

State of California
Department of Industrial Relations
M e m o r a n d u m

To : ALL STANDARDS BOARD MEMBERS

Date : March 6, 2015

From : **Occupational Safety and Health Standards Board**
Conrad Tolson, Senior Engineer - Standards

Subject : Cranes and Derricks in Construction Operator Certification Effective Dates and Phase-In
(Federal Time Extension)

At the February 19, 2015, Public Hearing, the Occupational Safety and Standards Board (Board) considered revisions to California Code of Regulations, Title 8, Construction Safety Orders, Section 1618.1(e), Cranes and Derricks in Construction Operator Certification Effective Dates and Phase-In (Federal Time Extension). These standards are substantially the same as federal standards.

Labor Code Section 142.3(a)(3) exempts the Board from providing a comment period when adopting a standard substantially the same as a federal standard. However, as indicated in the Notice and Informative Digest, the Board still provided a comment period for the purpose of identifying only issues related to the following two areas: 1) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking and, 2) solicit comments on the proposed effective date.

As a result of public comments, there were no changes made to the original proposal.

SUMMARY OF WRITTEN AND ORAL COMMENTS

I. Written Comments

Elizabeth Treanor, Director, Phylmar Regulatory Roundtable (PRR), by letter dated February 3, 2015.

Comment No. 1:

California Occupational Safety and Health Administrations (Cal/OSHA's) crane operator certification requirement first went into effect in 2005, long before federal Occupational Safety and Health Administration (OSHA) adopted crane operator certification requirements which will now go into effect in November 2017. This has provided California with years of experience with operator crane certification. Companies have been certifying crane operators according to type of crane, but not capacity, since 2005. Once certified, an operator's certification typically remains effective for up to 5 years. PRR members request that rather than requiring re-certification according to type and capacity all at once in 2017, that a flexible approach be adopted to allow crane operators to maintain their current certifications (by type) until their certification normally expires, and at that time they recertify for both type and capacity.

Response:

Since this is a Horcher rulemaking adoption, we do not have flexibility to depart from federal requirements. We also note that this comment was withdrawn during oral comments. However, see oral comments from Operating Engineers (to follow) which may help address commenters' concerns.

Comment No. 2:

Once certified, an operator's certification typically remains in good standing for up to a five-year period. Because certification by both type and capacity is not currently required nor widely available, California crane operators that have recently or will be soon obtaining certification to maintain compliance with the current Cal/OSHA standard will be at a disadvantage if they have to be recertified again by November 2017, before the expiration of the typical five-year certification period. The commenter therefore requested that California crane operators be granted an extension for certification by both type and capacity beyond November 2017 until the normal expiration of their certification.

Response:

This comment was withdrawn during oral comments. See also response the Comment No. 1 above.

Comment No. 3:

PRR believes that requiring training and certification for each capacity rating of the equipment could require multiple certifications, with much training content overlap between capacity ratings. For example, one company has five different capacities for mobile truck cranes. Another company has 13 different cranes of various types and capacities. Would the employer be required to certify for each type and capacity? PRR would like to request that the Board clarify the term "capacity" to permit a bandwidth in capacity range, such as: 0 to 45 tons, 45 to 75 tons, etc. The allowable range of capacity certification could be limited by the similarity of the hazards presented by cranes with capacities in a similar range.

Response:

This comment was withdrawn during oral comments. See also response the Comment No. 1 above.

David Shiraishi, MPH, Area Director, US Department of Labor, Occupational Safety and Health Administration, Oakland Area Office.

Comment:

The Area Office has completed their review of the proposed modifications to Construction safety Orders, Section 1618.1(e) regarding operator certification effective dates and phase-in (federal time extension) and determined that the proposed modifications appear to be commensurate with the federal standard.

Response:

The Board thanks Mr. Shiraishi and the OSHA Oakland Area Office for their participation in the rulemaking process.

II. Oral Comments

Oral comments received at the February 19, 2015, Public Hearing in Oakland, California.

Elizabeth Treanor, Director, Phylmar Regulatory Roundtable (PRR).

Comment:

PRR and its members now recognize that their comments were outside the scope of this (Horcher) rulemaking and therefore withdraw them. They will work on the substantive federal issues through other channels. PRR now wholeheartedly supports the proposal as noticed.

Response:

The Board notes the withdrawal. The Board thanks Ms. Treanor and Phylmar Regulatory Roundtable for their interest and participation in the rulemaking process.

Jim Leslie, Executive Director, Operating Engineers Certification Program.

Comment:

They are currently working with a coalition of stakeholders to get clarification on the federal requirements. The intent of the original OSHA rulemaking advisory committee was to have operators certified by type of crane; not capacity. Their intent was also for the employer to determine qualification of an operator to operate a particular type of crane. Certification and qualification are not the same thing. The Operating Engineers Certification Program supports the time extension in order to permit talks to continue at the federal level regarding certification by "type and capacity" and also operator qualification.

Response:

Noted. The Board thanks Mr. Leslie and the Operating Engineers Certification Program for the background information and for their support and participation in the rulemaking process.

Larry Hopkins, Operating Engineers Local 12, Certification Program.

Comment:

He agreed with Mr. Leslie that operator qualification is the main issue. He added that the lay person may think the larger the crane, the harder it is to run; however, the opposite is true. The Operating Engineers are working with the coalition on the "type and capacity" issue as well as operator qualification. He opined that industry opposition is nearly unanimous to the federal proposal to certify by "type and capacity." The present California crane operator certification program (GISO 5006.1) is more stringent than what the feds are proposing, and adoption of the federal standards (by type and capacity) will water-down California standards. It is therefore

imperative for the Board to adopt the time extension to 2017 to permit resolution of these issues at the federal level.

Response:

Noted. The Board thanks Mr. Hopkins and Operating Engineers Local 12 for the information and for their support and participation in the rulemaking process.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts as indicated in the Staff Development Memorandum.