

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**ADDENDUM TO THE FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8: Chapter 4, Subchapter 7, Article 98, Section 5006 and New Section 5006.1
of the General Industry Safety Orders

Crane Operator Qualifications and Certification

No further modifications to the information contained in the Initial Statement of Reasons (ISOR) are proposed as a result of the 15-day Notice of Proposed Modifications mailed on February 14, 2003. Therefore, the factual basis and necessity for the regulation remain as described in the Final Statement of Reasons.

SUMMARY AND RESPONSE TO WRITTEN COMMENTSI. **Written Comments**

Mr. William R.E. Jackson, Director of Safety, Granite Construction Company, by letter dated February 18, 2003.

Comment:

Mr. Jackson stated that when he asked at the December 12, 2002 Public Hearing why the Board was excluding operators of cranes with booms less than 25 feet in length or a rated lifting capacity of less than 15,000 pounds, he wanted to know what rationale the Board was relying on to determine that a crane with 7.5 tons of capacity could be safely operated by an individual with unknown qualifications. Mr. Jackson noted that Title 8 has already determined in Section 5021, that all cranes and derricks with more than 6,000 pounds of lifting capacity must be inspected and certified annually by a licensed certificating agency. Mr. Jackson stated that by exempting operators of some of those relatively large cranes from certification, the Board sends an inconsistent message that the integrity of the equipment is more important than the operator's qualifications.

Response:

Staff notes that Mr. Jackson's comment pertaining to the proposal's 15,000-pound load capacity cut-off figure contained in Exception No.1 is outside the scope of the 15-day Notice as it was not proposed for modification. However, the rationale was based on advisory committee deliberation and consideration of information provided at the advisory committee meeting by the Division of Occupational Safety and Health's (Division) Crane Unit which demonstrated that the

larger mobile cranes, those with boom lengths in excess of 25 feet or a lifting capacity of more than 7.5 tons, were involved in accidents to a greater degree than mobile cranes that were smaller than those covered by the proposed exemption. The committee heard testimony from the crane operator subcommittee members that appeared to corroborate the Division's statistics. As a result, the committee and Board staff reasoned that the increased cost impact of a lower mobile crane size threshold would not yield any significant benefit. It is important to note that operators of mobile cranes which are exempted from the proposed requirements are still subject to the operator qualifications specified in Section 5006, which requires the employer to ensure that the crane operator is trained to operate the crane. Board staff also wishes to emphasize that this proposal is an initial step towards quantifying what is a qualified operator. It is reasonable to expect that once the proposal becomes effective for a period of time, it may be revisited through remedial rulemaking to ensure that it is effective, enforceable and accomplishing its intended goals.

The Board recognizes the Section 5021 requirement for annual crane certification to verify the safety of the crane equipment being used but does not see the connection/relationship between what is an equipment maintenance issue and the competency of the operator as covered by Section 5006.1. Board staff notes that the three ton or 6000 pound threshold for crane certification was established by the Legislature as reflected in Labor Code Section 7375, whereas the 15,000-pound or 7.5 ton threshold was developed by Board staff. Crane certification and operator certification are two entirely independent processes that certainly complement each other but are independent concepts that stand-alone in separate sections of Title 8. The Board notes that while the proposal addresses certain size mobile cranes and all tower cranes, those mobile cranes not addressed by the proposal are addressed by Section 5006 in terms of operator qualifications. The Board does not believe it is necessary to modify the proposal at this time.

Comment:

Mr. Jackson stated that when he pointed out the annual certification requirement he did not mean to say that that operators should be certified annually, but that the current five year certification appeared to be too long an interval, at least when compared to pilots, truck drivers, etc.

Mr. Jackson stated that an individual's physical condition may change within the five-year period. Consequently, he indicated that it would make sense to require examinations more frequently than every five years. Mr. Jackson suggested a physical exam and substance abuse test every two years and indicated that he did not think that such a change would increase the cost of the proposal.

Response:

The five-year certification period was developed by consensus through the deliberations of the crane operator qualifications subcommittee and is believed to be a reasonable compromise between cost and effectiveness. It is reasonable to expect that reducing the substance abuse test and physical examination frequency from five years to two years will result in additional costs to employers with no certain benefits. This is because a shorter frequency will result in the employer having to provide and pay for more examinations, therefore incurring higher costs.

Staff wishes to emphasize that under the terms of the proposed language, nothing precludes employers from having the employee examined by a physician more frequently than every five years, however, without documentation to substantiate an examination frequency of less than five years, the Board believes further modification of the proposal is unwarranted at this time.

The Board would like to thank Mr. Jackson for his comments and participation in the Board's rulemaking process.

Mr. Steve Halterman, CSP, TOC Management Services, by letter dated March 4, 2003.

Comment:

Mr. Halterman stated he objected to the proposal based on his conversations with some of his member representatives, the majority of which operate at fixed locations and use cranes which are operated on the property of the employer. He indicated that the operators are company personnel who are well trained in the operation of the equipment. Mr. Halterman identified several areas in the proposal that may be problematic beginning with the physical examination and drug testing requirements which are taken from Department of Transportation (DOT) requirements and are designed for drivers of equipment that operate on public roads.

Mr. Halterman wondered whether physical examination and drug testing requirements would be also applied to operators of powered industrial trucks, heavy equipment operators or machine operators operating on fixed industrial sites. The list could go on and on and become a legal problem regarding employee privacy.

Response:

Written comments made during the Notice for Proposed Modification timeframe are limited to proposed changes made in response to the initial 45-day public hearing period. Many of Mr. Halterman's comments fall outside the scope of the Notice. Board staff has reviewed all the modifications to the original proposal and will address only those issues raised by Mr. Halterman that specifically relate to those items as shown in the Notice.

With regard to Mr. Halterman's comment on the physical exam and drug testing requirement, Staff wishes to clarify that under the terms of the proposal the employer may elect to provide a physical exam that either meets the ASME B30.5-2000 physical exam criteria or those of the DOT. The language was modified to specifically provide the employer with flexibility in being able to provide a physical exam based on either physical examination criteria and not just those of the DOT. No modifications were proposed to the proposal with regard to the issue of drug testing. Under the terms of the proposal only operators of tower cranes and those mobile cranes as stipulated in the proposal are subject to the certificate of competency requirement and this does not include powered industrial trucks, haulage equipment or any other machinery or equipment. The Board is not aware of any existing Title 8 requirements that mandate physical examinations and drug testing for the operation of heavy equipment, industrial trucks, machinery etc. The ANSI B30 committee reached consensus on the importance of ensuring through physical examinations and drug testing that operators of cranes be physically competent, in full

command of their mental faculties and senses to operate a piece of machinery as complex as today's modern cranes. The loss of a load due to impairment could result in serious injury or death to employees and the public, not to mention damage to equipment costing in the hundreds of thousands of dollars. The Board cannot speculate on the likelihood of drug testing or physical examination requirements being applied in the future to operators of such equipment.

Comment:

Mr. Halterman also inquired as to the nature of the level and standardization of the testing mandated by the regulation and language issues. He indicated that it may be difficult to deal with the 20% illiteracy rate in general industry. He also asked what level of comprehension and skills would be necessary for operators to be able to successfully demonstrate the ability to read, write and comprehend. In the case of equipment manuals written in the language of the crane manufacturer, could such materials be re-transcribed into the language of the operator or a translator be used to explain the materials.

Response:

Other than the inclusion of a copyright date for the test validation document referenced in the proposal, no other modifications were proposed for Section 5006.1(a)(3). The testing called for in the proposal is to meet a number of national consensus criteria to ensure testing validity, consistency, accuracy and effectiveness as a means to ascertain the competency of a crane operator. Literacy is of great importance when ascertaining the competency of a crane operator. Operators must be able to fully comprehend the critical safety instruction given to them in the course of their crane operator training and must be able to demonstrate that knowledge in a test. With regard to the demonstration of ability to read, write and comprehend, and exhibit arithmetic skills, these are all national consensus criteria taken from the ASME B30.5 standard.

There is nothing in the proposal that would preclude the employer from providing employees with instruction information on a particular crane transcribed in a language that is understandable to the crane operator. Use of a translator would not be out of the question either. Language problems must be addressed by the employer, as the employer is responsible throughout Title 8 regulations to be able to communicate to the employee in a manner that ensures that he/she is understood.

Comment:

Mr. Halterman stated that the make-up of the advisory committee who worked on the proposal represented companies that provide training and certification and this can be seen as a conflict of interest since they may have had self-serving motives in putting together the proposed language.

Response:

The committee membership that was instrumental in putting together the proposal was not made up predominantly of individuals representing the certification and training industry, but instead consultants in crane operations, construction industry applications, crane owners and leasing agents, the Division crane certification unit members, and representatives from the Operating Engineers, Locals 3 and 12.

Comment:

In Section 5006.1(a)(3)(D), Mr. Halterman wondered why an operator would be required to have specific knowledge if he or she did not operate any of the crane types mentioned in this subsection.

Response:

The intent of the clarifying modification to (a)(3)(D) is to ensure that the operator has the specific knowledge as reflected by the applicable national consensus standard, in the type of crane(s) he or she intends to operate.

Comment:

Finally, Mr. Halterman stated that the crane operator certification/qualifications proposal was developed at about the same time as the promulgation of SB 1999, which according to Mr. Halterman originally included crane operator certification. However, Mr. Halterman notes that SB 1999 contained language that stated in part: “No certificate of operation shall be required by this article for a crane operator to exclusively operate a crane owned or leased by the operators employer on a permanent site owned by the employer.”

Mr. Halterman stated that the proposal would be marginally acceptable to his clients if the exemption language stated above would be included in the language.

Response:

The Board notes that Mr. Halterman’s comment regarding SB 1999 is not relevant in terms of what is within the scope of what the Board will respond to with regard to this proposal. This rulemaking effort was not triggered by statute. The language from SB 1999 was not believed by the advisory committee to have merit in terms of the goal of the proposal to ensure that California mobile and tower crane operators are determined to be competent to operate the crane safely. Consequently, the Board believes such an exemption is unjustified and no further modification to the proposal is necessary.

The Board would like to thank Mr. Halterman for his comments and participation in the Board’s rulemaking process.

DETERMINATION OF MANDATE

These regulations do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.