



January 22, 2009

Thomas M. Stohler,
Acting Assistant Secretary of Labor for Occupational Safety and Health
c/o Docket Office (via fax 202-693-1648)
Occupational Safety and Health Administration
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: **Comments to Proposed Rule on Cranes and Derricks in Construction**
OSHA Docket No. OSHA-2007-0066

Dear Mr. Stohler:

On behalf of the Sheet Metal and Air Conditioning Contractors National Association (SMACNA), we hereby submit the following comments for the Occupational Safety and Health Administration (OSHA) Proposed Rule on Cranes and Derricks in Construction - OSHA Docket No. OSHA-2007-0066.

SMACNA is an international trade association representing 4,500 contributing contractor firms, and is dedicated to promoting safety, quality and excellence in the sheet metal and heating, ventilation, and air conditioning (HVAC) industry. SMACNA has national offices in Chantilly, VA, outside of Washington, D.C.

SMACNA congratulates OSHA for taking the steps to address crane safety through the Crane and Derricks Negotiated Rulemaking Advisory Committee (C-DAC) and we applaud the efforts of OSHA to improve jobsite safety. In general, we do not question C-DAC and the agency's proposed standard as it relates to assembly and disassembly, inspection, electric line safety, or communication.

One issue SMACNA would like OSHA to address is the inclusion of **overhead and gantry cranes** in the scope of this construction standard in section 1026.1400(a). These cranes are typically not used in construction and do not present most of the hazards this standard seeks to address (assembly, disassembly, ground conditions, overhead power lines, signaling, fall protection, etc.). SMACNA requests that "overhead and gantry cranes" be removed from the scope of this proposed standard.

Our members, like hundreds of other small businesses, rarely operate large cranes (such as tower cranes). Our members may operate small cranes during material and product loading and unloading operations but would most likely lease large cranes (including the set up and operation of the crane) for larger, more complicated lifts such as large rooftop HVAC units. SMACNA's concerns with the proposed standard focus on the signal person, the operator, and the controlling entity.

Signal Person Qualification

OSHA has asked for public comment regarding the definition of “third party qualified evaluator” in section 1926.1428, *Signal person qualifications*. SMACNA member employees receive significant safety and health training through an education system provided through the affiliation with Sheet Metal Workers International Association (SMWIA), and a joint labor-management trust partnership through the International Training Institute (ITI) and the Sheet Metal Occupational Health Institute Trust (SMOHIT).

This partnership includes development of training products and industry education through the 165 joint apprenticeship training centers (JATCs) throughout the country. Many JATC instructors are OSHA authorized trainers and have many years of training experience including conducting OSHA 10 Hour and OSHA 30 Hour training. Signal person training and qualification of workers could be conducted through this well-established, proven training program.

Therefore, SMACNA requests that the definition of “third party qualified evaluator” be revised to include language that allows training history to be considered and includes JATCs, such as the following (emphasis added):

An entity that, due to its *history in providing training*, independence, and expertise, has demonstrated that it is competent in accurately assessing whether individuals meet the Qualification Requirements in this Subpart for a signal person. *A labor-management joint apprenticeship training program qualifies as such an entity.*

SMACNA member employees are Union workers and may work for various employers through their lifetime. It is therefore important that their qualification as signal persons be “portable”. Allowing signal person training to be conducted through the JATCs as third party qualified evaluators addresses this SMACNA concern regarding “portability” of signal person qualification.

Operator Certification

In regards to operator certification, SMACNA agrees with the Small Entity Representatives (SERs) who commented on this topic during the Small Business Regulatory Enforcement Fairness Act (SBREFA) review process. Based on the SERs comments to limit operator certification, OSHA has asked for public comments on several issues related to operator certification. SMACNA requests these proposed rule changes since, realistically, under the current proposed standard, most small businesses have only one, less than ideal, choice to obtain operator certification, not the four “options” presented in the proposed rule.

The SERs asked OSHA to allow operators of a particular crane model to become certified to operate that equipment. They also wanted OSHA to address the operation or process involved in the crane use and to allow such operators to be certified for a “specific, limited type of circumstance defined by a set of parameters that, taken together, would describe an operation characterized by simplicity and relatively low risk” (preamble pages 59811 and 59812 of the 10/09/08 Federal Register).

C-DAC provided exceptions to the general rule for operator certification by excluding derricks, sideboom cranes, and equipment with a rated hoisting/lifting capacity of 2,000 pounds or less. The preamble does not detail the reasons for these exceptions. In addition, C-DAC reviewed very few significant studies or reports in making decisions regarding operator certification (“The Committee’s view was based on the collective experience of the Committee members.”).

SMACNA foremost requests that OSHA expand the exceptions to the general rule for operator certification by adding an exception for small capacity cranes (e.g., those rated less than 10 – 15 tons) which tend to be less complicated cranes used during low risk lifts such as commercial truck-mounted cranes, service/mechanic trucks with hoisting devices, and other similar cranes. These types of cranes are often used to deliver product to a jobsite or place small rooftop HVAC units on low rise buildings, and the actual lifts are simple and do not consist of significantly heavy loads (typically less than 5 tons).

SMACNA would support education and outreach efforts for these types of cranes to address hazards such as overhead power lines and basic hazard awareness, however, certification of operators of these cranes appears to be excessive.

In addition, SMACNA would request that OSHA add a less restrictive certification level for lesser capacity cranes (e.g., those rated less than 30 tons) which are less complicated to assemble and set up, and used during low risk lifts. This certification could be similar to the proposed qualification process for signal persons, in that, the definition of the certification provider would be more in line with the third party qualified evaluator (an entity that, due to its independence and expertise, has demonstrated that it is competent in accurately assessing individuals), and the certification process would be less burdensome and complicated.

Controlling Entity

SMACNA has concerns that the current definition and related requirements of the “Controlling Entity” may result in subcontractors getting into situations that are above and beyond their capacity and responsibility on any particular worksite. The definition includes “...any other legal entity which has overall responsibility for the construction of the project – its planning, quality and completion”. In addition, in 1926.1402 (d), OSHA proposes that “If there is no controlling entity, the requirement for ensuring ground preparations shall be made by the employer that has authority...”

C-DAC apparently had doubts in this regard, as they believed that in some instances, the controlling entity may lack the expertise needed to know what ground preparations may be needed. As a support craft in most large hoist and lift situations where ground conditions are critical to a safe lift, SMACNA members may be involved in certain aspects of the project planning and completion (what needs to be lifted, where it needs to go, rigging options, etc.), but our members more often do not have the technical or engineering expertise, or knowledge of overall site conditions, to ensure ground preparations meet equipment manufacturer’s specifications, as proposed. This is clearly the duty and responsibility of the assembly/disassembly (A/D) supervisor or the crane operator.

In fact, under proposed section 1926.1404, the A/D supervisor must address hazards associated with the crane operation including site and ground bearing conditions. Therefore, SMACNA would like the definition of controlling entity revised to reflect that subcontractors, and others who have very little to do with the overall project including site conditions and do not have the expertise to determine compliance with crane manufacturer specifications, are not included in the definition, purpose, or requirements of a controlling entity. SMACNA recommends that section 1926.1402 (d) be revised as follows:

(d) If there is no controlling entity for the project, the requirements in paragraph (c)(1) of this section shall be met by a competent person. The competent person shall be designated by the employer that has authority at the site to make or arrange for ground preparations needed to meet paragraph (b) of this section.

In addition, SMACNA has additional concerns with the responsibilities of the controlling entity regarding section 1926.1402 (c), Ground Conditions. In order to reflect the fact that others, with more expertise, should be available to make appropriate decisions on ground conditions, SMACNA requests that section 1926.1402 (c) be revised as follows:

(c) Either the controlling entity or a competent person designated by the controlling entity shall:

Conclusion

SMACNA believes that our comments do not substantially change the intent of the proposed rule, but more equitably apply the conditions of OSHA's proposal. SMACNA appreciates the opportunity to provide comments on this very important safety standard.

Sincerely,

Michael McCullion

Michael A. McCullion, CSP, ARM
Director of Safety and Health
SMACNA