

OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD

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Title 8, Mobile and Tower Crane Operator Recertification
Sections 5006.1(c) and (d) and 5006.2(c) and (d)(3)
Advisory Committee
July 24, 2024
Virtual – WebEx

Start Time: 9:06 a.m.

End Time: 11:30 a.m.

Chair Name: Simone Sumeshwar

Analyst Name: Marlo Miura

Participants

Simone Sumeshwar, Senior Safety Engineer, Occupational Safety and Health Standards Board

Royce Bedrosian, Maintenance Superintendent, Contra Costa Water District

Kevin Bland, Western Steel Council Residential Contractors Association and California Framing Contractors Association

Maryrose Chan, Senior Safety Engineer, Occupational Safety and Health Standards Board

Kelly Chau, Attorney, Occupational Safety and Health Standards Board

Jason Denning, Principal Safety Engineer, Cal/OSHA

John Dony, Director, Phylmar Group (representing several industry stakeholders operating in California and elsewhere)

Annette Evans, Environmental Health and Safety Specialist, City of Sacramento Public Works Department

J.D. Friend, Director of Safety, International Union of Operating Engineers (IUOE) Local 3

Michelle Garner-Janna, Director, Phylmar Group (representing several cross-industry organizations)

Kevin Goddard, Senior Safety Engineer, Occupational Safety and Health Standards Board

Brian Haight, National Service Manager, Morrow Equipment Company (manufacturers and employers)

Larry Hopkins, Director of Training, Operating Engineers Training Trust Local 12 **Ruth Ibarra**, Staff Services Manager, Occupational Safety and Health Standards Board

Jim Jacobs, Treasurer, Local 3

Kristen Kelly, Senior Safety Engineer, Occupational Safety and Health Standards Board

Vijay Krishna, Vice President of Credentialing, American National Standards Institute (ANSI) National Accreditation Board

Tom Milianti, Director, Operating Engineers Certification Program, (OECF)

Marlo Miura, Program Analyst, Occupational Safety and Health Standards Board

Amalia Neidhardt, Principal Safety Engineer, Occupational Safety and Health Standards Board

Cindy Sato, Construction Employers' Association (management)

Brian Silbernagel Corporate Safety Director, Liebherr

Thom Sicklesteel, Chief Executive Officer National Commission for Certification of Crane Operators (NCCCO)

Neil Tolson, Executive Director, Electrical Industry Certifications Association (EICA)

Martin Turek OECF, Certification Director

Michael Vlaming, Executive Director, Crane Owner's Association and Mobile Crane Operators Group

Yancy Yap, Senior Safety Engineer, Cal/OSHA Research and Standards Unit

Philip Yow, Senior Safety Engineer, Cal/OSHA Research and Standards Crane Unit

Board Policy and Practices Regarding the Use of Advisory Committees

The Chair reviewed the purpose, practices and procedures for advisory committees. Advisory committees are a non-mandatory tool used by Board staff to develop rulemaking proposals. It is an effective method to share information, evaluate recommendations and reach consensus among affected groups. Interested parties are encouraged to attend committee meetings. Please refer to the Board website for policies, procedures and other information about advisory committees.

The Chair shared that this is the first—and anticipated to be the only—Advisory Committee (Committee) meeting on this matter. She also outlined the protocols for this meeting. If significant discussion is anticipated, then rostered members will be prioritized before opening discussion to others.

Summary of Rulemaking Topic

On January 18, 2024, the Board granted Petition 598 “to the extent that Board staff is directed to convene an advisory committee to consider the necessity of potential changes to the regulation” of crane operator recertification requirements.¹

The focus of this Advisory Committee meeting is to review proposed language for title 8, California Code of Regulations (CCR), General Industry Safety Orders, sections 5006.1 and 5006.2 regarding the recertification process of crane operators. The proposed language cross-references to crane types in other CCR sections and modifies a requirement exemption in the recertification process. The Committee is to provide comments, concerns and recommendations about the drafted language for the two

¹ Occupational Safety and Health Standards Board. (2024, January 18). Order, Proposed Petition Decision of the Occupational Safety and Health Standards Board (Petition File No. 598).

sections. The Committee also may comment on things generally related to crane operator certification and recertification.

Documents related to the meeting, including Discussion Draft, Agenda, Invitation and Invited Member Roster may be found on the [Board's page for Petition 598's Advisory Committee](#).

Draft Proposal, Sections 5006.1(c) & 5006.2(c)(1): Defining the Scope of Crane Types

The Committee discussed defining the crane types that fall under the sections by referencing crane types in two other CCR sections.

The proposed additional language for both section 5006.1(c) (accreditation of certifying entities) and section 5006.2(c)(1) (employers' responsibility to pay for operators' certification and licensing) are the same: **“For purposes of this section, crane types shall correspond with the standards referenced in section 4884.”**

The proposed language for both section 5006.1(d) and section 5006.2(d)(3) (exam exemption requirements for operators seeking recertification) are the same: **“for applicable crane types included in section 4880(a)(1)[.]”**

After opening the floor for questions and comments, the Chair confirmed for the members that the proposed language is just a clarification—there is no change to the crane types that fall under sections 5006.1 and 5006.2. Chair also confirmed that section 5006.1 applies to general industry and section 5006.2 applies to construction. The group reviewed sections 4880(a)(1) (scope) and 4884 (standards incorporated by reference), both in CCR General Industry Safety Order's Group 13, Cranes and Other Hoisting Equipment.

The petitioner asked if the proposed language for sections 5006.1(d) and 5006.2(d)(3) cross-reference section 4880(a)(1) while the proposed language for sections 5006.1(c) and 5006.2(c)(1) cross-reference section 4884 for crane types? Could there either be an alignment (use only section 4880(a)(1) or 4884) or a reason provided for why they are different? (Sicklesteel, sent via email as well)

The Chair said more research is needed. Several Committee members agreed that it would be better to have the scope of crane types defined the same way, and several expressed support for using section 4884.

Concern was expressed that some crane types could be unintendedly excluded or included by referencing the section(s) in the proposed language. They felt that further information was needed to have a better perspective. (Bland, Haight, Dony) One further contributed that he thought subsection c's suggested language of section 4884 should not be there because it adds confusion and creates unintended issues. (Bland)

Some members pointed out that section 4880 is for construction and contains inclusions and exclusions that may not match general industry. For example, one member noted that section 4880 was created when adopting federal standards for construction (not general industry); additionally, section 4880 has some issues and excludes some things that should not be excluded like digger derricks and mechanical trucks. He wasn't sure if section 4880 should be used. (Yow)

Other members agreed that caution and further research is warranted. Adequate time is needed to research how the crane definitions would affect the certification programs before being able to evaluate and approve of the proposed language. (Hopkins) For example, some of these crane types are certified in the Operating Engineers Certified Program (OECF) as different categories because ASME groups determine a valid difference in crane setup and operations may fall into the same category. If an operator is exempted from the hands-on recertification exam for one crane, then they could be exempted for another crane. Also, section 4884 is about the design, construction and installation of cranes, and it incorporates ANSI only regarding design, construction and installation. So there needs to be care and diligence with the language to ensure safer and more efficient certification and recertification processes. (Bland). The chair confirmed that the recommendation to reference to Section 4884 was not a change but rather a clarification. Several comments were made in regards to subcategories and the group agreed that this discussion focused more on certification rather than recertification which is the topic of the AC. The chair recommended revisiting this section at a later time.

Operator Cards and Proposed Crane Type Definitions

Committee member Yancy Yap asked, from an inspector's perspective, would there be differences between how operator cards are generated and the proposed language? Reading the proposed language, it would seem like the operator card would list the specific crane referenced in section 4884 that the operator is certified for and using that day.

The operator card lists the scope of what an operator is certified for and the types of cranes that can be operated. That would be in alignment with what the standard says and provide disclosure for those who look at those certification cards. (Krishna) Traditionally, certifying entities like NCCCO come up with their own classifications. (Back when the law was written, there wasn't an intent to have so many categories; however, having categories and narrowing by crane types are a positive.) (Yow) Certifying entities provide what designations or specific certifications are allocated to which American Society of Mechanical Engineers (ASME) standard. (Sicklesteel) EICA certification cards have the specific designation listed on the card. (Tolson)

Both sections 4880 and 4884 have language that will not appear on certifications. (Denning) The cards don't necessarily correspond directly to section 4884 and won't list everything like the section. (Bland) Certifications are by different designations. Cranes

can be grouped or sub-grouped. For some programs, a mobile crane is further broken down into subcategories. What this does is create mobile cranes as one group since they're all under the B30.5 standard. (Sicklesteel). A need for the grouping of cranes was expressed, Yancy Yap stated that many years ago an FAQ was generated by Larry McCune which included crane types and grouping.

Jason Denning asked the certifying bodies if it was possible for the certifying entities to have a universal or agreed-upon certification standard so that the crane types could be more effectively grouped together.

Sicklesteel responded by asking what does the State want to allow? Should certifying entities set the definitions, or should the State be more prescriptive? There currently is a lack of consistency among certifying entities because certifying entities have interpreted the current language in different ways. Examples: Tonnage, activity, ASME standards and other ways. The EICA program has hydraulic crane certifications based on control type—rotating and stationary—not based on capacity. (Tolson) NCCCO and OECP programs are already fairly similar and do it by type aligned to ASME standards. (NCCCO could provide a table that its certifications align to these standards because that's how they structure those. Everything is driven by ASME standards.) (Sicklesteel) OECP breaks things down by ASME standards. It builds tests the same way by using those breakdowns and will continue to do so. OECP would like to keep its groupings and be in alignment with NCCCO. (Milianti)

A member suggested, in face of this lack of consistency, that perhaps Committee experts could come up with categories by considering crane operator certification boxes, training and experiences. These categories don't necessarily need to refer to ANSI since the differences in operating certain cranes are drastic even if the cranes themselves may be similar (crawler versus rubber tire, hydro versus conventional). The focus should be on the operators. (Bland)

Others agreed that crane classification could be improved. For example, similar-to-operate cranes could be grouped so that hours of experience can count better. (Bedrosian) Also, inspectors currently have difficulty at accident sites determining whether the operator is qualified to operate the crane based on their operator card. Categories would make it easier for the inspectors and their regulated public. (Yap) Another member pointed out that capacity should not be criteria for different types of crane operation certification. (Denning)

Mike Vlaming made a comment in regards to the discussion being beyond the scope of the petition topic. Thom Sicklesteel stated that they are grouping their certifications using the ASME standards and Tom Milianti stated that OECP is doing the same. The Chair concluded the discussion about the proposed language that incorporates crane type by cross-referencing to other CCR sections. She noted that a few people approve of the use of section 4884 including the Thom Sicklesteel, Larry Hopkins and Jim

Jacobs. The discussion ended with Kevin Bland re-reading the scope and reiterating that that the topic was recertification but the discussion we were having was about recertification. The chair agreed that certification may need to be looked at in the future but that we needed to focus on the petition.

The Committee discussed the Draft Proposal's language that would modify the hands-on test exemption in the recertification of crane operators.

The proposed additional language for both section 5006.1(d) (recertification in general industry) and section 5006.2(d)(3) (recertification in construction) are the same: **“unless determined by an Accredited Certifying Entity based on reports of accidents, safety concerns, performance problems or retraining requirements from employers or other parties.”**

The Chair shared during the discussion that, previously, stakeholders expressed confusion over the way certified entities interpreted the regulatory language; it was up to the legal units for each certifying entity to interpret the language. Sometimes the exemption was not applicable because of an entity's certification requirements. The goal of the proposed language is to clarify that certifying entities do have the ability to limit recertification based on safety incidents.

The proposed language seems to be in alignment with ANSI 17024—a certifying entity must ensure the certified crane operator demonstrates continued competence. The proposed change provides a mechanism for certifying entities to take multiple factors into consideration rather than locking them into one type of recertification activity. (Krishna)

Committee members shared that the certifying entities they represent already have standards and processes similar in effect to the proposed language. EICA has language about "accidents, safety concerns, violations of our code of conduct, performance problems" for recertification purposes. (Tolson) OCEP's policies allow for the evaluation of the crane operator if someone had an accident or safety concern. There would be an investigation, documented proof of what happened and retraining if needed. Most certifying entities would have their own policies to protect themselves. (Milianti) NCCCO also has similar language.

As the sections currently read, if an operator meets the documented hours (and other requirements) then the certifying entity would have to recertify without administering a practical exam—even if there had been an accident. (Sicklesteel)

One member voiced concern about enforcement and compliance difficulties based on the way the changes are written. As regulatory language, the recertification language needs to be clear. (Bland) Another member was hesitant to add a litany of things into the regulation; ambiguous terms are not helpful in the end. He thought the proposed

changes would invite confusion for the regulating agencies and opportunities for litigation. (Vlaming)

Some participants recommended that the proposed language be broken into two or more sentences; otherwise, it is a long sentence that is hard to understand. (Ibarra, Yap) One supported, from an inspector's point of view, retaining "reports of accidents, safety concerns" and the other specifics in the proposed revision. (Yap) Another suggested, thinking of Cal/OSHA, still including "based on reports of accidents." (Neidhardt).

The Committee discussed possibly modifying the suggested language to streamline it more.

Suggestion: "unless determined by an Accredited Certifying Entity deems it necessary" (Sicklesteel, NCCCO)

Suggestion: "unless an Accredited Certifying Entity deems it necessary" (Sicklesteel, NCCCO; Tolson, EICA, in agreement)

Suggestion: "unless determined necessary" (Haight, Morrow Equipment Company)

Suggestion: "unless determined by an Accredited Certifying Entity" (Vlaming, Crane Owner's Association and Mobile Crane Operators Group) (The accredited certifying entity will have a determination and a process for that—and it's an appealable process. Taking all the language out would make it really simple. (Sicklesteel))

Suggestion: "unless a hands-on examination is determined to be required by an Accredited Certifying Entity" (Denning, Cal/OSHA; Bland, Western Steel Council Residential Contractors Association and California Framing Contractors Association) (wanting to clarify what is being determined)

One member expressed concern that simplifying the language as suggested could allow an agency to require the hands-on examination for any reason. (Denning) Another agreed that certifying entities' criteria need to be known; otherwise, their criteria may differ and that leads to inconsistency. (Chau) The Chair shared that while the certification process may be different across the entities, all the entities follow ISO standards. NCCCO shared that it is required to build a job task analysis and define skills, knowledge, abilities and levels needed to pass certification and recertification. To the extent the job task analysis is determined differently (for example, tonnage vs type) then there are different criteria.

Thom Sicklesteel stated that the need for this language was not a "change" but clarification for current policy. Kevin Bland commented if this wasn't a change was a change needed [in the language]. Vijay Krishna added that clarifying the language will

allow the certification bodies to be in compliance with their third-party verification requirements.

The chair asked how recertification is handled if the operator has no incidents but repeatedly fails drug tests or physical exams.

The operator needs all three: physical card, drug test, and credentials. Section 5006.2(g) addresses recertification criteria; the operator must have a valid certificate showing they are substance-free as proven by a lab service. (Bland) For drug test failures, those are often not reported because of medical disclosure rules and laws. However, if reported, then the operator will typically lose their credentials. (Sicklesteel, Milianti) Drug test failures would be a major issue for EICA—the discipline and ethics committee would make a ruling. (Tolson).

The chair asked what if a certified crane operator has an incident with one employer and moves on to another employer or if they fail the employers hands on evaluation.

There is no accountability if there was a grossly incompetent crane operator who was certified. (Yap). Thom Sicklesteel explained that certification bodies require operators to report accidents and encourage employers to report them as well. Certifications are issued to operators as individuals (similar to a driver's license). The certifying entities do not have relationships with the employers even though the employers may coordinate and pay for the certification. The candidate is required to report accidents. It is not mandatory for employers to report incidents. Employers and regulatory agencies may report it, and such information can be gathered from other sources. In the chat Neil Tolson typed EICA language: "Any accidents or incidents that resulted in damage, injury or death of personnel, violation of the code of ethics policy, violation of substance abuse policy will be reviewed by the discipline and ethics committee[.]"

Members also generally pointed out that accidents don't necessarily demonstrate an operator is incompetent or unqualified and vice versa. (Bland) Accredited entities are yearly audited, and operators involved in accidents are part of the record being evaluated. (Sicklesteel)

Certification does not equal qualification. The certifying entity establishes a base level to issue certification. Certifying entities ensure those who are certified have knowledge, skills and abilities. (Tolson, Vlaming, Sicklesteel) The employer is required to evaluate and qualify the individual. (Tolson, Vlaming) That is where the responsibility lies. (Vlaming) Therefore, that concern is identified in section 5006.2(f) (evaluation). The employer must evaluate each crane operator in addition to the operator's certification requirements. There also are retraining requirements. (Bland)

The Chair concluded the discussion about proposed language modifying the hands-on test exemption for the recertification of crane operators.

Economic and Fiscal Impact/ Request for Cost Information

The Chair asked about potential economic or fiscal impacts because of the proposed changes. She also requested, if possible, data as to how many operators are using waivers annually as part of recertification. (NCCCO has shared this information via email.)

EICA and NCCCO agreed that there is no economic impact if the proposed changes only clarify their entities' current policies. There is no anticipated impact provided that the suggested language allows certifying entities to operate as they have been and align with ASME standards. (Sicklesteel, Tolson in agreement)

Some Committee members supported the concern that it may be premature to discuss economic impact until the suggested changes' scope and exact language are determined. (Bland, others).

Action or Pending Items

The Chair thanked the Advisory Committee and reviewed next steps. She thinks there is a good basis and that many people agree on most changes. The goal is to have this done by the end of the year with the Committee's help.

Action Items—Chair (in collaboration):

- Share with meeting participants an MS Word version of the Discussion Draft of sections 5006.1 and 5006.2 so that the participants may more easily make recommendations and modifications
- Share meeting minutes and include meeting participants (updated roster)
- Keep meeting participants informed as things move forward.

Action Items—Committee Members:

- Send the Chair any information, questions, suggested draft language and comments
- Contact the Chair if would like to set up a meeting
- Provide to the Chair, if possible, data as to how many operators are using waivers annually as part of recertification
- Provide chair with any information or data in regards to additional costs which may be incurred.