requests.

The SBREFA Panel recommended that OSHA request public comment on how the rule could be made easier to understand without creating ambiguities. The Crane and Derricks in Construction proposed standard is long and complex. Small Businesses will have difficulty in deciphering the language of the text and its intent. AGC believes that OSHA should provide guidance and training for small businesses to ensure comprehension and compliance of the rule when finalized. OSHA should offer this as a Susan Harwood Grant Training topic, along with creating e-Tool assistance. AGC believes that the construction industry must work together – OSHA, employers, labor, manufacturers and insurers - to ensure safety on construction job sites, especially while managing and maintaining cranes on the job site.

§1926.1400 – Scope

OSHA requested comment on whether the scope of the language should be adapted to include forklifts that are modified to perform similar tasks to cranes or derricks. The short answer is no. AGC believes that the intent of C-DAC was to cover, as defined in §1926.1400(i), "...power-operated equipment used in construction that can hoist, lower and horizontally move a suspended load." OSHA cannot list every piece of equipment that could potentially be modified to perform the same duties of a crane or derrick considering the advancements in technology. OSHA currently has a forklift standard - §1910.178 and the equipment is already covered in Subpart O – Motor Vehicles, Mechanized Equipment, and Marine Operations - §1926.602.

§1926.1401 – Definitions

AGC agrees with OSHA's modification of the definition for a tower crane. The Agency's modification removes any ambiguity in the definition.

The Agency solicits public comment on whether there is a more suitable definition for "Wire Rope," which is currently defined in §1926.1402 as "...rope made of wire." OSHA offers Specialized Carriers and Rigging Foundation's (SC&RF's) definition, "[a] flexible rope constructed by laying steel wires into various patterns of multi-wired strands around a core system to produce a helically wound rope;" AGC recommends that OSHA revise the definition of wire rope as recommended. However, AGC also believes that OSHA should not exclude synthetic or fiber core rope. OSHA should include definitions for fiber core and synthetic ropes.

§1926.1404 – Assembly/Disassembly – general requirements (applies to all assembly and disassembly operations)

OSHA is considering modifying the standard to address the hazards in relation to synthetic slings in the assembly/disassembly of equipment covered by the proposed standard, due to the collapse of a tower crane in New York City in March 2008. AGC recommends that if OSHA wishes to address the problem, the Agency should use the second option referenced in the preamble and

require padding or similar measure when needed to protect the slings from damage such as from being cut, compressed or distorted. AGC suggests that OSHA stipulate that “softeners must be used any time synthetic slings are in danger of being abraded or otherwise damaged.” Softeners increase the radius or decrease the angle of a corner so that sling capacity is not lost at the sharp bend of the corner. Proper use of softeners will improve safety and extend the useful life of the equipment.

The Agency requested public comment on §1926.1404(e), Protecting Assembly/Disassembly Crew Members out of Operator View. During the Crane and Derricks Negotiated Rulemaking, the Committee identified that one of the hazards for crew members are when an operator is swinging or moving the crane/derrick during assembly/disassembly. A crew member could be in the crush or caught-in between zones and out of the operator’s view. The Committee added language requiring crew members to notify the operator when they would be in a location that is out of the operator’s view and is in, near, on, or under the equipment or load.

The Committee decided that the operator would be prohibited from moving any part of the crane/derrick or load until the operator gives warning and sufficient time for the crew to move to a safe location or the operator is informed that crew members have moved to a safe location. OSHA suggested a modification to the proposed rule that a crew member could notify the operator directly or “through someone instructed by the crew member that the crew member is going to that location.” AGC opposes this change in the proposed standard. AGC believes that modifying the proposed standard with this change will add another line of communication and create a greater hazard.

§1926.1412 – Inspections

The Agency has expressed concern over the level of expertise needed by those who inspect the equipment covered by this proposed standard. OSHA is requesting comments on whether there should be specific protocol to ensure that inspectors have adequate expertise to perform their duties. AGC agrees that those who inspect the equipment covered under this proposed rule should demonstrate their training and ability to perform the duties required.

§1926.1417 – Operation

The Agency requests public comment on whether lock-out/tag-out procedures as referenced in §1910.147(e)(3)(i) through (iii) would be appropriate for cranes and derricks. AGC believes that lock-out of certain equipment may not be feasible; however, tag-out of equipment would be an option. The hydraulics for certain pieces of equipment may not be able to be locked out if the cab is not enclosed or there is a valve on the outside of the cab. Also, one may not be able to lock out certain engine functions in older machines as they have master switches and on/off

switches with no keyed lock. AGC suggests that OSHA modify the language in §1926.1417(f) to state that “when feasible, equipment must be locked-out.”

§1926.1423 – Fall Protection

OSHA notes that in §1926.1423(g)(2) C-DAC did not make an exception for providing fall protection when an employee is at or near draw-works, in the cab or on the deck, as they did in §1926.1423(g)(1). AGC believes that a greater hazard would be created by having slack rope in or around moving machinery. AGC suggests that OSHA include the exception from §1926.1423(g)(1) in (g)(2).

§1926.1427 - Operator Qualification and Certification

AGC fully recognizes the need to ensure the knowledge and ability of crane operators in the construction industry; however, the proposed §1926.1427 – Operator Qualification and Certification are too restrictive. The four options that are proposed are impractical for many contractors, specifically small contractors. §1926.1427(b) - Option 1, which is the most prominent option, requires that a crane operator be certified by an organization who has been accredited by a nationally recognized accrediting agency (i.e. National Commission for Certifying Agencies (NCCA) or American National Standards Institute (ANSI)). Currently, there are three organizations that have been accredited to provide certifications for crane operators. The National Commission for the Certification of Crane Operators (NCCCO) is the predominant certifying organization in the United States. OSHA notified the public of their intent to create a Negotiated Rulemaking Advisory Committee in 2002. The draft proposed standard was voted and finalized by C-DAC in 2003. Since that time, one additional organization has become an accredited crane/derrick operator testing organization other than Local 12 of the International Union of Operating Engineers. AGC has consistently expressed our concern that there may not be a sufficient capacity to provide certifications for the number of crane operators across the country to ensure compliance with the rule when it becomes effective.

§1926.1427(c) – Option 2 - Qualification by an Audited Employer Program requires that if an employer were to qualify their own crane operators, the employer’s whole program must be audited and approved by a certified auditor - who has been qualified by a certified crane/derrick operator testing organization. The written and practical test must be developed by an accredited crane/derrick operator testing organization or be approved by the auditor. This option is restrictive and cost prohibitive for a large majority of small- and medium-sized construction contractors. Secondly, this option is based on the evaluation of an accredited crane/derrick operator testing organization that would qualify auditors to audit employer programs. This option creates a perilous amount of liability for both the accredited crane/derrick operator testing organization and the employer, both of which trust the judgment of an auditor to ensure that the programs and qualifications are in place to certify crane operators.

§1926.1427(d) – Option 3 – Qualification by the U.S. Military is limited to individuals in the armed services. Construction contractors working on military bases are not qualified to certify their crane operator under Option 3, nor are the certifications portable for U.S Military personnel who become certified under Option 3 if they leave U.S. Military service. This option does not apply to the construction industry.

§1926.1427(e) – Option 4 – Licensing by a Government Entity would permit crane operators to be certified by their state or local government’s certification program. However, the state or local government’s program must meet §1926.1427(b) – Option 1.

AGC recommends a fifth option which was suggested during C-DAC and the Agency also requests public comment on whether an accredited educational institution should be able to provide certifications for crane/derrick operators. AGC strongly supports the inclusion of a fifth option which would allow accredited educational institutions the ability to administer and develop their own crane/derrick operator certification program. Many accredited educational institutions provide courses, education and training for the construction industry and serve as Educational Centers for OSHA’s Training Institute (OTI Education Centers). AGC disagrees that accredited educational institutions do not have the knowledge or resources to develop their own certification program to qualify crane operators; many of these institutions are able to provide confined space rescue programs, courses on heavy equipment, professional certifications for safety personnel, and bachelor’s or master’s degrees for occupational safety and health through their nationally recognized programs, such as Texas A&M, West Virginia University and North Carolina State University.

The Agency should also consider the feasibility of allowing small employers to “self-certify” that their operator is trained and competent to operate the equipment and perform the tasks being conducted (similar to OSHA’s Forklift/Powered Industrial Trucks standard §1910.178.). This approach will be more appropriate for small construction contractors who provide routine and redundant operations.

Additionally, AGC believes that physical examinations and controlled substance and alcohol testing should be required of crane operators to ensure the safety of construction job sites across the nation. At a minimum OSHA should require guidelines similar to that which the U.S. Department of Transportation (DOT) requires for transportation industry employers and their commercial truck drivers. The Agency has left out requirements to meet minimum physical examinations, and controlled substance and alcohol testing. These requirements are a necessity for crane operators to ensure that their ability to operate cranes safely is not impaired. Determination of vision, hearing, and potential for seizures, epilepsy, emotional instability, high

blood pressure and other physical impairments should be a part of the requirements for safe crane operations.

§1926.1428 – Signal Person Qualifications

Currently, under Option 2 in §1926.1428(a)(2), the term “qualified evaluator” is defined in §1926.1401 as “a person employed by the signal person’s employer who has demonstrated that he/she is competent in accurately assessing whether individuals meet the Qualification Requirements in this Subpart for a signal person.” However, OSHA realized that there is no definition for the term “third party qualified evaluator” which is used in §1926.1428(a)(1) – Option 1. AGC agrees with OSHA’s proposed definition – “[a]n entity that, due to its independence and expertise, has demonstrated that it is competent in accurately assessing whether individuals meet the Qualification Requirement in this Subpart for a signal person.”

OSHA further clarifies that the documentation for Option 1 must be available on site, whereas the current language only stipulates that the documentation must be available. AGC agrees with this clarification understanding that the documentation can be provided via the use of technology such as an onsite computer.

§1926.1434 – Equipment Modification

AGC is concerned over the language contained in §1925.1434 - Equipment Modifications. AGC would prefer that when deciding to modify or assemble a crane for barge use that OSHA require approval from a manufacturer **OR** a third party registered engineer. The first concern arises in seeking manufacturer approval, particularly in marine construction operations, given that marine construction contractors often “manufacture” their own barge and crane to mount on the barge. Marine construction contractors routinely hire a shipyard to build a barge or find an existing barge and modify it to meet the needs.

The equipment constructed may consist of components from more than one manufacturer and that crane is mounted on the barge. For example, it may take a crane car body of one manufacturer and attach a crane boom of another manufacturer. This is often the nature of building marine construction crane barges. Depending on where the vessel will be operating, the construction work may be jointly overseen by relevant maritime regulatory authorities, naval architects and registered professional engineers or by a registered professional engineer working with a naval architect.

Due to the existing oversight when manufacturing/building a crane barge, marine construction contractors should be allowed to move forward without going to a manufacturer of a crane or manufacturers of separate crane components. Indeed, in the instance set forth above where a crane is built from a car body manufactured by one entity and a boom by another entity, should we seek approval from the car body crane manufacturer, the boom manufacturer or both, or is the

marine construction contractor the manufacturer of the crane barge? AGC believes that the latter is the case, but OSHA's draft regulatory language is ambiguous in this regard.

AGC also believes that the manufacturer's approval of a modification should not be required when a third party registered engineer is retained. Specifically, when attaching fixed pile driving leads or a spotter to a crawler crane, using the services of a third party registered engineer should be sufficient to establish parameters that ensure that the modification is safe and acceptable. Another instance of proper usage of a third party registered engineer without seeking manufacturer approval, should be when a contractor fabricates a means of pinning a drilling attachment to the base of a boom working in conjunction with specifications from the drilling manufacturer's specifications. Finally, the wording in §1926.1434(a)(2) can cause mischief as it relates to the 30-day language. Specifically, once the manufacturer agrees to review the proposed modification, the contractor seeking the modification can be made to wait indefinitely for a manufacturer's finding. During on-going projects, scheduling is an essential requirement, the use of a third party registered engineer expedites the decision making process without sacrificing safety.

AGC appreciates this opportunity to comment on OSHA's proposed rule on Crane and Derricks in Construction. AGC continues to support OSHA's efforts in improving crane safety within the construction industry; however, OSHA must provide greater flexibility by expanding the options for §1926.1427 - Operator qualification and certification. AGC requests that OSHA also hold public hearings across the country to further understand the depth and impact of this rule, prior to issuing the final rule.

On behalf of our 33,000 firms, including 7,500 of America's leading general contractors, 12,500 specialty-contracting firms, and more than 13,000 service providers and suppliers all associated with AGC through a nationwide network of 96 chapters across the nation, AGC appreciates this opportunity to comment on OSHA's proposed rule for cranes and derricks in construction. AGC remains strongly committed to the safety of workers in the construction industry and our valued relationship with the Occupational Safety and Health Administration (OSHA).

Sincerely,



Jeffrey D. Shoaf
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JDS/msm